FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

420

ARTHUR H. LAMPE and **KATHLEEN A. LAMPE,** Appellants, vs. **DANIEL R. REED,** Appellee.	)	Filed April 26, 1979 20 2-61826

Appeal from Keokuk District Court - L. R. Carson, Judge.

Plaintiffs appeal from trial court judgment of $4,690.33 in their favor and from overruling of their motion for new trial and motion to amend or enlarge findings and conclusions. AFFIRMED.

Tracy Anderson of Kalona, Iowa, and Patrick M. Ryan of Muscatine, Iowa for appellant.

Robert Day of Washington, Iowa for appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

Plaintiffs appeal from a trial court judgment of $4,690.33 in their favor and from the trial court's overruling of their motion to amend or enlarge findings and conclusions and their motion for a new trial. Plaintiffs contend the trial court erred in not finding that defendant breached a 1971 livestock-share farm lease in a manner causing more damages to plaintiff than the trial court allowed. Alternatively, plaintiffs contend a partnership relationship existed between the parties and that the trial court should have ordered an equitable accounting and settlement of the partnership. Defendant has moved to dismiss the appeal on the ground that he has paid the $4,690.33 judgment. We conclude said motion should be denied. We consider the appeal on its merits and affirm the trial court.

I. An action for breach of contract is an action at law and as such, the trial court's findings of fact are binding on this court if supported by substantial evidence. Atlantic Veneer Corp. v. Sears, 232 N.W.2d 499 (Iowa 1975), Iowa R. App. P. 4, 14(f)(1). The contract entered into by the parties in 1971 was to run for seven years. In 1973, two changes were made in the original agreement. Although each new agreement contained a provision stating previous agreements were null and void, the business relationship between the parties continued essentially as it had before. In 1975 a new contract which completely changed the complexion of the parties business operation was executed. This agreement also contained a clause purporting to nullify all previous agreements. Although the new contract contained no specific term of duration, it called for the parties to review their business arrangement before August 1 each year. On July 23, 1975 defendant served notice that the lease would terminate on August 1, 1975, which resulted in plaintiffs bringing this action.

At trial and on appeal, plaintiffs have asserted the contractual changes were the result of duress; that they had been coerced into accepting new contractual terms which were dictated by defendant. When a contract on its face is not manifestly unfair, there is a presumption it was obtained free from duress. Smith v. Waterloo, C.F. & N.R. Co., 191 Iowa 668, 682, 182 N.W. 890, 896 (1921). The burden is upon plaintiffs to prove the contrary by clear, convincing and satisfactory evidence. Scott v. Seaburg, 220 Iowa 665, 661, 262 N.W. 804, 807 (1935). Although there was conflicting testimony regarding what had transpired, the trial court, after viewing the witnesses, found the lease had been made after "extensive discussions by the parties" which resulted in the "termina[tion of] all

claims which the parties had under any prior agreement." We find substantial support in the record for (1) the trial court's treatment of these contractual changes as renegotiations, not breaches, of the 1971 lease agreement; and (2) the trial court's finding that plaintiffs failed to establish the contractual changes were the result of duress.

In addition, our interpretation of the 1975 agreement confirms defendant's right to terminate plaintiffs' lease in the manner in which this was done. The trial court allowed plaintiffs to recover the costs of improvements made upon the leased premises. We cannot conclude that they have established a right to recover more under the contract.

II. Alternatively, plaintiffs allege the agreement between the parties constituted a partnership and request an equitable accounting and settlement. While ordinarily such a claim would present equitable issues, this case was tried at law and our review is on error. Flynn v. Michigan-Wisconsin Pipeline Co., 161 N.W.2d 56, 60 (Iowa 1968); Kline v. Reeder, 203 Iowa 396, 397, 212 N.W. 693, 694 (1927).

Since the business relationship between the parties began in December of 1971, the question of whether or not a partnership was created must be resolved under chapter 544, The Code 1971. Section 544.6 defines a partnership as "an association of two or more persons to carry on as co-owners of business for profit." Section 544.7 sets out rules for determining the existence of a partnership but does not establish an exclusive test. Traditionally, the salient features of a partnership are: (1) a community of interest in profits and losses; (2) a community of interest in the capital employed and; (3) a community of power in administration. These are the primary tests and constitute indicia of the existence of a partnership. The relationship is predicated on mutual consent and is evidence by the terms of contract, the conduct of the parties, and the circumstances surrounding the transaction. Malvern Nat. Bank v. Holliday, 195 Iowa 734, 739, 192 N.W. 843, 846 (1923).

An examination of the record indicates the following pattern of dealing: (1) the parties split the income generated from the operation equally as specified by paragraph D-1; (2) the parties each owned a one-half interest in the livestock and various items of equipment, and they established a joint bank account from which disbursements for various operating expenses were made; and (3) the parties shared managerial powers relating to the farming and livestock operation as required by the contract's mutual agreement provisions.

Despite these indications of the three salient features of a partnership as prescribed by Malvern Nat. Bank v. Holliday, the written agreement between the parties negates a partnership. That agreement, signed by the parties in 1971, is not ambiguous. A foundational requirement of any partnership is an intention of the parties to become partners. Butz v. Hahn Paint and Varnish Co., 220 Iowa 995, 997-98, 263 N.W. 257, 259 (1935). Paragraph F(1) of the contract expressly provided: "No partnership created. — This lease shall not be deemed to give rise to a partnership relation, and neither party shall have authority to obligate the other without written consent, except as specifically provided in this lease." The fact that the parties saw fit to sign an agreement containing this provision, while not conclusive, is strong evidence that the relationship was not a partnership. Anderson v. Walker, 256 Iowa 1324, 1328, 131 N.W.2d 524, 527 (1941). Throughout the entire agreement the parties use the terms "landlord" and "tenant" with the exception of one reference in paragraph D-2 to a "partnership account." The parties entered this agreement without the assistance of legal counsel and were not skilled in the use of legal terminology. This single reference to a "partnership account," loses significance when considered against the background of the entire contractual agreement containing many handwritten references to landlord and tenant and specifically disclaiming the existence of a partnership.

Another essential element of a partnership under Iowa law is joint liability. Section 544.13, The Code. Paragraph F(3) of the 1971 agreement provides: "Each party agrees that the other party shall in no way be responsible for the debt of, or liability for accidents or damages caused by the other party." Joint liability has traditionally been a reason for giving considerable thought and attaching great weight to the decision to enter into a partnership. In the case at bar, this clause has allowed each party to enjoy a relationship which functioned much like a partnership without responsibility for the debts or negligence liability of the other party. We, therefore, conclude the evidence supports the finding of the trial court that no partnership was formed while the original agreement between the parties was in effect.

Although in 1973, the parties made certain changes in their contractual agreement, the record does not disclose any major change in the nature of the parties business association. Therefore, we apply the same analysis to the contractual agreements in effect from 1973 to 1975 as we did to the 1971 contract and reach a similar conclusion. The changes enacted in 1973 did not establish a partnership between the parties.

In 1975, the parties signed an entirely new contract which called for the plaintiffs to raise hogs. As previously noted, the contract, while containing no specific term of duration, called for yearly review of the arrangement by the parties in section 1, paragraph 3. This provision effectively created a contract of renewable yearly leases. Paragraph 7 of section 1 stipulated that all checks for the hog production operation must be countersigned by defendant or his wife. Paragraph 8 of section 1 provided that the landlord's decision would govern in situations where landlord and tenant disagreed. The effect of these two clauses is to dispell the argument that the parties are co-owners of a business for profit. See section 544.6, The Code 1975. The contract reserves ultimate managerial decision-making to defendant and destroys any community of interest in administration the parties may have previously shared.

Having examined the terms of the agreements and all of the evidence presented at trial, we find that while many characteristics of a partnership arrangement are present, the evidence supports the trial court's finding that plaintiffs have failed to establish the existence of a partnership.

AFFIRMED.