FILED
AUG 30 1990
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-277 / 89-1501

MODAY REALTY CO., a New York Partnership, and SUMMIT CENTER CORP., an Iowa Corporation,

Appellees,

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vs.

JAY A. WHITNEY, JOSEPH H. WHITNEY, LAURA DECRESSEY, RICHARD CORSIGLIA, and MARY ELLEN CORSIGLIA,

Appellants.

Appeal from the Iowa District Court for Scott County, James R. Havercamp, Judge.

Appellants appeal a district court decision declaring their lease with the appellees to be in full force and effect. **AFFIRMED.**

Wayne M. Newport, Davenport, for appellants.

Charles E. Miller and Richard A. Davidson of Lane & Waterman, Davenport, for appellees.

Considered by Oxberger, C.J., and Sackett and Habhab, JJ.

OXBERGER, C.J.

The parties in this action are successors in interest to a thirty year lease agreement dated November 21, 1958, with an option to renew for an additional thirty years. The appellants-defendants are the landlords and the appellees-plaintiffs are the tenants under the lease. In 1982 the parties renegotiated the amount of rent, and set forth their agreement in a stipulation. The 1982 stipulation raised the fixed base rent and required Moday Realty Co. to pay the landlords additional percentage rents.

Moday subleases the property to four different tenants. Pursuant to the lease and 1982 stipulation, Moday pays the landlords a base rent and additional rents based on a percentage of the sales of Moday's subtenants.

Moday did not collect from a subtenant nor pay to the landlords the percentage rents for the years 1985, 1986, and 1987. When Moday realized its error, it collected the rents and paid the landlords. The landlords accepted the payment and then sent a notice of termination of the lease to Moday. Moday filed an action seeking declaratory and injunctive relief. The district court determined that the defendants were not entitled to terminate the lease. The landlords appeal.

The landlords contend that Moday breached the lease by not paying the percentage rents in the years due and by not

paying interest on the late payments. Based on these alleged breaches, the landlords argue that the lease was properly terminated.

On appeal, the appellants failed to cite any legal authority for four of the issues presented. Relying on Iowa Rule of Appellate Procedure 14(a)(3), we deem the issues appearing in appellant's brief without legal authority waived. Iowa R. App. P. 14(a)(3).

The remaining issue for review is whether the defendant's April 12, 1988, letter to the plaintiffs terminated the real estate lease between the defendants and plaintiff Moday. This case was filed as an action for declaratory judgment. Whether a declaratory judgment action is a legal or equitable proceeding is determined by the pleadings, the relief sought and the nature of the case. Eldridge v. Herman, 291 N.W.2d 319, 321 (Iowa 1980). Since the plaintiffs sought equitable relief in their original petition and the proceedings in the trial court apparently were tried as an equitable proceeding regarding the issue on appeal, we review de novo. Iowa R. App. P. 4. The trial court's findings of fact are accorded weight although not binding on this court. Iowa R. App. P. 14(f)(7).

Nonpayment of rent does not ipso facto operate as a forfeiture of a lease. A landlord may not terminate or declare a lease forfeited for nonpayment of rent without

first making a demand for the payment of the delinquent rent. Village Development Co., Ltd. v. Hubbard, 214 N.W.2d 178, 181-182 (Iowa 1974).

Substantial evidence in the record supports the finding that the defendants accepted the late payment of rents submitted by the plaintiffs and never made a demand for delinquent payments or interest due on late payments before attempting to terminate the lease. We find the defendants' contention that they were unaware of the contents of the lease when the late payments were tendered by the plaintiffs and therefore could not waive their right to terminate the lease by acceptance of the payments without merit.

Accordingly, we affirm the trial court's finding that defendants' letter dated April 12, 1988, did not terminate the lease between the plaintiffs and defendants.

AFFIRMED.