IN THE COURT OF APPEALS OF IOWA

No. 0-890 / 10-0835
Filed February 23, 2011

AGR-KEAST, L.L.P.,
Plaintiff-Appellant,

vs.

RICHARD STEEN and
LLOYDENE STEEN,
Defendants-Appellees.

Appeal from the Iowa District Court for Pottawattamie County, Kathleen A. Kilnoski, Judge.

AGR-Keast appeals from the district court's summary judgment ruling in favor of Richard and Lloydene Steen. **REVERSED AND REMANDED.**

Lyle W. Ditmars and Sarah J. Millsap of Peters Law Firm, P.C., Council Bluffs, for appellant.

Anthony W. Tauke of Porter, Tauke & Ebke, Council Bluffs, for appellees.

Heard by Sackett, C.J., and Potterfield and Mansfield, JJ.

POTTERFIELD, J.

AGR-Keast appeals from the district court's summary judgment ruling in favor of Richard and Lloydene Steen finding an option to purchase given to AGR was void for lack of consideration. We reverse this finding, conclude the purchase agreement and option agreement were one transaction involving an option rather than a right of first refusal, and we remand for further proceedings.

I. Background Facts and Proceedings.

On March 9, 2003, AGR-Keast (AGR), as purchaser, and Richard and Lloydene Steen (Steens), as sellers, executed a purchase agreement for an eighty-acre plot of the Steens' farmland.

Paragraph nine of the purchase agreement provided:

> **Contingencies.** The parties acknowledge that the performance of [AGR's] obligations under this Agreement are [sic] contingent upon [Steen] entering into an Option Agreement with [AGR] which grants [AGR] the first right to lease and purchase an additional 331 acres, more or less, of farm ground owned by [Steen]. A copy of this Option Agreement is attached hereto and incorporated herein as Exhibit B.
>
> [AGR] further acknowledges that [Steen's] obligation to perform under this Agreement is contingent upon [Steen] obtaining the approval of Farm Credit Services of America, for the proposed sale.

No option agreement was attached to the purchase agreement.

On April 2, 2003, AGR and the Steens executed a written document entitled Option to Lease/Purchase Real Estate. We set out pertinent portions of that document:

> This Option to Lease/Purchase Real Estate ("Option") is entered into this 31st day of March, 2003 between [AGR, "Purchaser"] . . . and Richard (Bud) and Lloydene Steen, (collectively "Seller").
>
> 1. [Steen] is the owner of the real property described as:

> See Exhibit A (the "Property") [describing 331 acres in Montgomery County and 80 acres previously described in purchase agreement].
>
> 2. [AGR] desires to lease the Property for $135 per acre, actual acreage to be determined by ASCS measurements.
>
> 3. [AGR] additionally desires an option to purchase the Property for Two Thousand One Hundred Dollars and 00/100 ($2,100.00), per acre (actual acreage to be determined by ASCS measurement).
>
> NOW, THEREFORE, in consideration of the foregoing [Steen and AGR] agree:
>
> 1. Creation of Option. [AGR] is hereby granted the right to lease the Property currently and the exclusive option to purchase the Property under the terms and conditions of the attached Lease Agreement and Purchase Agreement, as applicable.
>
> 2. Consideration and Term of Option. For good and valuable consideration, the receipt of which is hereby acknowledged, [Steen] grants to Purchaser the exclusive option to lease and/or purchase the Property for a period of six (6) years expiring on March 31, 2009 (the "Option Date").
>
> 3. Manner of Exercise of Option. This option shall be exercised by written notice given by [AGR] to [Steen] either delivered personally or by certified mail . . . .
>
> 4. Terms and Conditions of the Lease or Purchase. The attached Lease Agreement and Purchase Agreement are made a part of this Option and provide the terms of the lease and the sale if the Option is exercised.

No lease agreement or purchase agreement was attached to the document.

The parties closed on the purchase of the eighty acres on April 18, 2003.

On October 26, 2007, an attorney for AGR sent the following letter to the Steens:

> We are the attorneys for AGR-Keast.
>
> In the spring of 2003, you executed an Option to Lease/Purchase Real Estate on certain real estate located in Montgomery County, Iowa. A copy of the agreement is enclosed.
>
> It is my understanding that Eric Rasmussen, as a partner of AGR-Keast, has previously notified you of the partnership's intention to exercise its option and purchase the property as provided in the agreement.
>
> Please give me a call or have your attorney call to make arrangements to begin the process to close this transaction.

The Steens declined to follow through with the transaction.

On April 24, 2008, AGR filed a petition in four counts asserting: (1) it was entitled to reformation of the option agreement, which it alleged "should have included two attachments: the 331 Acre Purchase Agreement and 331 Acre Lease Agreement"; (2) the Steens are estopped from asserting the terms of the option agreement are contrary to the language of the purchase agreement and the intended attachments; (3) the Steens were in breach of contract for failing to recognize AGR's option to purchase the 331 acres at $2100 per acre; and (4) it was entitled to specific performance of the option to purchase. Attached to the petition were the March 9, 2003 purchase agreement, the April 2, 2003 option agreement with attached Exhibit A, and two unsigned and undated documents—one purchase agreement and one farm lease—for 331 acres of land, which were not further described.

The Steens answered and asserted the affirmative defense that the option agreement as prepared is inconsistent with the original purchase agreement and unenforceable for lack of new consideration.[1] They also counterclaimed asserting the option agreement should be reformed to be consistent with the previously agreed upon terms of the contingencies paragraph (paragraph nine) of the purchase agreement; in the alternative, the option agreement was the result of misrepresentation or mistake and should be rescinded.

The district court granted summary judgment to the Steens concluding the language of the purchase agreement, "first right to lease and purchase an

[1] The Steens first argued that notice to exercise the option had not been provided timely, and then asserted this modification/lack of consideration argument.

additional 331 acres," was language creating a right of first refusal, which was inconsistent with the language of the subsequently executed option agreement. The court found the option agreement was not a part of the original purchase agreement and purported to give expanded benefit to AGR, and required its own consideration. The court concluded the Steens had carried their burden of showing the option contract was not supported by consideration and thus it was unenforceable as a matter of law.

AGR now appeals, contending: (1) the intent of the parties in entering into the purchase and option agreements remains a genuine issue of material fact precluding summary judgment; (2) the district court erred in concluding the terms of the purchase agreement and the option agreement were inconsistent and, consequently, no additional consideration was required. Alternatively, AGR contends there was adequate consideration given for the option agreement or the Steens should be estopped from denying the enforceability of the option agreement.

II. Scope and Standard of Review.

We review a ruling granting summary judgment for correction of errors at law. *Margeson v. Artis*, 776 N.W.2d 652, 654 (Iowa 2009). Summary judgment is appropriate if the record demonstrates "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 1.981(3).

The moving party has the burden of showing the nonexistence of a material fact. *Pillsbury Co. v. Wells Dairy, Inc.*, 752 N.W.2d 430, 434 (Iowa 2008). "Every legitimate inference that can be reasonably deduced from the

evidence should be afforded to the nonmoving party, and a fact question is generated if reasonable minds can differ on how the issue should be resolved." *Id.*

III. Need for separate consideration?

"The interpretation of a written contract is a question of law, unless the contract is ambiguous." *Margeson*, 776 N.W.2d at 659. The meaning of an unambiguous contract presents a legal question, which properly may be resolved by summary judgment. *Id.* However, where the language is ambiguous, the resolution of ambiguous language may involve extrinsic evidence, and "a question of interpretation arises which is reserved for the trier of fact." *Walsh v. Nelson*, 622 N.W.2d 499, 503 (Iowa 2001).

"The cardinal rule of contract interpretation is to determine what the intent of the parties was at the time they entered into the contract." *Pillsbury*, 752 N.W.2d at 436.

> Long ago we abandoned the rule that extrinsic evidence cannot change the plain meaning of a contract. We now recognize the rule in the Restatement (Second) of Contracts that states the meaning of a contract "can almost never be plain except in a context." Accordingly,
>
> > "[a]ny determination of meaning or ambiguity should only be made in the light of relevant evidence of the situation and relations of the parties, the subject matter of the transaction, preliminary negotiations and statements made therein, usages of trade, and the course of dealing between the parties. *But after the transaction has been shown in all its length and breadth, the words of an integrated agreement remain the most important evidence of intention.*"
>
> In other words, although we allow extrinsic evidence to aid in the process of interpretation, the words of the agreement are still the most important evidence of the party's intentions at the time they entered into the contract. When the interpretation of a contract depends on the credibility of extrinsic evidence or on a choice

> among reasonable inferences that can be drawn from the extrinsic evidence, the question of interpretation is determined by the finder of fact.

Pillsbury, 752 N.W.2d at 436 (citations omitted).

Applying these principles, we are convinced from the words of the purchase agreement and of the option agreement, as well as the surrounding circumstances, the agreements represent one transaction with consideration and summary judgment should not have been entered in favor of the Steens. It is evident the parties agreed the purchase of the eighty acres was contingent upon the parties entering into another agreement concerning an additional 331 acres. The adequacy of consideration for the April 2, 2003 agreement is intertwined with our determination that the two documents were intended as a single agreement. *See In re Estate of Claussen*, 482 N.W.2d 381, 383 (1992) (finding real estate contract was intended to be a single, non-severable agreement and the option clause contained therein was supported by single consideration); *Levien Leasing Co. v. Dickey Co.*, 380 N.W.2d 748, 754 (Iowa Ct. App. 1985) (finding that even though an integration clause existed in the lease, it was not intended as complete expression of agreement; original sales proposal constituted an option clause contained within the existing lease contract). The only finding that can be made from the following facts is that the purchase agreement and lease/option were part of one transaction.

We have here one transaction, which closed on April 18, 2003. It involved two separate documents—a purchase agreement for the 80 acres signed March 9 and an option agreement for the 331 acres signed April 2. The purchase agreement by its terms is incomplete and subject to the option agreement. One

document cannot coexist without the other. In the March 9, 2003 purchase agreement, the parties acknowledge AGR's performance of the obligations under the purchase agreement was contingent on an option agreement in which the Steens would grant a right to lease and purchase an additional 331 acres. Richard Steen submitted an affidavit in which he states, "The [April 2, 2003] option agreement was executed with the purpose of complying with the contingency in paragraph 9 . . . ." And finally both documents were signed prior to the closing on April 18, 2003, when the property and option and right to lease were transferred to AGR for good and valuable consideration.

The option agreement—as a part of this single transaction—is supported by consideration. *See* Restatement (Second) of Contracts § 80, at 204 (1981) ("There is consideration for a set of promises if what is bargained for and given in exchange would have been consideration for each promise in the set if exchanged for that promise alone."). The only conclusion that can be reached with these facts is that there was consideration for the option. We reverse the district court's findings regarding lack of consideration.

IV. Right of first refusal or option to purchase.

The parties agreed that AGR's obligations under the purchase agreement were contingent upon the Steens granting AGR a "first right to lease and purchase an additional 331 acres," which agreement was to be attached. The language "first right to lease and purchase," without more, has been held to constitute a right of first refusal conditional upon the owner's desire to sell.[2] *See*

[2] As stated in one treatise:

Scott v. Fry, 261 N.W.2d 179, 180 (Iowa Ct. App. 1977) (noting the rule is that a "lease which grants the lessee a first option to buy is conditional upon the lessor's desire to sell, unless there is additional language in the lease, or parol evidence, which compels the finding of an absolute option"). Here, there is such additional language. The March 9 purchase agreement contains the phrase "first right to lease and purchase an additional 331 acres," but that language does not stand alone. Rather, we also have the April 2 "option agreement," which the March 9 agreement expressly incorporates as a condition precedent of its taking effect. "Where a writing refers to another document, that other document, or so much of it as is referred to, is to be interpreted as part of the writing." *Hofmeyer v. Iowa Dist. Ct.*, 640 N.W.2d 225, 228 (Iowa 2001). The April 2 document is a straightforward option. And no reasonable person could read the March 9 and April 2 documents *together* as creating anything other than an option. The former is expressly subject to the latter.

> A right of first refusal is a conditional option empowering its holder with a preferential right to purchase property on the same terms offered by or to a bona fide purchaser.
>
> A right of first refusal, also known as a preemptive or preferential right, empowers its holder with a preferential right to purchase property on the same terms offered by or to a bona fide purchaser. It limits the right of the owner to dispose freely of his or her property by compelling him or her to offer it first to the party who has the first right to buy. Nor may the owner accept an offer made to him by a third party.
>
> A right of first refusal is a conditional option which is dependent upon the decision to sell the property by its owner. A right of first refusal is the weakest of options; technically, it is not an option at all, because it does not require the grantor to offer the property subject to it for sale, ever.

17 C.J.S. *Contracts* § 56, at 503 (1999) (footnotes omitted); *see also Trecker v. Langel*, 298 N.W.2d 289, 90–91 (Iowa 1980) (noting distinction between option, which creates in the optionee a power to compel the owner of property to sell at stipulated price, and preemption, which requires owner, when and if the owner wishes to sell, to offer the property first to the person entitled to preemption).

V. Intent of the Parties.

The summary judgment record contains conflicting affidavits from Steen and Keast regarding their understanding of paragraph nine of the purchase agreement. Richard Steen avowed that he understood the contingency in paragraph nine of the purchase agreement required that he grant AGR the first right to lease or purchase additional property and that "the option was contingent upon my initial desire to sell the property."

On the other hand, Russell Keast states in his affidavit that he "understood the Purchase Agreement to grant AGR-Keast L.L.P. an absolute option to purchase 331 acres" from the Steens. Keast states further that AGR would not have purchased the eighty acres if the purchase agreement had not granted an absolute option. The language of the April 2, 2003 option is that of an absolute option.

We disagree with the Steens that these affidavits generate an issue of material fact. Richard Steen admits he had an opportunity to read the April 2 option agreement before signing it. He was represented by counsel. His claimed unilateral "understanding" of the option agreement, which is contrary to its express terms, cannot override what the option agreement actually says. In *any* dispute over the meaning of a contract, the parties will allege different understandings of the agreement. This kind of "extrinsic evidence"—which does not address the facts and circumstances surrounding the agreement, contemporaneous discussions and negotiations, and the like—really has minimal value and presents nothing for the court to try. "[A] contract is not ambiguous

merely because the parties disagree over its meaning." *Hartig Drug Co. v. Hartig*, 602 N.W.2d 794, 797 (Iowa 1999).

VI. Notice.

The Steens argue that if this court concludes summary judgment was improperly granted in their favor, and we do so conclude, we should review the district court's denial of their first motion for summary judgment wherein they asserted that AGR failed to give proper notice to exercise the option. They argue the district court erred in concluding AGR's filing of the petition constituted a timely written notification of intent to exercise the option. We find the district court correctly ruled on this issue. *Steele v. Northup*, 259 Iowa 443, 450, 143 N.W.2d 302, 306 (1966) (finding even if notice of election to exercise the option was not given in "legally precise terms, it still remains such notice was given" by filing action against defendant).

VII. Conclusion.

The purchase agreement and option agreement were part of one transaction for which consideration was given. The two agreements, read together, provide for an option, not a right of first refusal. The parties' affidavits do not create an issue of fact as to their intent in signing the agreements. AGR gave adequate notice when it served its petition on the Steens. We reverse the entry of summary judgment in favor of the Steens and remand for further proceedings consistent with this opinion.

REVERSED AND REMANDED.