

IN THE COURT OF APPEALS OF IOWA

No. 3-1003 / 12-2322
Filed November 20, 2013

NELSON ENTERPRISES, L.C.,
Plaintiff-Appellant,

vs.

JAMES L. VOGEL,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Eliza J. Ovrom,
Judge.

A vendee appeals the forfeiture of a real estate contract. **AFFIRMED.**

Patrick Burk and Matt O'Hollearn, Brick Gentry, P.C., West Des Moines,
for appellant.

Thomas Tarbox of The Law Office of Thomas T. Tarbox, Des Moines, for
appellee.

Considered by Doyle, P.J., and Tabor and Bower, JJ.

TABOR, J.

Nelson Enterprises, L.C., appeals the district court's order declining to set aside the forfeiture of a real estate contract. Nelson alleges the notice provided by vendor James Vogel under Iowa Code section 656.2 (2009) did not include a ground of noncompliance sufficient to justify the forfeiture. Because we agree with the district court's determination that delinquent real estate taxes served as a valid basis for forfeiture, we affirm.

I. Background Facts and Procedure

On December 31, 2001, James and Patricia Vogel sold a six-unit apartment building in Des Moines to Nelson Enterprises¹ for a purchase price of \$86,000. The parties recorded the sale on April 16, 2002. Nelson submitted \$60,200 as a down payment and agreed to pay the remaining \$25,800 in monthly installments of \$299.56. Nelson secured the down payment by a mortgage, which Liberty Bank holds through assignment.

The contract required vendee Nelson to pay all real estate taxes before they become due. The contract also allowed the Vogels, as vendors, to initiate forfeiture upon Nelson's failure to pay taxes levied on the property before those taxes became delinquent, as well as when Nelson failed to make timely installment payments.

Nelson paid installments through May 2009. He then stopped making the monthly payments. He also stopped paying real estate taxes on the property. By the summer of 2010, the delinquent taxes amounted to more than \$18,000.

¹ Barry Nelson owns Nelson Enterprises.

The parties met with attorneys and with each other in August and September of 2010. But they reached no resolution. Nelson did make double payments in September and October of 2010.

Vogel served a notice of forfeiture on October 19, 2010. At the time the forfeiture was served, Polk County Treasurer records indicated Nelson owed \$18,364 in delinquent property taxes. The forfeiture list three defaults under the contract:

(1) "Buyer failed to pay contract payments when due" in the amount of \$33,839.93, (2) "real estate taxes due, owing through tax sale or otherwise necessary to [redeem] property from tax sale and pay taxes due through September 30, 2010" in the amount of \$18,464, (3) "Cost of necessary repairs" in the amount of \$6,150.

In a letter sent during the thirty-day redemption period, Nelson's attorney disputed the \$33,839.93 amount alleged due in contract payments and the \$6150 in repair costs, but did not mention the delinquent taxes. Vogel's attorney sent a response discussing the contract payments and repairs, as well as citing the tax arrearages.

On December 16, 2010, Nelson tendered a check to Vogel for \$10,000 which he believed sufficient to pay off the contract balance. Vogel rejected that offer. Vogel advanced a counteroffer of \$20,000 to settle all claims, but Nelson rejected that. Vogel retook possession of the apartment building.

Nelson sued Vogel on April 18, 2011, asking for the forfeiture to be set aside and advancing other claims against the seller.² Vogel denied the allegations. The district court held a trial on October 15, 2012, and issued its

² The other claims included slander of title, fraud, and recovery of real property.

ruling on October 30, 2012. The court denied the petition to set aside the forfeiture and Nelson's other claims against Vogel. The court found Nelson admitted that "he did not make property tax payments, and that the property taxes were delinquent." The court concluded the delinquent property taxes listed as a default in Vogel's notice were sufficient to justify forfeiture under the real estate contract.

Nelson filed a motion to expand the ruling under Iowa Rule of Civil Procedure 1.904(2). On December 3, 2012, the district court issued an order amending minor aspects of its original ruling, but reiterating that "the basis of its ruling was the nonpayment of real estate taxes" and concluding the amount of back taxes alleged in Vogel's notice was correct. Nelson now appeals, arguing forfeiture of the real estate contract was improper because the notice failed to allege any ground sufficient to justify the forfeiture.

II. Standard of Review

The district court sits in equity when considering the forfeiture of a real estate contract under Iowa Code chapter 656. Accordingly, our review is de novo. *Goodale v. Bray*, 546 N.W.2d 212, 214 (Iowa 1996). "In our de novo review we are bound to review the facts and law and determine anew from credible evidence all properly presented and preserved contentions of the parties." *Miller v. Am. Wonderlands, Inc.*, 275 N.W.2d 399, 402 (Iowa 1979).

III. Analysis

Nelson leans heavily on the general rule that "equity abhors a forfeiture." See *Jamison v. Knosby*, 423 N.W.2d 2, 4 (Iowa 1988). In conjunction with that

rule we construe chapter 656 strictly against forfeiture and place the burden on Vogel to show full and strict compliance with statutory procedures. See *Fairfax v. Oaks Dev. Co.*, 713 N.W.2d 704, 708 (Iowa 2006). But as Vogel suggests, our supreme court has “taken some pains to point out that the fact forfeitures are not favored does not mean they will never be enforced.” *Miller*, 275 N.W.2d at 402.

Under section 656.2, a vendor initiates forfeiture by serving the vendee with a written notice which specifies the terms of the contract with which the vendee has not complied. Iowa Code § 656.2(1)(b). If the notice lists more than one allegation of the vendee’s noncompliance with the contract, and one of the allegations is faulty, the notice is not a nullity if another ground is sufficient to justify forfeiture. *Hampton Farmers Co-op v. Fehd*, 133 N.W.2d 872, 875 (1965); *Votruba v. Hanke*, 210 N.W. 753, 753 (Iowa 1926).

The district court relied on *Votruba* to find that the delinquent taxes sufficed as a justification for forfeiture. In that case, the Supreme Court reasoned:

Defendants concede that the specification relating to nonpayment of taxes was sufficiently specific. This of itself would have sustained the forfeiture. If the defendants had cured the default as to taxes by paying the same, they would have been in a position to contend that the other specifications were not sufficient. The most that the defendants can contend upon the record is that they had suffered no other default than the failure to pay the taxes. This being so, they were still in default, and subject to forfeiture. If the notice served upon them was redundant in charging other defaults, they were not harmed thereby. We have no occasion to consider whether the other defaults should have been stated more specifically.

Votruba, 210 N.W. at 753.

Without attempting to distinguish *Votruba*, Nelson argues in his appellant's brief that the \$18,464 in delinquent taxes does not qualify as "one specific matter sufficient to justify forfeiture." He asserts Vogel overstated the amount of taxes owed. Nelson also contends that because Vogel did not choose to pay the delinquent taxes and add the amount to Nelson's principal, Vogel had no basis to demand payment of the taxes. In his reply brief, Nelson switches to a new argument, claiming: "Although Nelson disputes whether the taxes are sufficiently specific [to sustain the forfeiture], the argument is irrelevant once Nelson tendered an amount sufficient to close out the contract."

We are not persuaded by Nelson's arguments. We have no reason to question the district court's finding that Nelson did not prove at trial that \$10,000 was sufficient to pay off all past due payments and repair costs, including interest due on those payments. Moreover, as the district court noted in ruling on Nelson's rule 1.904(2) motion, the tender of \$10,000 was not made within thirty days of service of the forfeiture notice. See *Hampton Farmers Co-op*, 133 N.W.2d at 563 ("Had a tender been made within 30 days of the delinquent interest and principal . . . a different situation would be before us.")

Even more significantly, Nelson does not dispute that the real estate contract with Vogel contained a clause allowing Vogel to proceed to forfeit and cancel the contract if Nelson failed to pay the taxes before they became delinquent. The \$18,464 in delinquent taxes identified in the forfeiture notice was verified by the county treasurer's office. Under the reasoning of *Votruba*, we find

the delinquent taxes to be a sufficient basis to justify forfeiture of the real estate contract.

AFFIRMED.