IN THE COURT OF APPEALS OF IOWA

No. 6-383 / 05-1569
Filed November 16, 2006

CASS ATLANTIC DEVELOPMENT CORPORATION,
f/k/a ATLANTIC INDUSTRIAL DEVELOPMENT FOUNDATION,
Plaintiff-Appellant,

vs.

HALEEN E. PELLETT,
Defendant-Appellee.

Appeal from the Iowa District Court for Cass County, James M. Richardson, Judge.

A corporation appeals the district court's dismissal of its petition seeking specific performance of an option agreement. **REVERSED AND REMANDED.**

Bryan D. Swain of Salvo, Deren, Schenck & Lauterbach, P.C., Harlan, for appellant.

John M. Trewet of Rutherford, Trewet & Knuth, Atlantic, for appellee.

Heard by Mahan, P.J., and Miller and Vaitheswaran, JJ.

VAITHESWARAN, J.

A corporation sought to enforce an option agreement for the purchase of land. Following trial, the district court ruled that that there was no consideration for the option agreement, no exercise of the option without qualifications, and no consent to an assignment of the option. We reverse and remand.

I. Background Facts and Proceedings

Atlantic Industrial Development Foundation (AIDF) was formed to develop jobs and industry in the Atlantic, Iowa area. AIDF purchased land from Wendell and Haleen Pellett. This land was comprised of lots 1, 3, 4 and 5. AIDF also purchased adjacent land from someone else. This land was comprised of lots 2, 6, and 7. Several years after these purchases, AIDF negotiated a resale of lots 1, 3, 4 and 5 to the Pelletts as well as a sale of lots 2, 6 and 7 to them. The agreement contained a ten-year option to repurchase the lots at $600 per acre over the resale price. The option agreement stated: "This option may not be assigned by AIDF without the consent of Pellett."

Meanwhile, another economic development group was formed. This group, known as the Cass County Development Corporation (CCDC), was created to support economic development in the entire county in which Atlantic was situated.

Eventually, the two economic development groups merged. AIDF became the surviving corporation and was renamed Cass Atlantic Development Corporation (CADCO).

CADCO requested a ten-year extension of the option agreement with the Pelletts. That request was denied. After the option agreement expired, CADCO

filed suit against Haleen Pellett for specific performance or, in the alternative, money damages for breach of contract. Following trial, the district court dismissed the petition. This appeal followed.

II. Scope and Standards of Review

The parties disagree on our scope of review, with CADCO arguing it is de novo and Haleen Pellett urging us to review the appeal for errors of law. We note that CADCO's petition was filed as a law action. Additionally, the district court ruled on evidentiary objections, which is "normally the hallmark of a law trial." *Sille v. Shaffer*, 297 N.W.2d 379, 381 (Iowa 1980). *See also Howard v. Schildberg Const. Co., Inc.*, 528 N.W.2d 550, 552 (Iowa 1995) ("Our review of the court's decision after trial is governed by how the case was tried in the district court."). CADCO did not object to this procedure, notwithstanding its equity count for specific performance. *Breitbach v. Christenson*, 541 N.W.2d 840, 843 (Iowa 1995) (noting review of ruling on specific performance request is de novo). For these reasons, we conclude our review is for errors of law.

"The existence of an oral contract, as well as its terms and whether or not it was breached, are ordinarily questions for the trier of fact." *Gallagher, Langlas & Gallagher v. Burco*, 587 N.W.2d 615, 617 (Iowa Ct. App. 1998). "'The trial court's findings of fact are binding on us if supported by substantial evidence.'" *Miller v. Rohling*, 720 N.W.2d 562, 567 (Iowa 2006) (quoting *Bates v. Quality Ready-Mix Co.* 261 Iowa 696, 699, 154 N.W.2d 852, 854 (1967)).

III. Analysis

The district court ruled against CADCO on three grounds: (1) CADCO gave no consideration for the option agreement; (2) CADCO failed to exercise its

option within the allotted option period; and (3) the option was personal to AIDF and terminated when AIDF merged with CCDC. We will address each of these grounds.

A. Absence of Consideration

"Consideration constitutes either a benefit to the promisor or a detriment to the promisee." *Magnusson Agency v. Public Entity Nat. Company-Midwest*, 560 N.W.2d 20, 27 (Iowa 1997). "Consideration may consist of a performance or a return promise." *Id*. It must be "bargained for." *Id*.

The district court stated, "[t]he option fails for lack of consideration." The court found "no monies exchanged hands in the granting of this option nor was the option granted contemporaneously with" the resale transaction. We believe a contrary finding is compelled as a matter of law. *Cf. Liberty Mutual Ins. Co. v. Winter*, 385 N.W.2d 529, 532 (Iowa 1986) (stating we will not interfere with trial court's determination that burden of proof was not sustained "unless the evidence established every element as a matter of law.").

The key evidence is the option agreement itself, which contains express mutual promises. *See Kristerin Dev. Co. v. Granson Inv.*, 394 N.W.2d 325, 331 (Iowa 1986). Specifically, the Pelletts agreed to give AIDF an option to repurchase the land in exchange for AIDF's agreement to sell them lots 1 through 7.

Haleen Pellett concedes that the agreement "recites adequate consideration," but appears to argue that the contract language is immaterial in the face of "evidence showing that no consideration was provided." The record in fact reveals that the lots were sold to the Pelletts for $600 less per acre than

the price AIDF would have paid had it exercised the option to repurchase the land. In addition, there is evidence that the Pelletts executed the option agreement because they wanted the three contiguous lots that AIDF had separately purchased from third parties, in addition to the four lots they originally sold to AIDF. Together, these lots "filled out their corner." This evidence compels a finding of consideration.

Notwithstanding this evidence, Haleen Pellett counters that the sale transaction was executed through an intermediary who was not a party to the option agreement. This factor does not defeat a finding that there was consideration. The sale of the property to the Pelletts was made through an intermediary because the Pelletts wanted it done that way to minimize their tax consequences. There was never any question that, by virtue of the transaction, the Pelletts would receive lots 1 through 7 and AIDF would receive an option to repurchase the land. Indeed, the Pelletts' son conceded there was an "interconnection" between the series of transactions and that the transfer of property by AIDF to the Pelletts "was a mutual agreement."

Haleen Pellett also notes that the sale transaction and option agreement were not executed on the same day. This fact also does not defeat a finding that there was consideration because it is clear from the option agreement and evidence adduced at trial that the two transactions were part of a single agreement containing mutual promises. There is also evidence that the deeds were transferred before the option agreement was signed only because Haleen Pellett's husband was in Florida. *Cf. Figge v. Clark*, 174 N.W.2d 432, 436 (Iowa 1970) ("Fairly construed, the acts of plaintiff were sufficient to establish an

enforceable contract between the parties pursuant to the agreement all had signed . . . .").

For all these reasons, we believe a finding of consideration to support the option agreement is compelled as a matter of law.

B. Exercise of Option

To determine how an option should be exercised, one looks to the language of the option agreement. *See Estate of Claussen*, 482 N.W.2d 381, 384 (Iowa 1992). The agreement provides,

> AIDF shall notify Pellett (or their successors in interest) of its intention to exercise this option by notice in writing given to Pellett (or their successors in interest) of its intention to exercise the option and upon which land the option is to be exercised. The closing of the transaction shall be within thirty (30) days after the option is exercised.
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> * * *
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> Settlement shall be in cash upon delivery of merchantable Abstract Title, Warranty Deed, and possession. Taxes shall be prorated to date of possession.

The option agreement was signed by the Pelletts on March 30, 1993, and by representatives of AIDF on April 1, 1993. By its terms, the option expired "ten (10) years from the date of this agreement." The agreement was dated April 2, 1993.

The district court found that CADCO did not exercise the option within this ten-year period. We believe a contrary finding is compelled as a matter of law.

In 2002, CADCO began corresponding with Haleen Pellett's son about the possibility of extending the option. The son responded that Haleen owned the property and did not want to extend the option. A CADCO officer then wrote,

> Based on your decision, we anticipate making arrangements to purchase all of the land under option prior to its expiration. We will work towards a closing date of around March 1.
>
> We wanted to let you know what we had in mind so you have plenty of time to terminate the appropriate farm tenancies prior to September 1.

Two months before the option was slated to expire, the CADCO officer wrote another letter to Haleen Pellett, stating the following:

> This letter is to reconfirm our August 22, 2002 notice to you that we intend to purchase all land under option to us on March 1, 2003. Please forward updated abstracts for the land to J.C. Van Ginkel, at his address: . . . .
>
> As a development group, we do not aspire to own land. We do believe it is vital to our community's growth and development to have immediate access to developable land. We would be willing to renegotiate our existing Option changing only the following two items:
> 1. TERM. The term of the option will be perpetual with termination only by mutual agreement of both parties.
> 2. PRICE. The option price for the land will be $2,100 per acre through February 29, 2004, and $2,200 per acre from March 1, 2004, through February 28, 2005. Thereafter the option price shall be the greater of $2,200 per acre or 10% above the most recent Iowa State land price survey for Cass County.
>
> *We will plan on a March 1 closing unless we receive an acceptance of the option extension under the above terms by noon, February 7, 2003*.

(emphasis added). Counsel for the Pellett family responded to this letter as follows: "As you know, there is no interest in extending any option." The letter also expressed concerns about CADCO's attempt to exercise the option. CADCO's attorney replied,

> The CADCO organization is ready, willing and able to proceed with this purchase. Please have the continued abstract delivered to my office for examination. I will give this matter expedited attention so that we can get Pelletts their money before the first of March.

This series of letters between CADCO and the Pellett family compels a finding that CADCO timely notified the Pelletts of its intent to exercise the option. The fact that some of the letters provided for alternatives to exercise of the option matters little because the letters unequivocally stated that the option would be exercised if the Pellett family did not accept one of the alternatives. *Cf. Clark*, 174 N.W.2d at 436 (stating "under no circumstances could defendants reasonably contend that they did not know plaintiff desired to and meant to exercise the repurchase option and were attempting to do so.").

C. Assignment of Option

As noted at the outset, the option agreement stated, "[t]his option may not be assigned by AIDF without the consent of Pellett." It is undisputed that AIDF was the entity that executed the option agreement and that the option was not formally assigned to CADCO after the merger of the two economic development organizations. What is disputed is the effect of the merger on the assignment clause.

The district court concluded "[t]he merger altered the character of both AIDF and CCDC in terms of their defined purposes and funding mechanisms" and, absent the consent of the Pelletts, "the exercise of the option by CADC was not possible." CADCO takes issue with this conclusion, arguing it was "still the same corporation" as AIDF, the entity that executed the option agreement. CADCO continues,

> As it was still the same corporation, there was no need for CADCO, formerly known as AIDF, to assign the Pellett option agreement to anyone, and no assignment was made. As no assignment was made, there was no contractual duty to seek the consent of Wendell or Haleen Pellett.

We agree with CADCO's reasoning.

The meaning and effect of a corporate merger has been summarized as follows:

> A corporate merger consists of a combination whereby one of the constituent corporations remains in existence, absorbing in itself all the other constituent corporations which cease to exist as separate corporate entities. When corporations merge, the surviving corporation succeeds to both the rights and obligations of the constituent corporations. The merger of one corporation by another may involve the latter retaining the absorbed corporation's name and corporate identity. The fact that the name of the continuing corporation is changed does not tend to show that it is a new corporation since a change in the name of a corporation works no change in its identity.

15 William Meade Fletcher, *Fletcher Cyclopedia of the Law of Private Corporations* § 7082, at 115-18 (rev. vol. 1999). The author of the treatise specifically addresses the effect of a name change following a merger, stating:

> A mere change in the name of a corporation generally does not destroy the identity of the corporation, nor in any way affect its rights and liabilities. A change of name by a corporation has no more effect upon the identity of the corporation than a change of name by a natural person has upon the identity of such person. It is the same corporation with a different name. The nature and character of the corporation does not change, nor does the rights and liabilities of its shareholders.

6 William Meade Fletcher, *Fletcher Cyclopedia of the Law of Private Corporations* § 2456, at 172-74 (rev. vol. 1996). *See also* 15 *Fletcher* § 7291, at 629 ("A mere change in the name of a corporation is a mere amendment, and does not affect the identity of the corporation."); *Hagan v. Val-Hi, Inc.*, 484 N.W.2d 173, 176 (Iowa 1992) ("In a merger, two constituent corporations combine to create one corporation. In such a transaction, one of the

corporations is considered the surviving or successor corporation even though there may be a subsequent name change.").

The merger agreement tracked these legal principles. The agreement provided that, following the merger of AIDF and CCDC, AIDF would become the "surviving corporation." The agreement further described the effect of the merger on the surviving corporation's rights and liabilities as follows:

> When such merger has been effected, such surviving corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, of a public as well as a private nature, of each of the merging corporations; and all property, real estate, personal and mixed, and all debts on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged, shall be taken and deemed to be transferred to and vested into the single corporation without further act or deed; and the title to any real estate or any interest therein vested in each of such corporations shall not revert or be in any way impaired by reason of such merger.

It is clear from this language that CADCO retained all the rights AIDF had, including the right to exercise the option granted to AIDF. No formal assignment of the option was necessary. *Cf. Corporate Express Office Prod., Inc. v. Phillips*, 847 So.2d 406, 414 (Fla. 2003) (concluding surviving corporation in a merger assumed right to enforce a noncompete agreement executed by merged entity and "no assignment is necessary").

We reach this conclusion notwithstanding differences in funding sources and staffing between the entities that merged. The merger agreement does not limit the rights of the surviving corporation based on these factors. *Cf. id*.

As for the name change, it was made to clarify the surviving corporation's purpose of promoting county-wide industrial development. AIDF held the option

before the merger and, as the surviving corporation, held the option after the merger, notwithstanding the name change.

Finally, we note that the purpose of the nonassignability clause was not defeated by the merger and name change. AIDF wanted the option for economic development purposes. CCDC had the same goal. Therefore, the merger did not place the Pelletts at risk of having the option executed for a purpose with which they disagreed.

We conclude no assignment was necessary to allow CADCO to exercise the option agreement.

IV. Disposition

We reverse the dismissal of CADCO's petition. We remand for entry of an order directing Haleen Pellett to transfer title of lots 2, 6, and 7 to CADCO. The remaining lots are in the names of entities not named as defendants in this action. Therefore, specific performance is not possible. *State ex. rel. Goettsch v. Diacide Distrib., Inc.*, 596 N.W.2d 532, 540 (Iowa 1999). With respect to lots 1, 3, 4, and 5, we remand for proceedings on CADCO's alternate count for breach of contract. We intimate no view on this count or any defenses that might be asserted.

REVERSED AND REMANDED.