IN THE COURT OF APPEALS OF IOWA

No. 9-661 / 09-0357
Filed September 2, 2009

Upon the Petition of
EDWARD CEILLEY ESTATE,
Plaintiff-Appellant,

vs.

RICHARD A. ANDERSEN, MERCY T. ANDERSEN and RICHARD LEE,
Defendants-Appellees.

Appeal from the Iowa District Court for Black Hawk County, Kellyann M. Lekar, Judge.

The Executor of the Edward Ceilley Estate appeals from the district court's denial of its forcible entry and detainer action. **REVERSED AND REMANDED.**

Joseph R. Sevcik of Snow, Knock, Sevcik & Hinze, Cedar Falls, for appellant.

Bradley M. Strouse of Redfern, Mason, Larsen & Moore, P.L.C., Cedar Falls, for appellees.

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).

POTTERFIELD, J.

The Executor of the Edward Ceilley Estate and Yvonne Ceilley personally (referred to as the Estate in our opinion) appeal the district court's denial of its petition for forcible entry and detainer. The district court found for the defendants, Richard and Mercy Andersen,[1] on their asserted defenses that the notice of forfeiture of the real estate sales contract was fatally defective and that the equities weighed in their favor. We reverse and remand.

I. Background Facts and Proceedings.

The following facts are not in dispute. In 2001, the defendants, Richard and Mercy Andersen, entered into a sales contract with Edward and Yvonne Ceilley for the purchase of commercial real estate. Monthly payments in the amount of $1042.64 were due on the first of each month. The Andersens made timely payments only for the first two months—payments thereafter were late. The Andersens also failed to pay real estate taxes in September 2004 and in March and September 2007. Edward Ceilley dealt with these defaults informally. Though entitled to interest for late payments under the contract, the Ceilleys did not demand interest from the Andersens through 2007. The Ceilleys also paid the property taxes.

Edward Ceilley died in January 2008. The Andersens did not make contract payments in January, February, and March of 2008. Yvonne, now the executor of the Estate of Edward Ceilley, sought legal help on behalf of the Estate and for her personal interest in the property. The Estate served notice of forfeiture to the Andersens on March 1, 2008, listing as defaults the amounts due

[1] The defendant Richard Lee has not appeared in any of the proceedings.

for contract payments, additional interest, and reimbursement of property taxes paid by the Ceilleys. The notice stated that the contract "shall stand forfeited unless the parties in default, within 30 days after completed service of this notice, shall perform the terms and conditions in default, and in addition pay the reasonable costs of serving this notice." The Andersens cured the defaults.

The Andersens did not pay real estate taxes in March 2008 and were late with the April 2008 payment on the contract. The Estate again served notice of forfeiture. The Andersens cured the defaults.

On November 13, 2008, the Estate served notice of forfeiture for nonpayment of the November 1, 2008 contract payment. The Andersens cured the default. After each of these three notices of forfeiture, the Andersens cured the default by payment on the last day of the time period for doing so. After each notice of forfeiture and each payment curing the default, the Andersens then were late in their payment for the following month.

After curing the November 2008 default and notice of forfeiture, the Andersens did not timely pay the December 2008 contract payment. On December 11, 2008, the Estate served a fourth notice of forfeiture stating the sales contract had not been complied with in the following particulars:

a. Non-payment of December 1, 2008, contract payment	$1042.64
b. Cost of Service	$45.00
Total	$1187.64

On Wednesday, January 14, 2009, after the 30-day time limit for curing the default expired, Mr. Andersen delivered a check in the amount of $1087.64 to counsel for the Estate. Counsel refused to accept the check.

On January 16, 2009, the Andersens were served with notice to quit, stating "the contract for the purchase of the real estate was forfeited on January 13, 2009."

On January 29, 2009, the Estate filed this action for forcible entry and detainer. Trial was held on February 4, 2009. The Andersens had not paid the January or February installment.

At trial, the Andersens did not contest that they were in default on the sales contract. Mr. Andersen testified that the property was leased to a tenant, who operated a restaurant on the premises. The tenant was in arrears on rent for various reasons. With respect to the check for $1087.64 he attempted to deliver on Wednesday, January 14, Mr. Andersen testified he "got sidetracked from the deadline." Mr. Andersen testified he had given to his own attorney a cashier's check for the January 2009 payment and that he had in his possession a cashier's check for the February 2009 payment.

The district court entered a ruling denying the forcible entry and detainer. The court found the notice of forfeiture "contained a typographical error for the total in default" though the "individual items listed as being in default were correctly stated." The court found that the Andersens "have a history of making late payments on the real estate contract . . . however, the Defendants have always cured the forfeiture prior to the necessary date." The court wrote:

> This Court has seriously considered this matter from every angle. The Court could make an argument on behalf of either side which would support a judgment in this matter. On the one hand, the Notice of Forfeiture is defective from the standpoint of the total amount stated as being in default but it is not inaccurate as to the itemized amounts of default. The Notice of Forfeiture was validly served and [the Andersens] appear to have been aware of the

> inaccuracy in the Notice of Forfeiture as the amount tendered by the [Andersens] was for the correct amount and not the incorrect amount stated in the Notice of Forfeiture. However, other than the amounts in default, there are no independent grounds stated in the Notice of Forfeiture which would allow the forfeiture to proceed. The Notice of Forfeiture is defective in that it incorrectly states the amount in default. Further, there are equitable reasons on the [Andersens'] behalf which support denying this forfeiture and forcible entry and detainer proceeding. As the [Andersens] have cited, the law does not favor forfeiture.

The Estate appeals, contending the court erred in determining the notice of forfeiture was fatally defective and in granting equitable relief to the defendants under the circumstances presented.

II. Scope and Standard of Review.

Because an action for forcible entry and detainer is triable in equity, our review is de novo. *Powell v. Grewing*, 562 N.W.2d 761, 762 (Iowa 1997). "We are obliged to consider both the facts and the law and then determine—based on the credible evidence—rights anew on those propositions properly presented." *Id.* (citation omitted).

III. Analysis.

Under Iowa law, "a contract for the purchase of real estate works an equitable conversion. The contract vendee becomes the equitable owner; the contract vendor holds title as trustee for his purchaser." *Fellmer v. Gruber*, 261 N.W.2d 173, 174 (Iowa 1978). When a notice of forfeiture has been served on the contract vendee, the rights of the contract vendor are identical to those before service of the notice of forfeiture. *See generally Jensen v. Schreck*, 275 N.W.2d 374, 384 (Iowa 1979) (noting that "[t]he purpose of this chapter is to limit the rights of a forfeiting vendor who might otherwise summarily remove a vendee

upon default" and not to grant any additional power to the vendor). A forfeiture for nonperformance cannot be declared until the cure period has run. *See Allen v. Adams*, 162 Iowa 300, 303, 143 N.W. 1092, 1093 (1913).

In Iowa, forfeiture is completed by compliance with Chapter 656 and the passage of thirty days after service of notice. Iowa Code §§ 656.2, .4 (2009); *Gottschalk v. Simpson*, 422 N.W.2d 181, 184 (Iowa 1988). The statute is "designed to extend a little grace to a party in default who may be staggering under the load of his undertaking." *Hampton Farmers Co-op. Co. v. Fehd*, 257 Iowa 555, 560, 133 N.W.2d 872, 875 (1965) (quoting *Waters v. Pearson*, 163 Iowa 391, 397, 144 N.W. 1026, 1029 (1914)).

The notice of forfeiture states on its face that the "contract *shall* stand forfeited unless the parties in default, within 30 days . . . perform." (Emphasis added.) Ordinarily, nothing is required to complete a forfeiture except the passage of the thirty days after notice. *See* Iowa Code §§ 656.2, .4. Once the debtor has not cured within the prescribed cure period, the contract stands forfeited. *Hunt Hardware Co. v. Herzoff*, 196 Iowa 715, 718, 195 N.W. 264, 265 (1923). The conclusion that "the contract stands forfeited," necessarily implies that the state of the title is "the same as though no contract for a deed had ever been entered into." *Id.*

Iowa courts follow the general rule that equity abhors forfeiture. *Jamison v. Knosby*, 423 N.W.2d 2, 4 (Iowa 1988). "In adherence to that rule, forfeiture statutes are to be construed strictly against forfeiture, with the burden to show full and strict compliance with the statutory procedures upon the party seeking forfeiture." *Id.* at 5; *see also Lett v. Grummer*, 300 N.W.2d 147, 149 (Iowa 1981)

(noting that "under statutory forfeiture, and we must enforce the statute" reading it "strictly as to the vendor"); *see, e.g.*, *Fairfax v. Oaks Dev. Co*., 713 N.W.2d 704, 708 (Iowa 2006) (applying rule of strict compliance with statutory procedures, the supreme court denied forfeiture where the party seeking forfeiture failed to serve notice as required).

A. Inaccuracies in Notice of Forfeiture. Here, the notice of forfeiture stated that the contract was in default for "Non-payment of December 1, 2008, contract payment $1,042.64" and "Cost of Service $45.00." The district court found and the parties agree that the notice accurately listed "the itemized amounts of default." When the Andersens tendered a check, it was for the correct total of these itemized amounts in default. The amounts were totaled incorrectly, however, and the district court concluded that the notice of forfeiture was "fatally defective for failure to accurately state the amount in default." This conclusion is not supported by the statutory requirements or our case law.

Iowa Code section 656.2 provides, in part:

> 1. The forfeiture shall be initiated by the vendor by serving on the vendee a written notice which shall:
>
> *a.* Reasonably identify the contract by a document reference number and accurately describe the real estate covered.
>
> *b.* Specify the terms of the contract with which the vendee has not complied.
>
> *c.* State that unless, within thirty days after the completed service of the notice, the vendee performs the terms in default and pays the reasonable costs of serving the notice, the contract will be forfeited.

The Andersens do not argue that the notice did not satisfy the statutory provision. They contend instead that the Estate "failed to properly calculate the amount of default."

In *Hampton Farmers Co-op.*, 257 Iowa at 558, 133 N.W.2d at 873, the notice of forfeiture stated that the contract seller intended to accelerate all payments upon the buyers' default, and demanded the entire principal, not just the late installment payment. The court held that, although the parties' contract provided for acceleration of payments, the demand for the full principal was not in keeping with the purpose of the forfeiture statute. *Id.* at 559, 133 N.W.2d at 874. It refused, however, to set aside the notice of forfeiture as a nullity based on the excessive demand, and ruled that the notice was valid to the extent of the default on the installment payment. *Id.* at 561, 133 N.W.2d at 875. The court noted that prior case law established the rule that a notice of forfeiture will not be set aside "if there is one specific matter in the notice which is sufficient to justify a forfeiture." *Id*. The court stated: "in event the notice of forfeiture makes demand for more than that to which the plaintiff is entitled, such excessive demand will not invalidate the forfeiture." *Id.* at 563, 133 N.W.2d at 876 (citations omitted).

Here, the only error in the notice of forfeiture is the inaccurate total under the correctly stated December contract payment and cost of service. The Andersens argue, and the district court apparently agreed, that where there is an inaccuracy in the notice, Iowa case law requires that there must be an "independent ground for default stated in the notice." We do not read such a requirement in the cases. All that is required is "one specific matter in the notice which is sufficient to justify forfeiture." *Id.* at 561, 133 N.W.2d at 875; *see also Gibson v. Thode*, 209 Iowa 368, 371-72, 228 N.W. 91, 92 (1929) (holding that where notice makes a demand on the vendees for payment of principal and interest, vendees "were duly notified that at least the interest which was past due

had not been paid" and the "notice of forfeiture was good to that extent; hence was a sufficient basis to support this forfeiture"); *Votruba v. Hanke*, 202 Iowa 658, 659, 210 N.W. 753, 753 (1926) (finding specification in the notice relating to nonpayment of taxes was sufficiently specific to sustain forfeiture); *Gaston v. Horn*, 158 Iowa 674, 678, 138 N.W. 925, 926 (1921) (upholding forfeiture though the notice demanded $500 when only $185 was due).

Here, the notice correctly specified the nonpayment of the December contract payment. The notice accurately stated the amount of the delinquent payment. The Andersens concede they were in default on the December payment and tendered the correct total that needed to be paid. The fact that the notice inaccurately totaled the monthly payment and the cost of service does not render the notice a nullity. The district court erred in concluding the notice was "fatally defective."

B. Balancing of Equities. The district court also concluded that the equities weighed in favor of setting aside the forfeiture. Forfeitures are enforced "only when it is shown that the equities clearly require forfeiture." *Babb's Inc. v. Babb*, 169 N.W.2d 211, 213 (Iowa 1969). Our de novo review of this record does not support a finding that the balance of equities tips in the Andersens' favor. Neither the amount in default nor the actions of the Andersens justifies setting aside the forfeiture.

In *Lett v. Grummer* and in *Watson v. Chapman*, the Iowa Supreme Court found equity would not allow forfeiture for defaults that were miniscule in amount. *Lett*, 300 N.W.2d at 149 (noting claimed default was the failure to replace six missing window panes in an obsolete hog house); *Watson v. Chapman*, 244

Iowa 56, 63, 55 N.W.2d 555, 559 (1952) (noting the only amount in default was $2.07, the cost of serving notice). The courts found the forfeitures to be null and void. *Id.* In *Brown v. Nevins*, 499 N.W.2d 736, 738-39 (Iowa Ct. App. 1993), this court found that a default of the payment of a $40 fee for service of the notice of forfeiture was "trifling" when compared with the debtor's equity in the real estate and set aside the forfeiture.

On the other hand, a forfeiture will be enforced, even for a small amount, where the contract purchaser repeatedly missed contract payments and defaulted in a "flagrant and stubbornly deliberate" manner. *Miller v. Am. Wonderlands, Inc.*, 275 N.W.2d 399, 402-03 (Iowa 1979) (noting deficiency of only $10.48). The *Miller* court wrote:

> [W]e have taken some pains to point out that the fact forfeitures are not favored does not mean they will never be enforced.
>
> The amount of default in this case is trifling when compared with the value of the real estate. On the other hand the default was flagrant and, we must assume, stubbornly deliberate. If we were to hold this trifling amount will not trigger a forfeiture *we would in effect be repealing the statute.* Under such a rule trifling amounts could never be recovered. We think that where the amount of a default is only trifling, that is only one factor to be considered as a part of equity's abhorrence of forfeiture. *The fact that the amount in default here was trifling must be balanced against the showing that the default was deliberate and that an opportunity was given to make payment.*

Id. (citations omitted) (emphasis added). Even were we to assume—as the Andersens imply—that the amount in default here is trifling,[2] we must balance the amount in default against the Andersens' lengthy history of nonpayment and

[2] We do not think the default amount here is "trifling" compared to those in other cases. *See Miller*, 275 N.W.2d at 403 (noting amount in default was $10.48); *Brown*, 499 N.W.2d at 738-39 (noting amount in default was $40).

their failure to cure within the statutory thirty-day period in this last forfeiture proceeding.

In ruling that the equities weighed in favor of the Andersens, the district court twice stated that the Andersens had "attempted to tender not only the correct amount in default but also the most recent payment on the real estate contract by way of cashier's check" on the "32nd day after service of Notice of Forfeiture."

The testimony does not support the court's statement. Service of the notice of forfeiture was accomplished on December 11, 2008. The statutory thirty-day grace period ran on Saturday, January 10, 2009 (twenty days remained in December plus ten in January). Mr. Andersen did not attempt to deliver the cashier's check to cure the noticed default until Wednesday, January 14—four days after the period to cure had run.[3] Mr. Andersen's testimony about his tardiness was that he "got sidetracked from the deadline." In addition, Mr. Andersen testified that the check for the January 2009 contract payment,[4] which was due on January 1, was delivered to his attorney—not the Estate's attorney, and that check is dated "01-19-09."

Other reasons noted by the district court include "the Defendants have paid approximately 50 percent of the contract price at this time" and "the

[3] The district court and the Andersens appear to have assumed that because the period ran on Saturday, they were entitled to extend the deadline for curing their default until Monday. *But see* Iowa Code § 4.1(34) ("In computing time, the first day shall be excluded and the last included, unless the last falls on *Sunday*, in which case the time prescribed shall be extended so as to include the whole of the following Monday." (emphasis added)).

[4] This was submitted as Defendants' Exhibit C.

Defendants cite the circumstances surrounding the flooding in Iowa which contributed to the delinquency of the payments." Yet, we do not know what remained of the contract price as no testimony was offered in that regard.[5] There was testimony that ninety-one payments had been made—eighty-nine of which had been made late. Of this history of late payments, the Andersens state "there can be no dispute that any prior difficulties had been rectified until the present matter arose." We think, instead, that the prior difficulties continued unabated. Even at the time the Andersens attempted to cure the December default, they were in default on the January payment.

Nor is there substantial support for a finding that the "flooding in Iowa [] contributed to the delinquency of the payments." Mr. Andersen did not testify that the flooding contributed to the Andersens' delinquency. Mr. Andersen testified that the tenant of the building was $1500 behind in payments to the Andersens for 2007, the year before the flood.

> Q. How about for 2008? A. 2008 we started out, everything was current. And then I think it was February or March he fell off a ladder, injured his shoulder, which didn't allow him to work to his full ability. And he made partial payments in February and March . . . .
>
> Then as he healed we were current. We kept current, and then in July was our last full payment and that kind of coincided with the floods. And then following the flood the street in front of the building became a construction area, so the blocks between 21st and 22nd were all tore up . . . .

On appeal, the Andersens claim that Mr. Andersen "was unable to tender payment within 30 calendar days after the notice of forfeiture was served as a result of internal errors within his bank and as a result of his inability to contact

[5] The price and interest rate are shown on the contract, but the record does not contain evidence of the balance.

attorney for [the Estate] during a weekend." Again, these claims are without support.

Finally, the Andersens note:

> Mrs. Ceilley testified that she and her husband had an established pattern of not enforcing strict deadlines and of allowing the Andersens a several day grace period. Given the circumstances which obstructed Mr. Andersen's efforts to make payments prior to Saturday, January 10, 2009, the Appellant's well-established history of allowing a few extra days to the Andersens in making payment, granting a forfeiture in the present matter would be inequitable.

Had this default occurred at the end of 2007, before Mr. Ceilley's death, the Ceilleys' leniency might have given this court more pause. However, beginning in March 2008, the Estate established a different pattern and served notice of forfeiture upon the Andersens again and again. The Andersens did cure three of the 2008 defaults—always on the last day for doing so. But, they were again in default for the December 2008 payment and received a notice of forfeiture for that default. They did not cure the default within the thirty-day period after service of the notice of forfeiture. As the court said in *Beck v. Trovato*, 260 Iowa 693, 698, 150 N.W.2d 657, 659-60 (1967):

> Defendant has again failed to provide for payment of rent. She cannot rely on plaintiff's prior forbearance. The first effort to oust her was sufficient warning . . . . Plaintiff should not be subjected to repeated rent collection difficulties and need not continue her prior forbearance.

"While it is true . . . that equity abhors a forfeiture, . . . it does not abhor a forfeiture enough to override established legal principles." *May v. Oakley*, 407 N.W.2d 569, 572 (Iowa 1987).

We conclude the notice of forfeiture was not fatally defective and that the Andersens cannot avoid the forcible entry and detainer on equitable grounds. *See Moore v. Elliott*, 213 Iowa 374, 378, 239 N.W. 32, 34 (1931) ("Within the thirty-day period after service of notice of forfeiture, she neither performed nor tendered full performance of her obligation under the contract by which she agreed to abide, and the record fails to disclose any sufficient excuse for her failure."). We therefore reverse and remand.

REVERSED AND REMANDED.