IN THE COURT OF APPEALS OF IOWA

No. 3-555 / 93-389

FILED
AUG 04 1994
CLERK SUPREME COURT

U.R.S., INC.,

Appellee,

vs.

IOWA TRUST AND SAVINGS BANK of Oskaloosa, Iowa,

Appellant.

Appeal from the Iowa District Court for Mahaska County, Richard J. Vogel, Judge.

The defendant bank appeals a judgment of the district court finding the bank owed the plaintiff a real estate commission in the amount of $5000. **AFFIRMED.**

James M. Hansen of Clements, Pabst, Hansen & Maughan, Oskaloosa, for appellant.

Garold F. Heslinga of Heslinga, Heslinga & Dixon, Oskaloosa, for appellee.

Considered by Hayden, P.J., and Sackett and Cady, JJ.

HAYDEN, P.J.

On March 13, 1989, Rex Wright, the executor of the R.C. Wright estate, entered into an exclusive right to sell agreement with Iowa Realty United. Said agreement was to expire March 13, 1990. The defendant, Iowa Trust and Savings Bank, was a mortgage holder on the real estate listed for sale, and upon demand of the bank, Rex Wright transferred the property to the bank in lieu of foreclosure.

Sometime thereafter, the plaintiff, U.R.S., Inc., procured a buyer for the real estate and submitted a purchase agreement to the bank, which the bank accepted. According to the agreement, the offer to buy was contingent on approval of the boundary lines by the buyer. Testimony at trial revealed the only reason for the contingency was to get a survey so the property could be transferred. The bank, however, never arranged to have the real estate surveyed, and the buyer was never given a legal description to the property he was attempting to purchase. After the expiration date of the agreement, January 2, 1990, the buyer contacted the real estate agent for Iowa Realty United and told them he had no more use for the property.

U.R.S. filed the present action against Iowa Trust and Savings, arguing the bank owed it a real estate commission in the amount of $5000. The district court found the parties were contractually bound by an agreement, and U.R.S. had complied with all elements of the contract. The

district court entered judgment in favor of U.R.S. against the bank in the amount of $5000 plus interest. The bank appeals. We affirm the trial court's decision.

The bank argues 1) the buyer only agreed to purchase the property subject to the establishment of the boundary lines; 2) the bank was unable to provide a survey of the property to obtain a legal description of the property; 3) consequently, the bank was not entitled to performance by the buyer. Therefore, U.R.S. was not entitled to its commission, based on the contingency.

This action was filed at law; our review is for the correction of errors at law. Iowa R. App. P. 4. If supported by substantial evidence and justified as matter of law, the judgment will not be disturbed on appeal. Moore's Builder & Contractor, Inc. v. Hoffman, 409 N.W.2d 191, 194 (Iowa App. 1987) (citations omitted).

The trial court's determination U.R.S. fulfilled its obligations under the listing agreement and is entitled to the commission is supported by substantial evidence. It is well-settled the broker is entitled to his commission when he undertakes to find a purchaser who shall buy on specified terms and conditions and who is ready, willing, and able to buy on such terms and conditions. See, e.g., Mullenger v. Clause, 178 N.W.2d 420, 428 (Iowa 1970) (citation omitted). Here the trial court found the buyer and the seller had only to provide the survey and legal description of the boundaries. The trial court further

found the obligation to produce the survey was left with the bank, and at all times the buyer was ready, willing, and able to go ahead with the purchase of the real estate. By failing to provide the survey by the deadline set in the contract, the bank prevented completion of the contract. Under these circumstances, the trial court decision awarding U.R.S. its commission was supported by substantial evidence.

The judgment of the trial court is affirmed.

AFFIRMED.