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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

54

PHILIP A. DAVITT and
THEO B. DAVITT,

Plaintiffs-Appellees,

vs.

SAM D. SMART,

Defendant-Appellant.

Filed June 29, 1988

8-96
87-1004

Appeal from the Iowa District Court for Warren County (No. 20851), Ray A. Fenton, Judge.

Defendant appeals a judgment entered in favor of plaintiffs following a jury trial based on defendant's alleged breach of a buy-sell agreement. **AFFIRMED.**

Rex Darrah and Grant Moser of the Rex Darrah Law Office, Des Moines, for defendant-appellant.

John P. Dollar of Seery & Dollar, Des Moines, for plaintiffs-appellees.

Heard by Schlegel, P.J., and Sackett and Habhab, JJ.

HABHAB, J. 55

This case presents two issues for our review; the first is whether the defendant was entitled to a directed verdict on the plaintiffs' theory that the defendant breached the purchase agreement by not cooperating with the lender. The second issue is whether the defendant was entitled to a directed verdict on the plaintiffs' theory that the defendant breached the purchase agreement after comparable financing was made available to the defendant. The facts of this case will be set out as the issues are addressed. We now address the first issue.

I.

At trial the defendant moved for a directed verdict and the trial court denied the motion. If there is substantial evidence in the record so that a reasonable trier of fact could find for the plaintiffs, the jury verdict is binding on a reviewing court. Iowa R. App. P. 14(f)(1); Northrup v. Miles Homes Inc., 204 N.W.2d 850, 860 (Iowa 1973). In order to affirm the trial court's denial of defendant's motion for a directed verdict, we must find substantial evidence in the record from which a reasonable trier of fact could find that the defendant breached the purchase agreement by not cooperating with the lender. If we so find, then the jury verdict is binding on us. We now turn to the record.

At some point in the late spring or early summer of 1985, plaintiffs entered into an oral listing agreement with realtor Irene Nolan. The agreement was simply that if Nolan found a buyer, plaintiffs would pay a commission. Nolan had prior knowledge of Sam Smart, the defendant, and believed him to be interested in buying Iowa farmland. He had previously bought Iowa land through her. Nolan further knew that the defendant had financed his previous purchase through Metropolitan Life Insurance Company. Nolan therefore contacted Metropolitan Life and ascertained generally what terms they would offer. She asked for a specific financing offer tailored to the purchase of plaintiffs' property.

She obtained a specific financing offer and a general statement of willingness to make such a loan.

Once these matters were established, Nolan sent an offer to buy to the defendant incorporating these terms. The defendant reviewed the terms and apparently found them acceptable as he signed the offer to buy. He also apparently found out that plaintiffs were in financial trouble and that they owed about $370,000 to the Land Bank. His offer was for $373,000. The offer was subject to financing and the terms of the financing were set out.

The agreement was signed by the plaintiffs and showed a date of August 5, 1985. The closing was set for October 5, 1985, thus allowing sixty days for the defendant to arrange his financing. The realtor Nolan then went to work to obtain financing from Metropolitan Life. Plaintiffs cooperated fully with this and carefully monitored the transaction. Defendant, however, was difficult to contact and dilatory in his efforts to get financing. The October 5, 1985, closing date came and went without the defendant's financing being finally arranged.

One substantial problem in obtaining the financing was that Smart would not give Metropolitan Life all of the information they requested, particularly regarding his income. The defendant himself testified that he had refused to give Metropolitan all the information they requested, particularly as to his income. He said that as a result of that the loan process simply "stopped." The attempt to secure financing at Metropolitan Life carried on until late October or early November 1985. Finally, in early November 1985, Metropolitan cancelled its loan commitment. To some degree this cancellation apparently related to the Iowa mortgage foreclosure law.

The defendant did later on testify that he was wrong when he said his lack of cooperation killed the loan. We find that such a change of story as to

the facts generates a jury question. In determining whether a jury question exists, the evidence is viewed in the light most favorable to the party in whose favor the verdict was rendered. See Poulsen v. Russell, 300 N.W.2d 289, 294 (Iowa 1981).

Our review of the record reveals there was substantial evidence in the record so that a reasonable trier of fact could find that the defendant breached the purchase agreement by not cooperating with the lender. The trial court is affirmed on this issue.

II.

Defendant argues that he is entitled to a directed verdict on plaintiff's theory that comparable financing was made available to him. Once again, the defendant moved for a directed verdict at trial on this issue and once again the trial court denied it. The same standard of review is applicable here as was discussed in the first issue. If there is substantial evidence in the record so that a reasonable trier of fact could find that the defendant breached the purchase agreement after comparable financing was made available to him, the jury verdict is binding on us. Iowa R. App. P. 14(f)(1); Northrup, 204 N.W.2d at 860. We return once again to the record.

After Metropolitan Life fell out of the deal the defendant agreed to go forward with the transaction if comparable financing could be found. Plaintiffs also agreed to extend the closing date indefinitely. Nolan sought alternative financing from several sources. Eventually she focused in on Peoples Trust & Savings Bank of Indianola, Iowa. Several commitment letters to finance the deal were issued by this bank. The last one was dated December 27, 1985. This is the one at issue.

Without responding directly to the terms of the commitment letter, the defendant contacted the president of the bank and stated he no longer wanted

the financing. His attorney also told the same thing to the realtor, Nolan, without giving a reason. The defendant never indicated at that time that the financing was not to his liking. In response to a letter from the plaintiffs' lawyer indicating that financing was available and the deal ready to close, the defendant simply declined to take any further action. The transaction was, therefore, never closed.

Irene Nolan testified that she felt the final financing package being offered by Peoples Bank was better than the deal offered by Metropolitan. There is other testimony that the deal with Peoples Bank was better than the Metropolitan deal. Further, there is testimony that Mr. Davies of Peoples Bank told Nolan that he would "do anything he [Smart] wanted to try and get a deal."

The defendant stated that the only problem with the financing Peoples offered was the lack of a renewal commitment after the three years were up. From the record we find that Jim Davies of Peoples Bank testified that the defendant never asked for more than a three-year commitment. Davies also said that if the defendant had asked for it, he could have had a loan for longer than three years. The defendant never gave any reason to Nolan, the realtor, nor Davies, the banker, as to why he broke off negotiations with the bank.

The evidence of this record demonstrates that there was substantial evidence so that a reasonable trier of fact could find that the defendant breached the purchase agreement after comparable financing was made available to him. The trial court was not in error by denying the defendant's motion for directed verdict and we therefore affirm.

III.

The defendant asserts that he is entitled to a new trial because the trial court improperly submitted an erroneous theory of recovery to the jury. We find no merit in this contention for we have previously determined that the

trial court was not in error in denying defendant's motions for directed verdict. The trial court acted properly when it submitted to the jury the theories for recovery.

AFFIRMED.