

IN THE COURT OF APPEALS OF IOWA

FILED

JUN 25 1985

CLERK SUPREME COURT

**ROGER LEE HORNSBY and NORMA
JEAN HORNSBY, Husband and Wife,**

Plaintiffs-Appellees,

vs.

ROBERT A. HAYES,

Defendant and Third-
Party Plaintiff-Appellant.

Filed June 25, 1985

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ROBERT A. HAYES,

Defendant and Third-
Party Plaintiff-Appellant,

vs.

**MERLE T. BUCHAN and
GRACE BUCHAN,**

Third-Party
Defendants-Appellees.

5-146
84-876

Appeal from the Iowa District Court for Dallas County - Jack D. Levin,
Judge.

Defendant third-party plaintiff appeals from order foreclosing the interest
in real estate of the third-party defendants and granting judgment in rem in favor
of the defendant third-party plaintiff. **AFFIRMED.**

Randy V. Hefner of Van Werden, Hulse & Hefner, Adel, for defendant and
third-party plaintiff-appellant.

James B. Smith of Shirley, Smith, Shirley & Powell, Perry, for plaintiffs-
appellees and third-party defendants-appellees.

Heard by Snell, P.J., and Hayden and Sackett, JJ.

PER CURIAM

In 1978, Roger Hornsby borrowed \$27,000.00 from a bank. The note was guaranteed by Robert Hayes. Approximately two years later, Hornsby defaulted on the note and the bank notified Hayes that he might be asked to pay all or part of the note.

On April 2, 1980, the Hornsby's sold a piece of real estate to the Buchans by executing an installment sales contract. On April 11, 1980, the Hornsby's executed an assignment of their right in the real estate contract to Hayes. The assignment was recorded. Then in June of 1980, Hayes paid the \$27,000.00 note in full.

In May of 1982, the Hornsby's sent a notice of forfeiture to the Buchans. The real estate contract between the Hornsby's and Buchans was a standard bar association real estate contract and contained a forfeiture and foreclosure clause allowing the sellers to forfeit the contract "as provided by Chapter 656." Hornsby's sent notice of forfeiture as required by Iowa Code section 653.2 and the forfeiture was completed. Following the forfeiture, the Hornsby's attempted to sell the property without Hayes' knowledge. As a result of the demands of prospective purchasers, the Hornsby's commenced this action to quiet title against Hayes. Hayes filed a third-party claim against the Buchans.

The trial court found that the assignment to Hayes was valid. The court then quieted the title to the property in Hornsby's subject to Hayes' assignment. Hayes was granted judgment in rem against the real estate and the interests of the Buchans was foreclosed. The order was entered on March 2, 1984.

On March 9, 1984, Hayes filed a rule 179(b) motion requesting that the court award him a personal judgment against the Buchans. The motion was denied on April 17, 1984.

Hayes argues that the forfeiture proceedings were ineffective because he paid the \$27,000.00 note, thus validating the assignment of the real estate contract from the Hornsby's and making him the successor in interest to the

Hornsby. He claims, therefore, that he was the person entitled to serve notice under Chapter 656.

Chapter 656 of the Iowa Code sets forth the requirements for the forfeiture of a real estate contract. Section 656.2 sets forth the notice requirements:

Such forfeiture and cancellation shall be initiated by the vendor or by his or her successor in interest, if known to the vendor or his or her successor in interest, and on the mortgagee or assignee for security purposes of the vendee or his or her successor in interest, if the interest of such mortgagee or assignee for security purposes is of record, and on the party in possession of said real estate, a written notice which shall:

1. Reasonably identify said contract, and accurately describe the real estate covered thereby.
2. Specify the terms and conditions of said contract which have not been complied with.
3. Notify said party that said contract will stand forfeited and canceled unless said party within thirty days after the completed service of said notice performs the terms and conditions in default, and, in addition, pays the reasonable costs of serving the notice.

Iowa Code § 656.2 (1983).

In this case the vendor, Hornsby, initiated the forfeiture proceeding by serving notice on Buchans. There was no cure of the default within 30 days, and the contract was forfeited under section 656.5.

Hayes argues that he became the successor in interest to Hornsby by virtue of the assignment and thus became the party entitled to initiate forfeiture proceedings under chapter 656.2. Hayes argues that upon the payment of the \$27,000.00 note which Hornsby owed the bank and which was the consideration for the assignment of the contract, he obtained all rights which Hornsby had in the contract. This argument overlooks the fact that the real estate contract was for more than the value of the assignment. The assignment contained the following language:

That we hereby acknowledge that we, the Sellers, have an outstanding note upon which Robert A. Hayes was a Co-signer, primarily and solely acting as a guarantor and should this note at anytime become due and collectible from the guarantor, then we assign our interest in and to

the above contract up to amount due thereon which is any maximum portion being \$27,000.00 plus interest.

We cannot say that Hornsby had assigned all of his rights in the contract. He still had rights as a vendor and was entitled to initiate notice under section 656.2. The forfeiture was effective. Because of this finding we conclude that the trial court order quieting title in Hornsby subject to Hayes' assignment and granting Hayes an in rem judgment against the property in the amount of \$41,097.45 is proper. Since the forfeiture was effective, we reject Hayes' argument that he should be allowed to proceed in a foreclosure action against the Buchans and obtain a deficiency in the event the sale of the property does not result in sufficient proceeds to satisfy the judgment. The trial court order is affirmed.

AFFIRMED.