IN THE COURT OF APPEALS OF IOWA

No. 9-645 / 08-2002
Filed September 2, 2009

EUGENE M. BRONNER,
Plaintiff-Appellee,

vs.

ROGER LUNDTVEDT,
Defendant-Appellant.

Appeal from the Iowa District Court for Winneshiek County, John Bauercamper, Judge.

Roger Lundtvedt appeals a district court decree ordering specific performance of a written contract to sell real estate. **AFFIRMED.**

James Updegraff, West Union, for appellant.

Thomas Fiegen, Cedar Rapids, for appellee.

Considered by Vogel, P.J., and Potterfield, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

MILLER, S.J.

Defendant Roger Lundtvedt appeals a district court decree ordering specific performance of a written contract for the sale of real estate to plaintiff Eugene M. Bronner. Our review of this equity action is de novo. *Breitbach v. Christenson*, 541 N.W.2d 840, 843 (Iowa 1995); *Figge v. Clark*, 174 N.W.2d 432, 434 (Iowa 1970); *Dergo v. Kollias*, 567 N.W.2d 443, 444 (Iowa Ct. App. 1997). Because our review is de novo, we need not separately consider assignments of error in the trial court's findings of fact and conclusions of law, but make such findings and conclusions from our review as we deem appropriate. *Lessenger v. Lessenger*, 261 Iowa 1076, 1078, 156 N.W.2d 845, 846 (1968). We affirm.

In the fall of 2003 plaintiff Eugene M. Bronner needed money to pay debts and finance the continuing operation of his 210-acre farm. Defendant Roger Lundtvedt, previously unknown to Bronner, contacted Bronner. Bronner told Lundtvedt that Bronner needed to borrow $230,000, and Lundtvedt tentatively indicated a willingness and ability to make the desired loan.

In February-March 2004 Bronner and Lundtvedt, each with the assistance of counsel, reached an agreement for a sale-leaseback, with purchase option, transaction. Under their agreement Bronner would sell his 210-acre farm to Lundtvedt for $230,000,[1] Lundtvedt would lease it back to Bronner for two years, commencing March 1, 2004, at a rental of $18,400 per year, and Bronner would have an option to purchase the farm back for $230,000.

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[1] Evidence indicates the farm was worth some $80,000 to $100,000 more than the $230,000.

Pursuant to the parties' agreement, Bronner deeded the farm to Lundtvedt by warranty deed,[2] and Lundtvedt leased the farm to Bronner as agreed. The written lease, signed by both parties, provided in relevant part:

> [Bronner] shall have the option to purchase this property at the end of this lease term or any renewal thereof for the price of $230,000.00 cash. [Bronner] shall notify [Lundtvedt] within sixty (60) days prior to the expiration of the lease of his notice to exercise this option.
>
> [Bronner] shall also be responsible for insuring the property as well as real estate taxes on the property.

On or about January 7, 2008, within sixty days prior to the expiration of the second, one-year renewal of the lease, Bronner timely notified Lundtvedt that Bronner was exercising his option to purchase the farm for $230,000 cash.[3] Lundtvedt refused to allow the purchase, and Bronner brought this action for specific performance. Following trial, the district court granted Bronner's petition and ordered Lundtvedt to convey the farm to Bronner by warranty deed, pursuant to the option in the written lease. Lundtvedt appeals.

On appeal Lundtvedt claims that the district court erred, in that "the terms of the option recited in the lease are too incomplete to allow specific performance." As shortcomings, Lundtvedt asserts that the written lease fails to state (1) the date of payment, (2) the date of possession, (3) the quality of title, (4) any obligation regarding provision of an abstract, (5) the apportionment of real estate taxes accruing but not paid before the actual transfer of ownership, (6) the

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[2] It appears that Bronner had provided an abstract of title to Lundtvedt, as Bronner's testimony shows that when he later sought to repurchase the farm Lundtvedt stated he had difficulty locating "his abstract" to the farm.

[3] Bronner twice provided Lundtvedt with a bank's written commitment to provide financing for Bronner's repurchase of the farm.

payment of transfer taxes, (7) any adjustments of rent accrued but unpaid, and (8) any adjustment of government farm program payments.[4]

In *Janssen v. North Iowa Conference Pensions, Inc.*, 166 N.W.2d 901 (Iowa 1969), the plaintiffs/appellants sought specific performance of an option contract for the purchase of land. The trial court denied relief, the plaintiffs appealed, and our supreme court reversed. *Janssen*, 116 N.W.2d at 902. The court held that the absence of provisions concerning a certain and definite time for payment of the purchase price and time of conveyance/transfer of title did not bar enforceability, at least where an obligation to pay within a reasonable time is implied and time of conveyance is not of the essence of the contract, *id.* at 907, 909, and enforced the contract. We believe the same reasoning applies here and shows there is no merit as to the first two claims of deficiency asserted by Lundtvedt.[5]

When Bronner conveyed the farm to Lundtvedt, Bronner did so by warranty deed and apparently furnished an abstract of title that presumably demonstrated marketable title. In *Janssen*, in dealing with the absence of a provision concerning the quality of title the defendant was required to provide, our supreme court stated: "Nothing is said about title, but the law would imply that the defendant should furnish marketable title." *Id.* at 908. From this statement, from the nature of the Bronner/Lundtvedt transaction, and from the

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[4] As a preliminary matter, it appears that the district court addressed and passed upon only the third, fifth, and perhaps the second of these eight items, and that error, if any, thus arguably has not been preserved as to the others. We nevertheless address all eight.

[5] We also note that the date of possession can hardly have been an issue, as Bronner was already in possession under the parties' written lease agreement.

fact that Bronner conveyed to Lundtvedt by warranty deed supported by an abstract of title apparently demonstrating marketable title, we conclude that Lundtvedt's obligation to reconvey was implicitly an obligation to do so by warranty deed and abstract demonstrating marketable title, and the absence of provisions so stating did not render the parties' agreement unenforceable. We find no merit to the third and fourth claims of deficiency asserted by Lundtvedt.

As noted in a portion of the parties' written lease agreement quoted above, Bronner was responsible for the real estate taxes during the term of the lease. It seems obvious that in the absence of a provision to the contrary he would be responsible for the real estate taxes following any reconveyance by Lundtvedt. We find no merit to Lundtvedt's fifth claim, that the absence of a provision concerning apportionment of real estate taxes rendered any right of Bronner to repurchase the farm unenforceable.

Iowa Code section 428A.3 (2007) imposes any transfer taxes on "[a]ny person . . . who . . . conveys any land . . . by a deed, writing or instrument." There is no provision to the contrary in the parties' written agreement. Lundtvedt is thus responsible to pay any transfer taxes, and the absence from the parties' agreement of a provision concerning the payment of such taxes does not render their agreement unenforceable. There is no merit to Lundtvedt's sixth claim of a deficiency.

Nothing in the record indicates that any rent was accrued but unpaid at either the time Bronner gave notice he was exercising his right to repurchase the

farm or at the end of the lease year within which he gave that notice.[6] Further, nothing shows that there were any farm program payments that might need to be adjusted. We conclude that Lundtvedt's final two claims of deficiency rendering the parties' agreement unenforceable are without merit.

We have considered all issues presented and find any not expressly addressed herein to be either not preserved or without merit.

AFFIRMED.

[6] In fact, the record shows that Bronner paid the rent due for each of the four years of the lease.