

IN THE COURT OF APPEALS OF IOWA

FILED

NOV 29 1982

CLERK SUPREME COURT

LINDA S. LINGER,

Plaintiff-Appellant,

vs.

KATHRYN LINGER, INDIVIDUALLY,
AND AS ATTORNEY-IN-FACT FOR
JOHN RICHARD LINGER, VIRGENE
LINGER, EDWARD WILLIAM LINGER,
BEATRICE LINGER, DANIEL FRANCIS
LINGER, COLEEN LINGER, MARY THERESA
LINGER, MARJORIE ANN COMER,
JOHN COMER, MARCELLA PAULINE CONWAY,
JOSEPH CONWAY, JAMES WALTER LINGER,
NANCY LINGER, DAVID CHARLES LINGER,
BARBARA LINGER, AND JOSEPH JEROME
LINGER, AND ALL INDIVIDUALLY,

Defendants-Appellees.

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Appeal from Marion District Court, Robert O. Frederick, Judge.

Plaintiff appeals from an adverse judgment in this action to set aside a
forfeiture of a real estate contract held by her former husband. AFFIRMED.

A. Frederic Matthias, Newton, for plaintiff-appellant.

David A. Johnson, Knoxville, for defendant-appellee Joseph Jerome Linger.

Terry L. Wilson, Knoxville, for remaining defendants-appellees.

Considered en banc.

Plaintiff appeals from an adverse judgment in this action to set aside a forfeiture of a real estate contract held by her former husband. She claims that the forfeiture resulted from a conspiracy among Joseph, her former husband, and members of his family to allow the latter, contract vendors, to repossess certain land bought by Joseph under contract and deprive plaintiff of any means to secure the judgment awarded her in a prior decree dissolving her marriage to Joseph. We affirm.

Our review is de novo. Iowa R. App. P. 4. After examining the record, we agree with the trial court that plaintiff failed to present any evidence of fraud against either Joseph or his family, nor did she demonstrate the existence of any conspiracy to defraud her. The only mention in the record pertaining to such allegations is found in plaintiff's own unsubstantiated speculations. The evidence clearly shows that Joseph was unable to make the contract payments when due; as a result, his family exercised their forfeiture rights as expressed in the contract. We will not infer the existence of a conspiracy to defraud plaintiff on this record.

Nor has plaintiff established any basis for equitable relief on the grounds of unjust enrichment of Joseph's family. They merely exercised their contractual right to forfeit the contract when Joseph was unable to make further payments. Without any showing whatsoever that this was done at least in part to deprive plaintiff of a way to secure her judgment in the dissolution proceeding, she has failed to demonstrate unjust enrichment in this case.

The trial court correctly held that plaintiff failed to show that the forfeiture ought to be set aside. We affirm that decision.

AFFIRMED.