IN THE COURT OF APPEALS OF IOWA

No. 0-143 / 89-784

FILED
JUN 26 1990
CLERK SUPREME COURT

FARM CREDIT BANK OF OMAHA, f/k/a FEDERAL LAND BANK OF OMAHA,

Appellee,

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vs.

WILLIAM BRANDERHORST, JEENIE BRANDERHORST, MARK BRANDERHORST, and LOIS BRANDERHORST,

Appellants.

Appeal from the Iowa District Court for Jasper County, Jerrold W. Jordan, Judge.

The Branderhorsts' appeal from a district court order granting the Farm Credit Bank's petition for forcible entry and detainer and evicting the Branderhorsts from the farm. **AFFIRMED.**

Peter C. Riley and David J. Smith of the Tom Riley Law Firm, P.C., Cedar Rapids, for appellants.

Harry W. Zanville and Joseph W. Seidlin of the Zanville Law Offices, Waterloo, for appellee.

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

HAYDEN, J.

This case concerns 317 acres the Branderhorsts had been farming since 1946. In 1984, William Branderhorst, the titleholder, agreed to deed back the property to the Farm Credit Bank of Omaha, f/k/a Federal Land Bank of Omaha (Bank) pursuant to a Chapter 11 bankruptcy. The Bank leased the farm to the Branderhorsts in 1987 and 1988. In April 1988, the Branderhorsts received notice of their right of first refusal to purchase the farmland under the federal Agricultural Credit Act. The Branderhorsts' offer to repurchase for $240,000 was accepted. The purchase agreement required the Branderhorsts to obtain financing in order to close within thirty days. The Branderhorsts did not obtain financing within thirty days and the Bank denied their request for additional time. The farm was eventually sold at public auction to another party in August 1988. In March 1989, the Bank filed a forcible entry and detainer action seeking to evict the Branderhorsts. The district court granted the Bank's petition. Following the district court's order, Branderhorsts filed a motion for enlarged findings and conclusions of law asserting the Bank's thirty-day time limit did not comport with the legislative intent of the Agricultural Credit Act. The court denied the motion. The Branderhorsts have filed this appeal.

The Branderhorsts raise two issues for our consideration. They contend the trial court's ruling their

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motion for enlarged findings and conclusions of law was not timely filed contravenes established Iowa law. They further assert the Bank's thirty-day limit deprived Branderhorsts of their right of first refusal based on the intent of the Agricultural Credit Act.

We affirm the trial court.

Our review of an action for forcible entry and detainer, tried as an equitable action, is de novo. Roshek Realty Co. v. Roshek Bros. Co., 249 Iowa 349, 87 N.W.2d 8 (1958). However, when considering the credibility of witnesses, the court gives weight to the fact findings of the trial court, but is not bound by them. Iowa R. App. P. 14(f)(7).

In the ruling on Branderhorsts' motion, the court found the motion was not timely filed. It further stated:

> 3. Even if Defendants' Motion for Enlarged Findings and Conclusions of Law and Request for Oral Argument was timely filed, this Court, in its April 12, 1989 Ruling and Order, fully considered the Agricultural Credit Act of 1987 and its Application to the evidence presented herein. That Ruling and Order is proper and Defendants' Motion for Enlarged Findings and Conclusions of Law should be denied.

Because we affirm the court's finding regarding the enforceability of the time limit, we need not address the issue of the timeliness of the motion to enlarge.

Branderhorsts argue the Bank cannot enforce a "time is of the essence" clause in a purchase agreement due to the language of the Agricultural Credit Act. However,

Branderhorsts do not cite this court to any specific provision of the act which is violated by this time limit.

Iowa courts will uphold a "time is of the essence" clause in a contract if there are express provisions to that effect. See Peter Kiewit Sons' Co. v. Iowa Southern Utilities Co., 355 F. Supp. 376, 391 (S.D., Iowa 1973); Lane v. Crescent Beach Lodge & Resort, Inc., 199 N.W.2d 78, 82 (Iowa 1972). The May 23, 1988, purchase agreement specifically required payment to be made at closing and further stated the closing would take place within thirty days or the contract would be null and void. There is nothing in the record to indicate Branderhorsts were dissatisfied with the terms of the contract or that they did not knowingly enter into the agreement with the Bank.

Branderhorst testified that when he signed the offer to purchase real estate, he did not have a loan commitment from a commercial lender but did have an oral commitment from a private individual whose identity he would not disclose. The record shows a few days prior to the scheduled closing date of June 20, 1988, Branderhorst requested additional time because he had not obtained the financing. The Bank extended the time until June 23, at which time Branderhorst was still unable to obtain the necessary financing. On June 24, the Bank returned Branderhorst's down payment and terminated the offer to buy agreement. The real estate was eventually sold at auction where Branderhorst was an unsuccessful bidder.

Branderhorst's argument the thirty-day closing requirement is contrary to the legislative intent of the Agricultural Credit Act because he was not afforded his right of first refusal is not persuasive. The record clearly indicates the Bank afforded Branderhorst his right of first refusal to purchase the farm in complete compliance with the Act.

In fact, Branderhorst had three opportunities to purchase the farm. After his default on his farm loans, the Bank accepted his voluntary deed in lieu of foreclosure. The Bank leased the farm to him with an option to repurchase at any time up to January 1, 1988. He exercised his option the day before it expired, but the sale fell through because he was not able to obtain financing. The second opportunity to repurchase is the one at issue in this case. He had a final opportunity when the farm was sold at auction. Branderhorst was notified thirty days in advance of the auction. He was unable to match the final bid and the farm went to someone else.

We affirm the trial court in all respects. The Bank gave Branderhorst several opportunities to repurchase the farm. The Bank is not required to undergo unlimited delays because appellant is not able to secure adequate financing.

AFFIRMED.