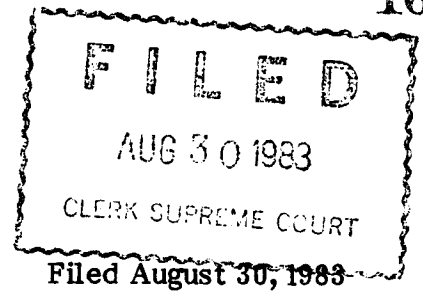


IN THE COURT OF APPEALS OF IOWA



DEAN C. HUFF,

)

Plaintiff-Appellee,

)

vs.

)

WILLIAM E. YOHN,

)

Defendant-Appellant.

)

3-80
2-68382

Appeal from Cerro Gordo District Court, Ray E. Clough, Judge.

The parties contracted for the defendant to purchase land from the plaintiff. The defendant purchaser did not complete performance on the ground a condition precedent, his obtaining suitable financing, had not been met. The plaintiff sued, alleging that the defendant had breached the contract.

REVERSED

James M. Stanton of Boyle, Schuler, Stanton, Grabinski & Sorensen, Clear Lake, for defendant-appellant.

Thomas C. Teas and Thomas H. Burke of Finley & Teas, Mason City, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Schlegel, and Hayden, JJ.

OXBERGER, C.J.

On March 3, 1980, Dean Huff entered into a purchase agreement with Bill Yohn for the purchase of 85 acres of land in Cerro Gordo county. The purchase agreement contained the language: "This Offer Subject to Buyer Obtaining Financing Suitable and Agreeable to Buyer Within an Agreed Amount of Time by Buyer and Seller." The defendant purchaser did not complete performance on the ground a condition precedent, his obtaining suitable financing, had not been met. The plaintiff sued, alleging that the defendant had unreasonably rejected Federal Land Bank financing, that the condition precedent of suitable financing had been met, and that the defendant had breached the contract. The plaintiff asserted he had suffered damages because the land had declined in value during the two months between the date of the contract and the date of the alleged breach.

The trial court, as finder of fact, concluded that the plaintiff had proved both breach of the contract and damages. The defendant appeals from the resulting judgment for the plaintiff. The defendant contends the evidence was insufficient to support either the conclusion that a breach had occurred or the conclusion that the plaintiff had suffered damages because of a drop in the land's value. We reverse.

The parties signed a contract under which the defendant, Yohn, agreed to purchase a parcel of land for \$210,000 from the plaintiff, Huff. The contract was contingent upon Yohn's obtaining "suitable" financing.

Yohn investigated the possibility of a Federal Land Bank loan but concluded that such a loan was unsuitable because the Land Bank required too large a down payment, too short a repayment term, and variable rather than fixed interest rates. (Yohn had previously tried and failed to borrow from other sources the amount of down payment required by the Land Bank.) Yohn refused to purchase

the land from Huff on the ground that the condition precedent of suitable financing had not been met. Huff sued, alleging that Yohn had acted unreasonably in rejecting Federal Land Bank financing, that the condition precedent of suitable financing had been met, and that Yohn had breached the contract. Huff alleged that he had suffered damages because the land had declined in value during the two months between the time of the contract and the time of the alleged breach.

The lawsuit was tried to the court, which concluded that Huff had proved both a breach of the contract and damages. The trial court awarded Huff \$29,000 in damages.

On appeal, Yohn contends that the evidence was insufficient to support either the conclusion that he had unreasonably rejected suitable financing and had therefore breached the contract or the conclusion that Huff had suffered damages because of a drop in the land's value.

I. Scope of Review

This action at law is on assigned errors only. The trial court's findings of fact will not be disturbed if supported by substantial evidence. We view the evidence in a light most favorable to the judgment. The trial court's findings are to be construed broadly and liberally, and in case of ambiguity will be construed to uphold the judgment. However, these principles do not preclude inquiry into whether the court's decision was based upon the erroneous application of rules of law. Iowa R. Civ. P. 4.

II. Construction of the Contract

The principal issue in this case revolves around a sentence typed into the contract by Wilbur Numelin, a partner in the real estate agency which handled the transaction between Huff and Yohn. There is no dispute over the fact that Yohn, who was not familiar with Land Bank financing, insisted that Numelin insert the sentence in the contract. The sentence reads: This Offer Subject to Buyer Obtaining Financing Suitable and Agreeable to Buyer Within an Agreed Amount Time by Seller and Buyer.

Yohn contends that his intention in having this provision inserted into the contract was to ensure that the contract would not become effective until he had arranged for financing that he would consider to be suitable for his purposes. Huff himself testified that Numelin had explained the provision as "beings that Bill [Yohn] had never had a Land Bank loan, he wanted to make sure that the loan would suit his fancy." (Emphasis added.)

Huff insists, however, that this provision ought to be construed objectively rather than subjectively. This is, he argues that financing "suitable and agreeable" to the buyer does not mean that the buyer may reject any financing, however desirable any reasonable person might find it to be, on the ground that it simply does not appeal to him. The court, Huff says, should construe this clause to mean that if Yohn was able to obtain financing that any reasonable person in his circumstances would find acceptable, he would then be obliged to follow through and carry out the remainder of the provisions of the contract.

The trial court agreed, finding that the duty of all parties to a contract to act in good faith and to deal fairly with one another implied that the provision in question be construed as imposing upon Yohn the obligation to accept any reasonable financing that became available to him, whether it was to his liking or not.

"When the court is asked to interpret a contract which the parties made for themselves the object is to ascertain the meaning and intention of the parties expressed in the language used." State v. Stanzinger, 179 N.W.2d 761, 764 (Iowa 1970).

"It is well settled that the primary rule of construction is, if possible, to give effect to the intention of the parties. Unfair or unreasonable results will, if possible, be avoided. The practical construction placed upon an ambiguous or

indefinite contract by the parties thereto will usually be adopted by the courts." Miller v. Geerlings, 256 Iowa 569, 576-77, 123 N.W.2d 207, 213 (1964); Darnell v. Day, 240 Iowa 665, 670-71, 37 N.W.2d 277, 280 (1949). See also First National Bank in Creston v. Smith, 331 N.W.2d 120, 122 (Iowa 1983); Village Supply Co., Inc. v. Iowa Fund, Inc., 312 N.W.2d 551, 555 (Iowa 1981); Lovlie v. Plumb, 250 N.W.2d 56, 59 (Iowa 1977).

But as Justice Holmes once put it, "[a] word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used." Towne v. Eisner, 245 U.S. 418, 425, 38 S. Ct. 158, 159, 62 L. Ed. 372, 376 (1918).

We may not confidently assume that the words of any contract are so clear and unambiguous as to require no interpretation or construction in light of the circumstances surrounding the making of the contract and the intentions of the parties as revealed by such extrinsic evidence as is revealed at trial. "The polestar of construction is the intention of the parties to the contract as revealed by the language used, taken as an entirety; and, in the quest for the intention, the situation of the parties, the attendant circumstances, and the objects they were thereby striving to attain are necessarily to be regarded." Casriel v. Ling, 2 N.J. 45, 65 A.2d 514, 517 (1949).

The Iowa Supreme Court has repeatedly said: "The practical construction placed upon a contract of doubtful meaning by the parties themselves will usually be adopted by the courts." Hamilton v. Wosepka, 154 N.W.2d 164 (Iowa 1967); Gilbrech v. Kloberdanz, 252 Iowa 509, 513, 107 N.W.2d 574, 576-77 (1961); Theobald v. Weber, 259 Iowa 452, 458, 143 N.W.2d 418, 422, 423 (1966).

" 'Construction' of a contract, the process of determining its legal effect, is always a matter of law to be resolved by the court. 'Interpretation,' the process

of determining the meaning of the words used, is also a matter for the court to decide as a matter of law, unless it depends upon extrinsic evidence or a choice among reasonable inferences to be drawn from it." Farm Bureau Mutual Ins. Co. v. Sandbulte, 302 N.W.2d 104, 107-08 (Iowa 1981); Connie's Const. Co. v. Fireman's Fund Ins. Co., 227 N.W.2d 207, 210 (Iowa 1975).

In light of these principles, we conclude that the trial court's construction of this contract was incorrect. The plaintiff, Huff, admitted that he understood that the purpose of the sentence introduced into the contract by Numelin at Yohn's insistence was to enable Yohn to choose any financing that would "suit his fancy." Huff went on to explain that he understood that the legal effect of this clause was that it acted as a condition precedent: "Well, I understood it until he had a loan that I didn't have a deal."

The language of this contract is ambiguous. It may be construed as imposing upon Yohn an objective, "reasonable man" obligation to seek and accept such financing as any reasonable person in his position would find acceptable; or as permitting him to accept only such financing as (subjectively) "suited his fancy." It is the court's duty to ascertain the meaning and intention of the parties expressed in the language of the contract, Stanzinger, supra, avoiding unfair or unreasonable results, if possible, Geerlings, supra. Where the parties have given the contract their own practical construction, however, we will adopt the construction they have given it. Id. Both parties here are in agreement that the provision in question is to be construed as allowing Yohn very wide latitude in the selection of financing for the purchase—not so much as to allow him to act upon whim and caprice, but enough to allow him to act in ways that he might reasonably consider to be in his own best interest, even though other persons similarly situated might have acted otherwise. We therefore conclude that the contract is to be construed so as to give effect to that right.

III. The Land Bank Financing

In the absence of Huff's statement that the provision discussed in Division II of this opinion was intended to allow Yohn to find any financing that suited his fancy, we would have been inclined to conclude, as the trial court did, that Yohn was to be held to a reasonable man standard. Even if we were so to hold, however, that would not dispose of the matter; for it remains to be seen whether Yohn reasonably rejected the Land Bank financing for which he had applied.

Yohn was in the ready-mix concrete business. His purpose in purchasing the land from Huff was to mine the sand and gravel that was on the property and to utilize it in his business.

In negotiating for the loan from the Land Bank, Yohn explained that he wanted to finance 80 percent of the purchase price with a loan repayable over thirty years at a fixed rate of interest. He was told that he would have to come up with a down payment of 30 percent of the total purchase price, that he would have to purchase land bank association stock with 5 percent of the gross loan proceeds, that he would have to repay the loan over twenty years, and that the terms of the loan would require variable interest rates that could increase over time. In addition, he was told that if he removed sand and gravel from the property, special principal payments would be required in order to account for the removal of collateral from the property.

Although he was dissatisfied from the outset with these terms, Yohn applied for the loan, thinking that he might still be able to negotiate more favorable terms with the Land Bank before closing the deal.

Yohn asked Spencer Ollenburg, president of the Hancock County National Bank, for a loan in the amount of \$30,000 to \$40,000 to cover a portion of the down payment required by the Land Bank. Ollenburg rejected Yohn's loan request

because he believed that Yohn's proposed operation would not have sufficient cash flow to repay the debt. Yohn did not submit a formal application to the bank for this loan, but was informed by Ollenburg that his request for the loan was rejected.

The trial court found that Yohn was held by his contract to a standard of reasonableness which would not permit him to reject financing arrangements "for any whimsical or capricious reason he may concoct." The court concluded that the condition set by the words Yohn inserted in the contract was satisfied once his loan application was approved. And the court concluded, finally, that the rejection of Yohn's loan application by the Hancock County National Bank was not a bona fide rejection, and that Yohn had ample funds and other resources to make the down payment himself or to liquidate other assets in order to do so. The condition precedent was thus satisfied, according to the trial court, and Yohn was liable for damages.

We find that the evidence is not sufficient to establish that the rejection of Yohn's request for a loan from the Hancock County National Bank was not bona fide. The bank president's testimony is clear and unequivocal on this point.

We find further that Yohn was under no legal obligation to liquidate other assets in order to make the down payment required by the Land Bank.

And finally, we find that it was not unreasonable for Yohn, as a prudent businessman, to reject the Land Bank loan that was offered to him, particularly after his application for a loan for the down payment was rejected by his bank.

Having determined that the condition precedent was not satisfied, it is not necessary for us to discuss the question of damages.

REVERSED.