IN THE COURT OF APPEALS OF IOWA

No. 8-1051 / 08-0931
Filed March 11, 2009

TIM RAYL and DONNA RAYL,
Plaintiffs-Appellees,

vs.

JOSHUA PARISE and
CHRISTY PARISE,
Defendants-Appellants.

Appeal from the Iowa District Court for Linn County, William L. Thomas, Judge.

Defendants appeal the denial of their motion for dismissal of plaintiffs' forcible entry action. **AFFIRMED.**

Gregory J. Epping of Terpstra & Epping, Cedar Rapids, for appellants.

R.L. Sole of Sole, McManus, Pearson & Willems, P.C., Cedar Rapids, for appellees.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

MAHAN, J.

Joshua and Christy Parise appeal the denial of their motion for dismissal of Tim and Donna Rayl's forcible entry action.

I. Background Facts and Proceedings.

On January 22, 2008, the Rayls and Parises entered into a "Purchase/Sale Contract" under which Parises were to purchase Rayls' house. Throughout the transactions, Rayls were represented by Jean Perkins and Parises were represented by Karen Feltman, realtors employed by Skogman Realty. All transactions between the parties were made through Perkins and Feltman, under a dual agency agreement.

Because Parises still owned a house in Wisconsin they had not sold, Rayls agreed to extend the closing date on the their house for a long period of time, with closing to occur no later than January 31, 2009. The parties also entered into an "Interim Occupancy Agreement," under which Parises would live in the house before closing and make monthly rental payments to Rayls, beginning on February 1, 2008. Rayls, Perkins, and Feltman understood the parties' agreement to be a lease/purchase agreement, under which the buyers lease and occupy the house with an agreed upon price and closing date.[1] Joshua Parise alleges he believed the agreement was a lease with an option to purchase.[2] Joshua Parise admitted at hearing, however, that he had not read

[1] In contrast, a lease with an option to purchase agreement is an agreement under which a lessee occupies the house and has the option to purchase the house at the end of the lease term or within a specified period of time.

[2] As the district court noted, Joshua Parise believed the terms of the parties' agreement to be that "he and Mrs. Parise could move into the house and live there for awhile, and if

the parties' "Purchase/Sale Contract" or "Interim Occupancy Agreement." The court specifically found it was a lease/purchase agreement.

As early as January 27, 2008, Joshua Parise began to express concerns to Feltman about the house and stated he was unsure whether he and his wife would want to purchase the house at the end of the lease term. Feltman testified it was her understanding that Joshua Parise did not want her to say anything prior to Parises moving in because Rayls would probably say Parises should not move in. Parises moved into the house around February 1, 2008. Joshua Parise continued to share concerns with Feltman throughout February and March, but did not formally indicate to Rayls whether he and his wife intended to purchase the house.

Feltman testified that she realized there was a problem on February 26, 2008, when Joshua Parise again indicated he was unsure he and his wife would purchase the house. However, he still did not want to do anything in writing and told Feltman not to say anything to Rayls. In her testimony, Feltman agreed that the Rayls were "basically in the dark as to what was going on." According to Feltman's testimony:

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they did not like the house, they could walk away and forfeit their earnest money." As Joshua Parise testified:

> Our intention was to have a property we could lease it with the option to purchase it at the end of the lease. . . . My understanding was that we would be able to pay rent payments to a seller, be able to collect some of that money back towards the purchase of the house if we wanted to buy . . . the house at the end of the lease.

We note, however, that Parises now contradict those statements in their brief to this court. In their brief, Parises specifically state that the agreement was *not* for Parises to lease the house and then have the option to purchase the house at the end of a lease term. Parises now rely on the district court's determination that the parties did not establish a landlord-tenant relationship to bolster their arguments on appeal.

> He wasn’t sure what they were going to do. My hands were tied. I mean he didn’t want to do anything in writing. He didn’t want me to say anything. He went back and forth between say something, don’t say something, I didn’t know what to do.

Feltman further testified that she advised Parises as follows:

> I told them that all I could do was if you wanted to put something in writing, the sellers’ right were stated in the Interim Occupancy that said if . . . the purchase of the property has not occurred by 1-31-09 or sooner, in the event of a contingency in the Purchase/Sale Contract has not or cannot be met, buyers agree to immediately vacate the premises upon ten days written notice from sellers. I said that was—I said that was the possibility. Whether or not they would choose to exercise that was up to the sellers. However, that was their right in the Interim Occupancy Agreement.

Eventually, in mid-March, Feltman shared Parises’ reluctance to Perkins. Perkins requested something in writing indicating Parises’ intentions with regard to the house, but Parises refused. As Feltman testified:

> He did not put anything in writing to me. . . . [Ms. Perkins] asked for a written cancellation of the contract, and he said his answer was yes, but not yet, he didn’t want to do anything in writing . . .

In an email to Feltman on March 14, 2008, Joshua Parise wrote:

> Putting something in writing is . . . what we did not want to do, until we knew how they were reacting. I know we have to put something in writing at some point, but if I did right now, wouldn’t I be giving up all control of the process and negotiation of the terms we left on?

Although they had determined they were not going to purchase the house, Parises were avoiding a paper trail and the possibility that Rayls could order them to vacate the house. In an email to Feltman on March 25, 2008, Joshua Parise wrote, “They could sue us right now (you can sue anyone, anytime, for anything) and they would be laughed out of court. The only false evidence they have is hearsay.”

After consulting legal counsel, Rayls determined Parises' actions constituted an anticipatory breach of the Purchase/Sale Contract. On April 3, 2008, Rayls served Parises with a notice to quit. Parises remained in the house. On April 21, 2008, Rayls filed a petition in equity for forcible entry, asserting that Parises were holding over after the termination of the parties' agreement. Rayls requested the court issue an order for writ of possession requiring Parises to vacate the house. On April 30, 2008, Parises filed a motion to dismiss, contending the grounds Rayls relied upon in their petition were not valid under Iowa Code chapter 648. On May 8, 2008, after a hearing, the district court granted Rayls' petition for forcible entry and directed the clerk to issue a writ of possession requiring Parises to vacate the house. Parises now appeal the district court's denial of their motion to dismiss.[3]

II. Scope and Standard of Review.

We review a district court's ruling on a motion to dismiss for errors at law. Iowa R. App. P. 6.4; *State v. Finders*, 743 N.W.2d 564, 548 (Iowa 2008); *Palmer v. Hoffman*, 745 N.W.2d 745, 746 (Iowa Ct. App. 2008). A motion to dismiss should only be granted if there is no state of facts conceivable under which a plaintiff might show a right of recovery. *Kingsway Cathedral v. Iowa Dep't of Transp.*, 711 N.W.2d 6, 7 (Iowa 2006). In determining whether to grant the motion to dismiss, a court views the well-pled facts of the petition, but not the conclusions. *Turner v. Iowa State Bank & Trust Co.*, 743 N.W.2d 1, 3 (Iowa 2007); *Kingsway*, 711 N.W.2d at 8. The purpose of the motion is to test the legal

[3] Notice of appeal was filed on June 3, 2008. On April 30, 2008, Joshua Parise testified that he and his wife planned to move out of the house on June 1, 2008. The issue of mootness, however, was not addressed in either party's brief.

sufficiency of the petition. *Turner*, 743 N.W.2d at 3. Where an issue presents a question of statutory interpretation, our review is for correction of errors at law. *State v. Garcia*, 756 N.W.2d 216, 219 (Iowa 2008).

III. Merits.

Parises contend the district court erred in failing to grant their motion to dismiss. They assert Rayls' action should have been dismissed for failure to state a claim upon which relief can be granted under Iowa Code chapter 648. Parises argue the district court lacked authority under chapter 648 to issue a writ of possession based on an anticipated breach of a real estate purchase agreement. According to Iowa Code section 648.1:

> A summary remedy for forcible entry and detainer is allowable:
> 1. Where the defendant has by force, intimidation, fraud, or stealth entered upon the prior actual possession of another in real property, and detains the same.
> 2. Where the lessee holds over after the termination of the lease.
> 3. Where the lessee holds contrary to the terms of the lease.
> 4. Where the defendant continues in possession after a sale by foreclosure of a mortgage, or on execution, unless the defendant claims by a title paramount to the lien by virtue of which the sale was made, or by title derived from the purchaser at the sale; in either of which cases such title shall be clearly and concisely set forth in the defendant's pleading.
> 5. For the nonpayment of rent, when due.
> 6. When the defendant or defendants remain in possession after the issuance of a valid tax deed.

Parises claim that because ouster of a contract vendee is not an enumerated ground under chapter 648, the statute is unavailable to Rayls as a means to recover possession. Specifically, Parises claim the Rayls and Parises

did not have a landlord-tenant relationship, and therefore the district court did not have authority under chapter 648 to evict Parises.

This court has stated that "[t]he intent of the forcible entry and detainer statute is to prevent people from resorting to self-help and violence and, instead, provide legal process for regaining possession of real property." *Crawley v. Price*, 692 N.W.2d 44, 49 (Iowa Ct. App. 2004). The supreme court has recognized that "a vendor who has forfeited a real estate contract can bring a forcible entry and detainer action only if the contract expressly or impliedly creates a landlord-tenant relationship upon forfeiture." *Robinson v. Black*, 607 N.W.2d 676, 648 (Iowa 2000). A contract may expressly create a landlord-tenant relationship if it provides that, in the event of default, the vendee is to be treated as a tenant holding over unlawfully after the expiration of the lease and can be ousted and removed as such. *See Robinson*, 607 N.W.2d at 648; *Warren v. Yocum*, 223 N.W.2d 258, 262 (Iowa 1974) (finding landlord-tenant status expressly created by a contract stipulating that upon forfeiture of the contract, the "[vendees] may be treated as tenants holding over unlawfully after the expiration of a lease, and may be ousted and removed as such"); *Spangler v. Misner*, 238 Iowa 600, 609-10, 28 N.W.2d 5, 9-10 (1947) ("[U]nder the terms of the contract of purchase, one of the terms agreed upon was that in the event [vendee] defaulted in his obligations he was to be treated as a tenant holding over unlawfully after the expiration of a lease and could be ousted and removed as such.").

Parises contend that prior to commencing an action for forcible entry, Rayls needed to forfeit or rescind the contract in order to establish a landlord-

tenant relationship. Parises further point out that forfeiture cannot be enforced without the service of thirty days' written notice of the forfeiture on the buyer. *See* Iowa Code § 656.2(1)(c). Rayls argue, however, that forfeiture is not a prerequisite for standing under chapter 648.

Due to the unique facts and circumstances of this case, we do not find it necessary to decide whether forfeiture of a contract is a condition precedent to filing an action for forcible entry. We note that, in the facts of the cases Parises cite, forfeiture of the contract *did* occur prior to the filing of forcible entry actions. Nevertheless, the cases and Iowa law do not seem to mandate forfeiture prior to the commencement of such actions. *See* Iowa Code § 648; *Robinson*, 607 N.W.2d at 648; *Warren*, 223 N.W.2d at 262; *Spangler*, 238 Iowa at 609-10, 28 N.W.2d at 9-10. Section 648.3 does require, however, that three days' notice to quit be given in writing before an action for forcible entry may be brought. In this case, Rayls served Parises with a notice to quit on April 3, 2008, and filed a petition for forcible entry on April 21, 2008.

The express language of the "Purchase/Sale Contract" supports the availability of an action for forcible entry and detainer in this case. The "Purchase/Sale Contract" provides as follows:

> If the Buyer(s) fails to fulfill this Contract, Seller(s) *may* forfeit the same as provided in Chapter 656 of the Code of Iowa, and all payments made so far shall be forfeited, *or the Seller(s) may proceed by an action at law or in equity*. . . . If Buyer(s) or any other person or persons shall be in possession of this property or any part thereof, Buyer(s) will peaceably remove himself and his possessions and abandon all claims to any right, title and interest in and to said property or in and to this Contract, *or in default thereof he may be treated as a tenant holding over unlawfully after the expiration of a lease and may be ousted and removed*.

(Emphasis added.)

Furthermore, based on the intentional and deliberate actions of Parises, we feel it would be inequitable to deny Rayls' action for forcible entry. As Parises' real estate agent testified and as shown by emails from Joshua Parise, Parises knew for several months they were not going to purchase the house, but kept Rayls in the dark about what they intended to do. Parises also would not allow Feltman to share their concerns with Rayls. Parises did not put anything in writing in an effort to avoid a paper trail and with the knowledge that Rayls could order them to vacate the house. Furthermore, Parises completely changed their argument on appeal. To the district court, Joshua Parise testified he believed the parties' agreement was a lease, under which he and his wife were renting the house with an option to purchase the house at the end of the lease. In contrast, on appeal, Parises argue the parties did *not* intend to establish a landlord-tenant relationship and their agreement was *not* for Parises to lease the house with an option to purchase at the end of the lease.

Upon our review, we determine the express language of the "Purchase/Sale Contract," in addition to the intentional and deliberate actions of Parises to keep Rayls in the dark, as testified to by their realtor, lead us to conclude forcible entry and detainer was appropriate in this case. We find no reversible error here. As such, we affirm the court's denial of Parises' motion to dismiss.

AFFIRMED.