IN THE COURT OF APPEALS OF IOWA

No. 2-899 / 12-0106
Filed November 29, 2012

JOHN R. GANSEN, as Executor of the Estate of Frances A. Gansen, deceased; JOHN R. GANSEN, a Trustee of the Frances Gansen Declaration of Trust, dated December 16, 1996; and GANSEN FAMILY LIMITED PARTNERSHIP,
Plaintiffs-Appellees/Cross-Appellants,

vs.

JAMES B. GANSEN,
Defendant-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Dubuque County, Thomas A. Bitter, Judge.

James Gansen appeals from the district court's ruling in this declaratory judgment action concerning farm leases and purchase agreements; the Estate and Trust cross-appeal from the district court's decision not to terminate the farm leases and the amounts of rent James was ordered to pay. **AFFIRMED IN PART AND MODIFIED IN PART.**

Todd J. Locher of Locher & Locher, Farley, for appellant.

Stephen J. Juergens of Fuerste, Carew, Juergens & Sudmeier, P.C., Dubuque, for appellees.

Heard by Potterfield, P.J., and Danilson and Tabor, JJ.

POTTERFIELD, P.J.

James Gansen appeals from the district court's ruling in this declaratory judgment action concerning farm leases and an option to purchase. The Estate of Frances A. Gansen and the Family Limited Partnership (his brothers and sisters) cross-appeal from the district court's decision not to terminate the leases and assigning rental amounts.

I. Background Facts and Proceedings.

Bernard and Frances Gansen, husband and wife, farmed in the area of Zwingle, lowa. They raised seven children: Linda Ostby, John Gansen, Elaine Bries, James Gansen, Janice Kemp, Richard Gansen, and Virginia Henneberry. Bernard and Frances accumulated several different farms. The home place farm consists of 343 acres.[1] They subsequently acquired a 120-acre parcel and an additional 80-acre parcel.[2] In the early 1970's, Bernard and Frances left the family residence on the 343-acre home place farm and moved into a newly constructed home. James Gansen has resided rent-free in the original family residence since sometime in the early 1970s. He has been farming the home place farm since about 1976.

Bernard died in 1990 leaving Frances the sole owner of all their marital assets. That same year, Frances met with Ray Quint, her financial advisor, for the purpose of obtaining advice on estate planning. Quint was concerned that Frances had a potential problem with estate taxes due to the value of her assets.

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[1] The lease specifies 343.99 acres "more or less." The parties and the district court, however, consistently used the number 343 and so will we.

[2] The lease specifies 76.59 acres "more or less." The parties and the district court consistently refer to this property as having 80 acres. Other parcels the couple may have acquired are not pertinent to this action.

Frances expressed her intent to Quint that the home farm eventually pass to James, and that her children be treated equally through the distribution of her estate. She met with Quint again in 1994.

In 1996, Quint referred Frances to Dubuque attorney Brian Kane for estate planning assistance. In December 1996, Kane drafted, and Frances executed, the Frances Gansen Declaration of Trust (Trust) with Frances as trustee. That declaration of trust allowed Frances to convey her property into the trust, wholly revocable, with those assets thereby passing outside probate. Upon her death, title to trust property would be in the name of the Trust. The Trust provided that the trust assets would pass equally to her children upon her death. Frances deeded both the 120-acre parcel and the 80-acre parcel to the Trust (trust farms).

Also in December 1996, Kane drafted documents to establish the Gansen Family Limited Partnership, LP: Frances Gansen was the general partner and a limited partner, and each of her children was a limited partner. Frances deeded the 343-acre home place farm to the limited partnership (partnership farm). The limited partnership became effective on December 16.

On December 27, 1996, all of the limited partners (Frances and all seven of the children) executed a "Buy-Sell Agreement" providing that upon the death of Frances, each limited partner "shall sell, and James B. Gansen (the 'Buyer') shall purchase, all of the units owned by the Sellers at the date of such event." The method by which those units were to be valued was described in paragraph four

of the agreement. The original value of each of the 4491 units was $68.73.[3] Per the terms of the "Buy-Sell Agreement," if more than three consecutive years passed without an updated endorsement,

> the value of all of the outstanding units shall be agreed upon by the Buyer [James] and the selling Partners. If an agreement is not reached within 60 days after the occurrence of the event requiring sale and purchase, the value shall be determined as follows: the Buyer and the selling Partners or the selling Partner's successor in interest, as applicable, shall each name one arbitrator and the two shall determine the value as of the end of the fiscal year immediately preceding the date of death. If the two arbitrators cannot agree upon the value of the units they shall appoint a third arbitrator and the decision of the majority of the arbitrators shall be binding.

The total value of the units was essentially the fair market value of the partnership farm in 1996.

Starting March 1, 1997, cash-basis written leases were executed for the partnership farm and the two trust farms. Pursuant to the leases, James was to pay cash rent, but the spaces for the amounts were left blank. These three original leases each were for a five-year term (March 1, 1997, to February 28, 2002). Each lease also provided,

> 9. TERMINATION OF LEASE. This lease shall automatically renew upon expiration from year-to-year, upon the same terms and conditions unless either party gives due and timely written notice to the other of an election not to renew this Lease. If renewed, the tenancy shall terminate on performance of the Lease. All notice of termination of the Lease shall be as provided by law.
>
> . . . .
>
> 25. ADDITIONAL PROVISIONS.
>
> (a) Option to Renew. This lease shall automatically renew for four additional 5-year terms unless Tenant provides notice to Landlord in writing not less than 180-days before the termination of

[3] In 1999, all of the limited partners signed an endorsement agreeing to a unit value of $78.28 at that time. That was the last time the limited partners executed an endorsement agreeing to any specific unit value.

> then current leased term, or within 30-days of the commencement of the new lease term, with tenant's election not to lease the leased property for any such additional five year term. In the event the lease term is extended pursuant to this paragraph, in all respects the lease shall continue upon the same terms and conditions provided for herein, provided, however, that the annual rental due shall be adjusted each year by the mutual agreement of the parties. If the parties do not mutually agree to such adjusted rental on or before August 1 of any such year, the rental for the previous year shall apply.
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> (b) Right of First Refusal. Before Landlord may sell or convey the real estate underlying the leased premises as described in Section 1 above; Landlord shall give notice in writing to the tenant, stating the price and terms upon which Landlord proposes to [sell] such real estate at the price and on the terms so stated. If Tenant fails to elect to purchase such real estate within 30 days from the date in which Tenant receives notice of Landlord's intention to sell as set out above, then Landlord shall have the right to sell such real estate at not less than the price so stated and on terms no more favorable than those stated. If the Tenant elects to purchase such real estate for the price and on the terms so stated in the notice to Tenant, tenant shall close the purchase of such transaction no later than 60 days from the date on which Tenant elects to purchase the real estate. All notices hereunder shall be given as provided in this lease. The parties shall each bear normal closing costs in connection with this purchase and sale.

Beginning in 1997, and for a period of eleven years, James was paid a "farm management fee" of $9000 per year by the Trust, which is the approximate annual premium on a $250,000 life insurance policy insuring the life of Frances. James used the farm management fee to pay that premium. James was the sole beneficiary of the policy on Frances's life.

A. Claims of the parties.

1. Frances's claims. On August 19, 2009, Frances (individually and as trustee) filed an application for declaratory judgment against James. In Count I, she alleged that though the leases called for an annual reconsideration of the rental rate, James had refused to cooperate in good faith to renegotiate. As a

result, he was leasing the property at a rate "significantly below market value" and was in breach of the leases. Count II asserted that if the court did not find James was in breach of the leases, the court should determine a fair rental for the lease year commencing March 1, 2009. Count III asked that the court conclude the leases terminated as of March 1, 2009, if the court determined a material term of the leases was not included in the agreement.

2. James's claims. James answered and, in his counterclaim, asserted seven counts: (I) No rent increase was sought "until the spring or early summer of 2008" and because the parties did not mutually agree to any adjustment prior to August 1, 2008, the rent remained the same. He asked that the action be dismissed and the rent declared the same as paid for crop year 2008. (II) James had received notices of termination of farm leases on September 1, 2008, which were untimely and constituted a breach of the leases. He asked that the terminations be declared unenforceable. (III) James asserted he and the Gansens had entered into a written agreement in 2004 providing he would purchase the partnership property at a price of $1500 per acre and the trust property at a price of $2000 per acre and asked that the court enforce the agreement. (IV) James contended the Gansens had breached the contract identified in the previous count. (V) He demanded specific performance under the terms of the 2004 contract. (VI) This count is entitled promissory estoppel and again asks that the court declare "that Gansens shall sell to James" the partnership and trust farms "under the terms promised." (VII) In the event James was not allowed to purchase the properties, he asked that he be compensated for the "significant sums" expended to improve them. In a later amendment,

James attached Exhibit A in reference to his Counts III through VI. Exhibit A appears to be a handwritten document with a printed heading of MEMO. It reads:

> It is agreed to sell Jim the farm at the following prices
> The family limited part $1500 per acre $480,000
> balance @ $2000.00 per acre
> to be reassessed annually with
> % of gain or loss

Below this are three signatures: John Gansen, Jim Gansen, and Frances Gansen. This document is the 2004 option agreement, which appears to contemplate the sale of the partnership and trust farms to James at the time of Frances's death. Like the other written memorializations of the parties' efforts to agree on price, the terms anticipate a reassessment of the price on a regular basis, which never was achieved.

3. Amendments. Frances thereafter was allowed to amend to assert a Count IV in which she requested the court declare a "certain Option Agreement dated January 3, 2008, null and void as a matter of law." James consented to the amendment and asked that the court "declare the parties' rights and obligations with respect to the option referred to at Count IV."

The 2008 option agreement, pertaining to the trust farms, reads in part:

> For valuable consideration, the receipt, sufficiency and adequacy of which is hereby acknowledged, FRANCES A. GANSEN, a widow and not remarried, (hereafter "Grantor"), hereby grants to her son, JAMES B. GANSEN (hereafter "Grantee"), an exclusive option to purchase all of the real estate (including any improvements thereon) described as follows: [legal description for both trust farms][4] (all of which is described herein as the "Real Estate").

[4] Upon Frances's death, it was discovered the legal description for Parcel I "should be titled in the Partnership." John Gansen submitted an affidavit in which he

> Grantor hereby grants to Grantee an exclusive option to purchase the Real Estate commencing upon the death of the Grantor and ending 90 days after the death of the Grantor.
>
> The total option purchase price shall be $3,000.00 per net acre ("Net Acre" for this purpose shall mean the gross acres of the Real Estate less any part thereof subject to a public right of way (e.g. county road)).
>
> . . . .
>
> Grantee shall exercise this option, if at all, by giving written notice of such intent to exercise this option commencing with the death of Grantor and ending ninety (90) days after the death of Grantor. Grantor shall exercise this option by giving written notice by certified mail, return receipt requested, to Grantor's estate's personal representative or trustee under Grantor's trust, as applicable, and such notice shall be deemed given upon mailing.
>
> . . . .
>
> Grantee shall pay to Grantor $5,000.00 during the first 15 days of January, 2008, and $5,000.00 during the first 15 days of January of each year thereafter through and including the year of Grantor's death (and the commencement of the Option period hereunder). If Grantee timely exercises the Option as provided for herein, ~~$1,000.00 of each of~~ the aforesaid $5,000.00 payments shall be credited to the purchase price for Grantee's purchase of the Real Estate.

The strikeout was initialed FH and JH.

James was allowed three additional amendments to his counterclaim. In Count VIII, he sought a declaration of the parties' rights and obligations under an attached Exhibit B—the 1996 Buy-Sell Agreement. In Count IX, he asked that the court declare that John Gansen's appointment as general partner under the Gansen Family Limited Partnership Agreement was null and void and that a neutral third party non-family member be named general partner. In Count X, James asked that the court determine the parties' rights under an easement

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avers: "[B]y virtue of long-standing usage and family belief," the following is the property that "should be titled in the Trust": "South West 1/4 of the South West 1/4 of Section 9, and the South East 1/4 of the South East 1/4 of Section 8, all in Township 87 N, Range 2 East of the 5th P.M., in Dubuque County, Iowa."

Quit claim deeds exchanging these properties between entities were recorded on April 28, 2011.

agreement granting ITC Holding Corp. an easement across partnership and trust property for the construction of an electrical transmission line.

Frances died on January 12, 2011, before the matter was tried. John Gansen was substituted in this proceeding as executor of the Estate of Frances Gansen and as trustee of the Trust, the plaintiffs. For the remainder of this opinion, we will refer to the plaintiffs as the Gansens. We will refer to the defendant, James Gansen, as James.

On April 4, 2011, James sent a "notice to exercise [the January 3, 2008] option."

B. Evidence at trial.

The case was tried as an equity action on August 2, 2011. The following appears from the evidence presented.

1. Rent and good faith negotiations. The rent James paid has never changed. From 1997 through 2008, James paid the family partnership $100 per acre for the 343-acre partnership farm; James paid Frances $120 per acre for the trust farms (200 acres). James submitted a check for rent of the partnership farm in the amount of $28,460 to cover 2009 rent, and that same amount to cover 2010 rent. He submitted a check for rent of the trust farms to Frances in the amount of $17,100 to cover 2009 rent, and that same amount to cover 2010 rent. All of these checks indicated on the notation line the check was for a specific year's "rent paid in full." Each was rejected by the Gansens due to the pending litigation. In sum, James's rent has not increased since 1997, and though he has continued to farm the properties and sell the harvests, he has paid

no rent on any of the partnership or trust farms for the 2009, 2010, 2011, or 2012 crop years.

Beginning in about 2007, Frances complained to attorney Brian Kane that James's rental rate was inadequate. Kane testified they began attempts to negotiate higher rent with James. Kane stated he obtained Iowa State University (ISU) Extension study information for the rent in the area, the average of which was higher than what James was paying. (For 2008, the overall average rent for "Area 9," which included Dubuque County, was $198 an acre). The attorneys for both Frances and James discussed the rental rate for at least a year prior to the filing of the petition in this matter. In a letter dated April 28, 2008, Kane relayed an agreement by Frances to increase the rent to $160 per acre for the 2008 crop year. The most James agreed to pay was a 10% increase, or $110 per acre for the partnership farm and $132 per acre for the Trust farms. James refused to talk further about the rental rates unless he first "got a deal" on the purchase price for the farms.

2. Count I—request to find leases breached. The district court found James had "unreasonably refused to negotiate a fair and reasonable rental rate when requested to do so," but "refuse[d] to declare this action by James to be a breach of the agreement" as alleged in Count I of the petition.[5]

3. Count II—set a reasonable rental rate. The court having determined that James unreasonably refused to negotiate a fair and reasonable rental rate, the court determined that, pursuant to Count II, "it is appropriate to

[5] The court noted that "Plaintiffs did timely serve notice of termination prior to March 1, 2009, and prior to March 1st of each year thereafter."

establish the fair rental rate for the lease year commencing March 1, 2009, and for each lease year thereafter." At trial, both parties presented evidence as to the fair rental rate for the years 2008 through 2011, including testimony from farmers and landlords near the Gansen farms.

The court accepted James's evidence of rental values as "reasonably appropriate, but on the low side of reasonable," and concluded the rent James *should have paid* for the three years beginning March 2009 to March 2012 was as follows:

Farm	# of Acres	Year	Rent Paid[6]	Rent Should Have Paid Per Acre
Partnership[7] Farm	343	3-1-09 to 3-1-10	$100	$144.07
Partnership Farm	343	3-1-10 to 3-1-11	$100	$160.64
Partnership Farm	343	3-1-11 to 3-1-12	$100	$175.00
Partnership Farm	343	3-1-12 to 3-1-13[8]		$180.00
Trust Farm	120	3-1-09 to 3-1-10	$120	$141.95
Trust Farm	120	3-1-10 to 3-1-11	$120	$158.27
Trust Farm	120	3-1-11 to 3-1-12	$120	$173.00
Trust Farm	120	3-1-12 to 3-1-13		$180.00
Trust Farm	80	3-1-09 to 3-1-10	$120	$121.89
Trust Farm	80	3-1-10 to 3-1-11	$120	$135.90
Trust Farm	80	3-1-11 to 3-1-12	$120	$150.00
Trust Farm	80	3-1-12 to 3-1-13		$155.00

[6] The district court calculated the judgment by assuming that James actually paid rent for the total number of acres and at the rate stated. The plaintiffs point out—and James does not deny—that no rent has been paid for any acres since 2008.

[7] The district court referred to this farm as the "Home Farm"; we have substituted our term "partnership farm" to differentiate the properties by ownership.

[8] The district court ruled that if James rented the ground for crop year 2012, "unless the parties agree otherwise" the rental rate would be $180 per acre on the partnership farm and the 120-acre trust farm, and $155 per acre on the 80-acre trust farm.

4. Count III—asking that the court declare the leases prospectively terminated as of March 1, 2009. The district court denied the plaintiffs' Count III request to declare the leases terminated as of March 1, 2009.[9]

5. Purchase agreements. The evidence at trial also showed that there had been discussions about James buying both the partnership and the trust farms for several years—those discussions covering issues of the price per acre, the timing of the sale, and proposed option agreements.

6. Counterclaim Counts III-VI—concerning 2004 memo. The undated document James contends is an enforceable agreement reads:

> It is agreed to sell Jim the farm at the following prices
> The family limited part $1500 per acre $480,000
> balance @ $2000.00 per acre
> to be reassessed annually with
> % of gain or loss

The parties believed it was written around 2004 and signed by James Gansen, John Gansen, and Frances Gansen. James asked the court to declare the agreement enforceable, and that under this agreement, he should be allowed to purchase the partnership farm for $1500 per acre and the trust farms for $2000 per acre. The district court denied the request (essentially ruling against James on Counts III through VI of his counterclaims) concluding, this document "does not provide any detail as to a closing date. Further, no earnest money was ever given, and no action was ever taken, by either party, to enforce this agreement."

The parties continued to discuss the issue of James buying the three

[9] Because James continued to farm the properties, we find this count is moot as to crop years 2009, 2010, and 2011. Having remained on the property and "reaped" the benefits, James is obligated to pay rent.

farms in the years that followed. In a July 23, 2007 letter to Frances, attorney Kane wrote:

> At our July 9, 2007 meeting, in response to our prior office conference, we provided you with a draft Option Agreement (copy enclosed) that provided for an exclusive option for Jim to purchase the above two [Trust] farms basically through an appraisal mechanism, less a 15 % discount, but with cash at closing. . . . .
>
> . . . .
>
> As you know, Jim has expressed that he desires to obtain the option for a "locked in" price. . . . .
>
> In response to the meeting, enclosed please find a revised option, with the changes marked, for your review and comment. . . .
>
> . . . .
>
> We have therefore left the price amount blank in the revised option.

On November 23, 2007, James contacted Kane and informed him that he and Frances had reached an agreement for an option on the trust farms (200 acres). Kane then sent a letter to Frances and included a revised option agreement calling for $3000 per acre, as well as a blank option agreement with no specific numbers. Again, Kane told Frances in his letter that "if the fair market value of the farm increases, the option is to Jim's benefit. If the fair market value of the farm decreases below $3,000 an acre, the option is to your family's benefit."

On November 29, 2007, James and Frances both signed a hand-written document, which reads:

> 3,000 per acre
> Cash Deal
> Mom stops funding life insurance
> Jim will take his share of rest of estate up front to put down on farm.
> Survey possible ? at expense of sellers
> Purchase option at $3,000 per acre

Based upon this purported agreement, John Gansen contacted Kane and directed him to prepare a purchase agreement for the partnership farm at a price of $3000 per acre. Attorney Kane prepared a document entitled "Offer to Buy Real Estate and Acceptance,"[10] which was signed by Mary Gansen, wife of James Gansen (no date was included). However, no one else signed it.

7. Count IV of petition—declare January 3, 2008 option agreement null and void. On January 3, 2008, James and Frances went to American Trust & Savings Bank in Dubuque, where they met with David Recker, a vice-president and office manager. James and Frances had the option agreement concerning the two Trust farms drafted by Kane, which they both signed in Recker's presence. Recker notarized Frances and James's signatures, but recommended they take the document back to Kane to be corrected.

The January 3, 2008 option agreement was not sent back to Kane.[11] James did not pay Frances $5000 within the first fifteen days of January 2008. However, James did attempt to pay $5000 as part of a $13,550 check dated October 27, 2008, with the notation "1/2 of rent + 2008 payment." By letter dated December 9, 2008, from Kane to James's attorney, Frances "disavows any knowing execution of [the January 3, 2008] document. Further, this letter shall stand as her notice to your client of her rescission of that alleged agreement. Specifically, she claims that your client misrepresented the alleged agreement to

[10] The total purchase price noted was "$1,031.970.00 (calculated as 343.99 acres x $3,000/acre)."

[11] On the same day Frances filed her petition (August 19, 2008), the January 3, 2008 agreement was recorded at the Dubuque County Recorder's Office by James's attorney, Flint Drake.

her in a material way." The letter also stated that, "even if the agreement was validly signed and in effect . . . the '$5000' was due during the first 15 days of January 2008 and was not timely paid."

James sent another $5000 check to "Fran Gansen" dated December 22, 2009, which included the notation "payment for option." He also sent a check dated November 29, 2010, with the notation "option payment for 200 [acres] for 2010." Both checks were rejected and returned.

With respect to Count IV of the Gansens' petition asking that this January 3, 2008 option on the trust farms be declared null and void, the district court did not make an explicit ruling. However, the court impliedly ruled in the plaintiffs' favor in its findings that

> Jim did not pay $5,000 to Frances within the first 15 days of January 2008, as called for in the option agreement signed by Jim and Frances on 1-3-08. Jim attempted to pay his $5,000 "option payment" for 2008, 2009, and 2010, but he made those payments in November or December of those years, not in the first 15 days of those years as called for in the option agreement. All such "option payments" were refused and returned to Jim.

8. Counts VII through X of counterclaim[12] *denied*. The court then denied the "remaining counts" of James's counterclaim, though it did rule:

> Pursuant to the Buy-Sell Agreement (Plaintiff's Exhibit 8), James is obligated to purchase the [partnership] property[13] upon the death of his mother. The method for calculating the purchase

[12] The undecided counterclaim counts remaining were: Count VII—in the event James is not allowed to purchase the properties, he asked that he be compensated for the "significant sums" expended to improve them; Count VIII—asking for a declaration of the parties' rights and obligations under the 1996 Buy-Sell Agreement; Count IX—asking that the court declare that John Gansen's appointment as general partner under the Gansen Family Limited Partnership Agreement was null and void and that a neutral third party non-family member be named general partner; and Count X—concerning the parties' rights under an easement agreement.

[13] We read this as a ruling on Count VIII of the Counterclaim, which concerns only the limited partnership units.

> price is provided in the agreement. That agreement remains valid and shall be followed by the parties. By December 31, 2011, James shall notify Attorney Kane in writing as to his intention regarding purchasing the property consistent with the Buy-Sell Agreement. If James fails to do so, or if James indicates he will not be purchasing the property, the property shall be sold consistent with the Gansen Family Limited Partnership and the terms of the Last Will and Testament of Frances Gansen. If James timely indicates his intent to purchase the property under the terms of the Buy-Sell Agreement, closing shall occur as soon as practicable and without unnecessary delay from buyer or seller.
>
> The Court intentionally makes no award or provision for any improvements James claims he has made to the property. Likewise, the Court intentionally makes no award or provision for any damage or changes the Plaintiffs claim have occurred.

James appeals, and the Gansens cross appeal.

II. Scope and Standards of Review.

Because this case was tried in equity, our review is de novo. Iowa R. App. P. 6.907. We give weight to, but are not bound by, the district court's findings of fact. Iowa R. App. P. 6.904(3)(g).

III. Discussion.

James's appeal raises eight issues. He contends: (1) the plain language of the farm leases require mutual consent for rent to be adjusted; (2) the January 3, 2008 option agreement respecting the Trust farms is an enforceable contract; (3) the handwritten 2004 agreement is an enforceable modification of the 1996 Buy-Sell Agreement for the sale of the Partnership farm; (4) in the alternative, promissory estoppel requires enforcement of the handwritten agreement; (5) quantum meruit protects James for sums expended on the farms in the amount of $89,148.34; (6) if the court does not accept his contention that the 2004 agreement modified the Buy-Sell Agreement, this court should "specify the method for selecting the 'arbitrator' for the sellers and that the method prevent[s]

shopping appraisers for the highest value opinions"; (7) he asks that this court declare that John Gansen cannot act as general partner of the family partnership; and (8) he asks that this court order all consideration for easements for the future use of the farms be paid to him as the purchaser of the farms.

The Gansens cross-appeal, asserting (A) the trial court erred in failing to find James breached each of the leases and in failing to terminate the leases; (B) the trial court erred in finding James paid rents for lease years beginning March 1, 2009, 2010, and 2011; and (C) the rents determined by the trial court were inadequate.

A. Rent adjustment under the leases/Failure to terminate.

1. *Good faith*. We begin with James's claim that the farm leases require mutual consent for the adjustment of rent, and his connected claim that there is no duty of good faith implied in the farm leases. When considered together, James asserts he has the right to refuse to re-negotiate the rental rate without consequence for the full twenty-five years covered by the leases.[14] He argues the Iowa Supreme Court has "only addressed the duty of good faith in the context of insurance contracts, employment agreements and adoption placement contracts—all cases dealing with parties on unequal footing." Contrary to

[14] We doubt very much James would be making the same argument had commodity prices and land values continuously decreased and the *landlord* refused to negotiate a lower rental rate.

And while not raised by either party, we note that the Iowa Constitution prohibits leases of farmland for a period longer than twenty years. Iowa Const. art. I, § 24 ("No lease or grant of agricultural lands, reserving any rent, or service of any kind, shall be valid for a longer period than twenty years."); *see Casey v. Lupkes*, 286 N.W.2d 204, 206 (Iowa 1979) (holding that an agricultural lease for an indefinite term, either forty-five years or the death or disability of the tenants, was "valid for twenty years from its effective date and invalid only as to the excess").

James's assertion, the duty of good faith is not limited to a particular type of contract.

Our supreme court has unequivocally stated, "A contract imposes upon each party a duty of good faith in its performance and enforcement." *Engstrom v. State*, 461 N.W.2d 309, 314 (Iowa 1990). The *Engstrom* court cited the Restatement (Second) of Contracts, which states, "*Every* contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement." Restatement (Second) of Contracts § 205, at 99 (1981) (emphasis added) (hereinafter Restatement). Moreover, the supreme court has stated that "[b]ad faith in negotiations of a contract may result in the imposition of sanctions, such as invalidation of the contract if fraud and duress are shown. Additionally, tort remedies may be available for bad faith negotiations." *Engstrom*, 461 N.W.2d at 314.

Our supreme court has described these general principles:

> A lease is both a contract and a conveyance. Therefore, we look to ordinary contract principles when construing a lease.
>
> We recognize "in the construction of written contracts, the cardinal principle is that the intent of the parties must control; and except in cases of ambiguity, this is determined by what the contract itself says." The intent of the parties may be determined from the terms of the lease, what is necessarily implied from the terms, and the circumstances surrounding the formation and execution of the lease.

Dickson v. Hubbell Realty Co., 567 N.W.2d 427, 430 (Iowa 1997) (citations omitted).

The general rule is that "substantial compliance with the terms of a lease will avoid a forfeiture." *Beck v. Trovato,* 150 N.W.2d 657, 659 (Iowa 1967); *see*

also Jack Mortiz Co. Mgmt. v. Walker, 429 N.W.2d 127, 130 (Iowa 1988) (noting that forfeitures are not favored in law or equity).

Here, the farm leases specify that the "annual rental due shall be adjusted each year by the mutual agreement of the parties." The phrase, specially added, clearly contemplates annual negotiations. We have no doubt the parties intended that those annual negotiations would be carried out in good faith.

James contends that if we assume there *is* an implied duty of good faith, his offer to adjust rates by 10% and the plaintiffs' refusal to counteroffer is evidence he negotiated in good faith, but the Gansens did not. The evidence showed that James would not discuss the rental rate at all after his offer, unless he first was able to get a firm price for the exercise of his option to buy the land.

An implied covenant of good faith and fair dealing is breached when a party to a contract acts in a manner that is offensive to "community standards of decency, fairness, and reasonableness." *Kooyman v. Farm Bureau Mut. Ins. Co.*, 315 N.W.2d 30, 34 (Iowa 1982) (citing Restatement § 205 cmt. a, at 100). "Subterfuges and evasions violate the obligation of good faith in performance even though the actor believes his conduct to be justified." Restatement § 205 cmt. d, at 100. Whether this covenant is breached, as well as the appropriate remedy, depend on the circumstances of each case. *Id.* § 205 cmt. a, at 100.

We find the district court's ruling that James unreasonably refused to negotiate a rental rate increase is supported in the record: the farm leases state that "the annual rental due shall be adjusted each year by the mutual agreement of the parties." This term in the leases suggests the parties intended an annual adjustment of some kind—whether it be up or down. James's own evidence

shows he was paying Frances far less per acre than he was paying non-family landlords for crop land. A rational fact finder could conclude that James's refusal to agree to anything more than a nominal rate increase after twelve years of very favorable rental rates, particularly in light of rising land and commodities prices, was offensive to "community standards of decency, fairness, and reasonableness."

2. *Termination as appropriate remedy?* The Gansens argue that the district court erred in finding that James's unreasonable refusal to negotiate constituted a breach, but did not warrant termination of the leases. As noted above, the appropriate remedy for a failure to perform a contract in good faith depends on the circumstances of each case. *Id.* § 205 cmt. a, at 100. Our supreme court has also stated that substantial compliance with the terms of the lease will avoid a forfeiture. *Beck*, 150 N.W.2d at 659. "This case was brought in equity and it is the general rule that equity abhors a forfeiture." *Jamison v*. *Knosby*, 423 N.W.2d 2, 4 (Iowa 1988). Particularly in light of the fact that the parties not only have leases, but a buy-sell agreement, and the right of first refusal to purchase, we find the district court's refusal to terminate the leases prospectively was equitable.

The district court determined that the appropriate remedy would be that James pay a reasonable rental rate for the crop years 2009, 2010, 2011, and 2012 (presuming he remained on the land).[15] *See Long v*. *Jensen*, 522 N.W.2d

[15] Nothing in this record indicates whether notices of termination of leases were sent with respect to crop year 2012 or beyond.

621, 623 (Iowa 1994); *see also Meier v*. *Johannsen*, 47 N.W.2d 793, 796 (Iowa 1951) ("Concededly there was a written lease for the first year, and if defendants held over another year it is presumed to be on same terms where there is no new arrangement, *or unless the facts rebut the presumption*." (emphasis added)).

3. *Reasonable rental rates*. The district court entered judgment for the Gansens for *additional* rent for crop years 2009, 2010, and 2011, in the amount of $79,050.13 plus interest. This judgment assumes both that James paid rent for crop years 2009, 2010, and 2011, and that James paid per total acre, not per tillable acre.

Both parties ask that we amend the district court's calculation of rent due. James argues that if we uphold the district court's finding that he acted unreasonably in the rent negotiations, we should "revisit the district court's rent calculations" because he has historically paid rent on tillable acres, not total acres.

The Gansens believe the district court's rental rate, rather than being "on the low side of reasonable," was unreasonably low. Moreover, they assert that the record shows that James has not paid any rent since 2008.

James's own testimony was that he had rented crop land for the past four years for $150 per acre from a Mr. Weber; for the year prior to trial the "Bottoms farm" for $160 per acre; and in 2010, crop land for $180 per acre from a "Mr. Spiegel" in 2010. James acknowledged that people who "farm in close proximity

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While termination of the leases has been held in abeyance during these proceedings, we observe that the leases allow for termination when "either party gives due and timely written notice to the other of an election not to renew this Lease."

to the family farm, the partnership farm and the trust farms, have paid a lot more than $100 to $120 an acre for crop ground."

The Gansens proffered ISU surveys indicating that in 2008, the overall average of typical cash rents for the district in which Dubuque County lay was $190 an acre; in 2009, it was $186 an acre; in 2010, it $192 an acre; and in 2011, it was $223. For Dubuque County, the average cash rent was $210 per acre in 2009, and $217 by 2010. They also proffered the testimony of neighboring farmers who were paying between $180 and $330 per acre by 2009, with an average of $218 per acre. The Gansens ask that this court order James to pay $210 per acre (343 + 120 + 80 = $114,030) for each farm for 2009 and not less than $217 per acre for 2010, 2011, and 2012 (543 acres x $217 x 3 years = $353,493). They seek a total judgment in the amount of $467,523 plus interest.

The district court, however, accepted James's proffered exhibits as reasonable rates, "though on the low side of reasonable." James's exhibits incorporate the concepts of tillable acres and Corn Suitability Ratings (CSR Points). We concur in the district court's findings as to the reasonable rental rate per acre. However, it is undisputed that James has historically paid rent on fewer than the total acres stated in the lease.

In 2008, 2009, and 2010, James submitted rent for the partnership farm in the amount of $28,460, which if divided by $100 per acre meant James was paying for 284.60 tillable acres, but he now claims the partnership farm is 267.41 tillable acres. We find the former payments a more reliable indicator of the total tillable acres. Concerning the partnership farm, we conclude rent is owed on 284.60 tillable acres.

In 2008, 2009, and 2010, James combined his payments for rent on the two trust farms in single checks of $17,100, which if divided by $120 per acre meant James was paying for 142.5 acres on the trust farms. However, according to his exhibits—which were accepted by the district court and conceded to by the Gansens at oral argument—the trust farms have a combined 170.95 acres:[16] Exhibit AA with the rental rate accepted by the district court notes the 120-acre trust farm consists of 103.22 crop acres; Exhibit Z notes the 80-acre trust farm consists of 67.95 crop acres. With respect to the 120-acre and 80-acre trust farms, we conclude rent is owed on 103.22 and 67.95 tillable acres, respectively.

Using the district court's findings with respect to reasonable rents per acre (found in the table on page 11), James is ordered to pay rent as stated in the table below.

Farm	**Total tillable acres**	**Crop Year**	**Rent due/acre per district court**	**Total due (no credit for rent assumed paid**
P'rship Farm	284.6	3-1-09 to 3-1-10	$144.07	$41,002.32
		3-1-10 to 3-1-11	$160.64	$45,718.14
		3-1-11 to 3-1-12	$175.00	$49,805.00
		3-1-12 to 3-1-13	$180.00	$51,228.00
Trust Farm	103.22	3-1-09 to 3-1-10	$141.95	$14,652.08
		3-1-10 to 3-1-11	$158.27	$16,336.63
		3-1-11 to 3-1-12	$173.00	$17,857.06
		3-1-12 to 3-1-13	$180.00	$18,579.60

[16] We observe an apparent coincidence that this figure would coincide with the combined rental payments submitted for the trust farms—if rent were $100 per acre, rather than the asserted $120 per acre ($17,100/ $100 = 171 acres).

Trust Farm	67.95	3-1-09 to 3-1-10	$121.89	$8282.43
		3-1-10 to 3-1-11	$135.90	$9234.41
		3-1-11 to 3-1-12	$150.00	$10,192.50
		3-1-12 to 3-1-13	$155.00	$10,532.25
			Total due:	$293,420.42

B. James is not entitled to specific performance of the January 3, 2008 option agreement respecting the Trust farms.

The Gansens asked the district court to find the January 3, 2008 agreement null and void in Count IV of their amended petition.[17] James asked that the court declare the parties' rights and obligations under the agreement and sought specific performance of that agreement.

The 2008 option agreement granted James "an exclusive option to purchase the Real Estate commencing upon the death of the Grantor and ending 90 days after the death of the Grantor." It allowed James to purchase the Trust farms for $3000 per acre. However, it provided further: "Grantee shall pay to Grantor $5,000.00 during the first 15 days of January, 2008, and $5,000.00 during the first 15 days of January of each year thereafter through and including

[17] Plaintiffs assert that James did not properly preserve this issue for review, contending the January 3, 2008 option agreement was never the subject of James's counterclaims. We reject this claim. The plaintiffs raised the issue of the enforceability of the January 3, 2008 agreement in seeking to add Count IV by amendment to their petition. James consented to the amendment and asked that the court "declare the parties' rights and obligations with respect to the option referred to at Count IV." Evidence was presented and the court made findings on the issue. "If the court's ruling indicates that the court *considered* the issue and necessarily ruled on it, even if the court's reasoning is 'incomplete or sparse,' the issue has been preserved." *Lamasters v. State*, ___ N.W.2d ___, 2012 WL 5042996, at *6 (Iowa 2012).

the year of Grantor's death (and the commencement of the Option period hereunder)."

When James first tendered a $5000 payment—without any indication it was pursuant to this January 3, 2008 agreement—it was as part of a check for 2008 rent, which was tendered in October 2008, long after it was due. The check was returned and Frances specifically repudiated the agreement.

The district court did not explicitly conclude the agreement was null, but it did implicitly find that James did not fulfill the conditions of the option: the court wrote that James "did not pay $5000 to Frances within the first 15 days of January 2008, as called for in the option agreement" and "[a]ll such [late] 'option payments' were refused and returned" to him. We, like the district court, find that James has not fulfilled the conditions of the option. *See Bruggemeyer v. Bruggemeyer*, 258 N.W.2d 364, 366 (Iowa 1977) (finding no mutuality of assent between the parties to the proposed option contract; and finding nonperformance of a condition precedent vitiated the contract or proposed contract between the parties). *Cf. Janssen v. N. Ia. Conference of Pensions, Inc. of the Methodist Church*, 166 N.W.2d 901, 906-07 (Iowa 1969) (ruling the defendant was estopped from denying option where plaintiffs' check was not only accepted, but retained well beyond expiration date of the option agreement). Where James did not timely remit the payment required by the option agreement, did not identify the option agreement when late payment was tendered, and did not record the option agreement until after Frances returned the check and repudiated the contract, we have no qualms about denying his equitable claim for specific performance. *See Berryhill v. Hatt*, 428 N.W.2d 647, 657 (Iowa 1988) (noting

that "[s]pecific performance of a contract is a remedy resting in the equitable discretion of the court").

C. The 2004 handwritten agreement is not an enforceable modification of the 1996 Buy-Sell Agreement.

James argues that the 2004 handwritten agreement modified the 1996 Partnership Buy-Sell Agreement and set the price for the Trust farms. In its entirety, the undated memo states, "It is agreed to sell Jim the farm at the following prices—The family limited part $1500 per acre $480,000—balance @ $2000.00 per acre—to be reassessed annually with % of gain or loss."

A contract requires a meeting of the minds. *Peak v*. *Adams*, 799 N.W.2d 535, 544 (Iowa 2011). "'A court cannot enforce a contract unless it can determine what it is.'" *Palmer v. Albert*, 310 N.W.2d 169, 172 (Iowa 1981) (citation omitted).

James claims the "terms of the Option Agreement are clearly expressed in the document." However, James then propounds an interpretation not "clearly expressed" in the simple handwritten document: he testified the agreement, believed to have been signed some time in 2004, set the price for both the partnership and Trust farms if the option was exercised in 2004 and, if not, that the price would be "reassessed annually" altering the arbitration method of arbitration contained in the Buy-Sell Agreement. Such a broad reading is far from "clear."

We—like the district court—find that the handwritten memo fails for lack of material terms. The memo refers to a "farm," but what farm? This record indicates the parties have negotiated with respect to at least three separate

farms. What does "balance" refer to? Are both the "limited part" and the "balance" to be reassessed annually, or just the "balance"? How is the farm to be "reassessed annually"? What gain or loss is pertinent? When was a purchase to occur?

Moreover, the parties continued to negotiate various prices and enter into other written agreements over the years. For example, in November 2007, James and Frances both signed a hand-written document, which reads: "3,000 per acre—Cash Deal—Mom stops funding life insurance—Jim will take his share of rest of estate up front to put down on farm. Survey possible ? at expense of sellers—Purchase option at $3,000 per acre." Based upon this purported agreement, John Gansen contacted attorney Kane and directed him to prepare a purchase agreement for the partnership farm at a price of $3000 per acre. Kane prepared a document entitled "Offer to Buy Real Estate and Acceptance," which was signed by Mary Gansen, wife of James Gansen (no date was included). However, James did not sign it. We are unable to find the 2004 handwritten memo constitutes an enforceable contract.

D. The district court did not err in denying James's claims of promissory estoppel and quantum meruit.

James contends that if we do not find the Buy-Sell Agreement was modified by the 2004 memo agreement and is enforceable, he is entitled to purchase the partnership and trust farms based on sums he has expended in detrimental reliance on the promise that he will be allowed to purchase them. He also argues that his investments in the properties are protected by the theory of quantum meruit. The district court "intentionally ma[de] no award or provision for

any improvements James claims he made to the property." We read this as an implied finding that either James's claims lack credibility or that the equities do not weigh in his favor, and on either basis, we affirm upon our de novo review of the record.

E. The 1996 Buy-Sell Agreement provides the method of selecting arbitrators.

James also asks this court to "specify the method for selecting the 'arbitrator' for the sellers and that the method prevent shopping appraisers for the highest value opinions." The 1996 Buy-Sell Agreement sets out the parties' agreed upon method of selecting arbitrators. The contract also sets out an alternative method of determining fair market value should the parties not agree with the other's arbitrator's appraisal. There is no reason for this court to impose itself on the parties' negotiated process.

F. James stipulated to John Gansen's substitution as general partner.

James objects to John Gansen acting as general partner in the family partnership. However, he testified at trial that he had—in proceedings concerning his mother's estate—stipulated to the appointment of John Gansen as general partner. He provides no valid reason to interfere with his stipulation, by which he is bound. *See In re Estate of Clark*, 181 N.W.2d 138, 142 (Iowa 1970) ("In order to warrant a court in interfering to relieve a party from a stipulation there must be a showing of fraud, collusion, mistake, accident or surprise, otherwise the court would not be justified in setting it aside on less grounds than would justify the setting aside of any other contract.").

G. The question of easements is the subject of a separate proceeding.

The Gansens point out—and James does not deny—that after entry of the ruling in this case (and as noted in the district court's ruling on post-trial motions), James has filed a new proceeding pertaining to the easements referred to in his final claim on appeal. Consequently, we do not address the issue here.

IV. Conclusion.

We modify the district court's November 2, 2011 order with regard to the rent due and the calculation of the number of tillable acres on which James Gansen is to pay reasonable rent. We affirm in all other respects. Accordingly, the plaintiffs, John R. Gansen, as Executor of the Estate of Frances A. Gansen, and John R. Gansen, as Trustee of the Frances Gansen Declaration of Trust, are awarded judgment in their favor and against the defendant, James Gansen, in the amount of $293,420.42 plus interest as provided. Costs are assessed to James Gansen.

AFFIRMED IN PART AND MODIFIED IN PART.