IN THE COURT OF APPEALS OF IOWA

No. 6-1065 / 06-0447
Filed April 11, 2007

BRENT PICKRELL,
Plaintiff-Appellee/Cross-Appellant,

vs.

GARY SCHUBERT,
Defendant-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Pottawattamie County, Charles L. Smith, Judge.

Gary Schubert appeals the district court's award of damages to Brent Pickrell for Schubert's breach of a business agreement. **REVERSED AND REMANDED FOR ENTRY OF JUDGMENT OF DISMISSAL.**

Mark McCormick of Belin Lamson McCormick Zumbach Flynn, P.C., Des Moines, for appellant.

Curtis J. Heithoff, Council Bluffs, for appellee.

Heard by Sackett, C.J., and Mahan and Vaitheswaran, JJ.

VAITHESWARAN, J.

In this breach of contract action, the key question is whether the plaintiff established the existence and terms of a contract. We agree with the defendant that these elements were not proven.

I. Background Facts and Proceedings

Brent Pickrell and Gary Schubert had discussions about opening a convenience store on an undeveloped parcel of land in Council Bluffs. The property was owned by SIMA Construction Company (SIMA), whose principal was Mike Paulson. Pickrell and Schubert agreed on a sale price of $172,050.00, with a total down payment of $90,000.00.

Prior to closing, Pickrell and Schubert signed "Schupik's Daily Operations Management Agreement," a one-page document detailing their compensation plans and operations responsibilities. They subsequently signed a "Management and Buy-In Agreement," which provided that Pickrell would quitclaim his interest in the real estate to Schubert. The agreement also provided that Pickrell would have an option to buy up to 40,000 shares in the corporation known as Schupik's, mentioned in the first agreement. This corporation was to be formed by Schubert and, according to testimony from the attorney who drafted the agreement, was to be capitalized with the land.

At the time of closing, Pickrell quitclaimed his interest in the land to Schubert. Schubert provided the entire down payment. The real estate contract listed both Pickrell and Schubert as purchasers and a warranty deed was issued to both. The real estate contract obligated them to make five installment payments to SIMA.

Pickrell and Schubert defaulted on their first payment. SIMA filed a foreclosure action against them and the district court entered a foreclosure decree and judgment. Schubert later redeemed the property.

Meanwhile, Schupik's, Inc. (Schupik's) was incorporated, but a convenience store was never built. Pickrell did not purchase 40,000 shares in the corporation. Several months after it was incorporated, Schupik's was dissolved.

Pickrell sued Schubert for breach of contract, citing the daily operations management agreement and the management and buy-in agreement.[1] He sought damages, including, but not limited to, his "loss of bargain and profits in the venture, and one-half of the increase in the market value of the real estate." Schubert filed a counterclaim based on misrepresentation. Following trial, the district court ruled in favor of Pickrell and awarded damages. The court dismissed Schubert's counterclaim and later overruled Schubert's motion for new trial. Both parties appealed.

II. Breach of Contract

In a breach-of-contract action, the complaining party must prove: (1) the existence of a contract; (2) the terms and conditions of the contract; (3) performance of all the terms and conditions required under the contract; (4) the defendant's breach of the contract in some particular way; and (5) damages resulting from the breach. *Molo Oil Co. v. River City Ford Truck Sales, Inc.*, 578 N.W.2d 222, 224 (Iowa 1998).

[1] Other claims are not at issue on appeal.

The district court determined that "Schubert breached his contract or agreement with Pickrell to be an equal owner of the land by preventing him from acquiring his interest in Schupik's or a successor entity." The court reasoned that Schubert was aware Pickrell wanted a one-half interest in the real estate, the real estate was to be placed in Schupik's irrespective of whether a convenience store was built, Pickrell had a right to purchase 40,000 shares in Schupik's, and Schubert dissolved the corporation before Pickrell could exercise his right.

Schubert maintains that "Pickrell failed either to plead or prove the existence or terms of the contract the trial court held Schubert breached." In considering this contention, we are mindful that the district court's fact-findings bind us if supported by substantial evidence. *Land O'Lakes v. Hanig*, 610 N.W.2d 518, 522 (Iowa 2000). The district court's legal conclusions, however, as well as the court's application of legal principles, do not bind us. *Id.* at 522.

Pickrell concedes that nothing in the two written agreements assured him of a fifty-percent interest in the real estate. He also concedes "[t]he Agreement was silent regarding whether or not the real estate was to be put into the corporation." And he concedes "[t]he Agreement was also silent on whether or not [his] rights were dependent upon the convenience store being built." It is clear, therefore, that the written agreements cited in Pickrell's petition did not entitle him to a fifty percent interest in the real estate. We could end our discussion here. However, neither the parties nor the district court linked the evidence to the four corners of the written agreements.

We turn, therefore, to the extrinsic evidence introduced by the parties to supplement the written agreements.[2] There is no question that Pickrell originally wished to share ownership of the land with Schubert on an equal basis. It is equally clear that, while this may also have been Schubert's original intent, both parties' intent changed over time. In pre-closing discussions with Schubert and their attorney, Pickrell did not say he was to receive equal ownership of the land following the closing. Instead, he stated title to the land was to be placed in Schupik's corporation and Pickrell would receive the opportunity to buy into the corporation. Following up on this testimony, the district court asked Pickrell about his interest in the land. Pickrell acknowledged that he did not presently have a fifty percent interest in the property but "a right to fifty percent." Later, he testified,

> I had the option, as it says, to purchase 50% of the shares, which was 40,000 shares, for up to two years after the opening of the store. That was the way back at the title, because we were using the title to go into the financing. It never went into Schupik's. I never had a chance to get back on the title after I gave it up to him.

The parties' attorney had a similar recollection. He testified,

> At some point, the deal for the purchase of the Paulson property changed from being a 50/50 split where they were both going to

[2] The district court determined that the parol evidence rule did not preclude consideration of this evidence, notwithstanding an integration clause in the management and buy-in agreement. We will assume without deciding that the district court correctly decided this issue. *See Whalen v. Connelly*, 545 N.W.2d 284, 290 (Iowa 1996) (stating "[a]n agreement is fully integrated when the parties involved adopt a writing or writings as the final and complete expression of the agreement," and stating fully integrated agreement triggers application of parol evidence rule which "prevents the receipt of any extrinsic evidence to contradict (or even supplement the terms of the written agreement)."). *See also* Restatement (Second) of Contracts § 209(2) (1981) ("Whether there is an integrated agreement is to be determined by the court as a question preliminary to determination of a question of interpretation or to application of the parol evidence rule."). Schubert suggests the statute of frauds may apply, but Pickrell points out this doctrine was not raised.

> pony up the purchase price. At some point that became different, and it became obvious that [Schubert] was going to be the one putting up the money. So they were renegotiating how they were going to get the property from Paulson to them.

The attorney continued,

> It had become obvious that [Pickrell] was going to maybe have trouble coming up with his half of the purchase price by the time of closing and because of that – I – my recollection was that management buy-in agreement was really – it was an agreement that had kind of been negotiated between [Schubert and Pickrell] more for [Pickrell's] protection probably than [Schubert's].

He further stated,

> Part of this agreement required [Pickrell] to execute a quitclaim deed, which was obviously for [Schubert's] protection, [Schubert] being the one that was going to have to come up with the full 90,000 up front. The quitclaim deed protected [Schubert's] interest as far as putting up the money. My understanding was that the management agreement was intended to protect [Pickrell's] interests making sure that, you know, he wasn't going to get squeezed out of the deal. It was an attempt to come up with a vehicle for him to buy into an entity which I don't even know, frankly, if it had been legally set up at that point, which was Schupik's. This was a vehicle to allow [Pickrell] to purchase into that corporation so he could gain the financial stake in the operation.

The attorney was specifically asked whether he knew how Pickrell was going to buy into the land itself. He testified,

> I assume it would have been impossible for him to buy in to Schupik's under that management agreement at that time because the corporation had been dissolved. Schupik's was gone, dead, etc. I have no idea how he was going to buy into the ownership of the land.

He continued,

> I guess my thought the whole time was that he is out of the land. The land is moving from one hand into the other hand. It then goes back into the pot of the corporation, and you know, he has a right to get back into it. That was kind of the shell game that was being played. The property leaves [Pickrell] and goes to [Schubert], goes

> from [Schubert] into the corporation – [Pickrell] owns zero of the corporation but he has a right to buy in to the corporation. That was my understanding of the deal.

As noted, this testimony is essentially undisputed and, indeed, is contained in substance within the district court's fact findings. Based on this testimony, we conclude that, at best, Pickrell acquired an option to purchase stock in a corporation. *See Crowe-Thomas Consulting Group, Inc. v. Fresh Pak*, 494 N.W.2d 442, 444-45 (Iowa Ct. App. 1992) (stating "an agreement to agree to enter into a contract is of no effect unless all of the terms and conditions of the contract are agreed on and nothing is left to future negotiations."). We recognize there is substantial evidence to support the district court's finding that this option was frustrated by Schubert's decision to prematurely dissolve the corporation. The question here, however, is whether the parties contracted to become fifty percent owners of the land rather than the corporation. On this question, we conclude as a matter of law that Pickrell did not contract with Schubert, either orally or in writing, to acquire a fifty percent interest in the real estate. As there was no agreement for equal ownership of the land, the breach of contract action fails as a matter of law.[3]

REVERSED AND REMANDED FOR ENTRY OF JUDGMENT OF DISMISSAL.

[3] We reach this conclusion without consideration of Schubert's testimony, which the district court found not credible.