

**IN THE COURT OF APPEALS OF IOWA**

No. 6-342 / 05-0848

Filed June 14, 2006

**THE CAYLOR-CAMPBELL FARM TRUST,**  
**by and through RICHARD S. CAMPBELL,**  
**Trustee,**  
Plaintiff-Appellee,

**vs.**

**ROBERT A. HOWE and KIMBERLY K. HOWE,**  
Defendants-Appellants.

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Appeal from the Iowa District Court for Jasper County, Dale B. Hagen,  
Judge.

Defendants appeal the grant of summary judgment to plaintiff on its action  
for a declaratory judgment regarding a real estate contract sale. **AFFIRMED.**

R. Eugene Knopf, Newton, for appellants.

David L. Charles and Margaret C. Callahan of Belin Lamson McCormick  
Zumbach Flynn, P.C., Des Moines, for appellees.

Considered by Vogel, P.J., and Zimmer, J., and Schechtman, S.J.\*

\*Senior Judge assigned by order pursuant to Iowa Code section 602.9206  
(2005).

**SCHECHTMAN, S.J.**

The appellants, Robert Howe and Kimberly Howe, contest the grant of summary judgment declaring that an installment real estate contract was void and dismissing the purchaser's counterclaim for specific performance of it.

***I. Scope of Review***

The review of summary judgment rulings is for the correction of errors at law. *Hegeman v. Kelch*, 666 N.W.2d 531, 533 (Iowa 2003). Summary judgment is appropriate only when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show there is no issue of material fact and that the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 1.981(3). We examine the record before the district court to determine if any genuine issue of material fact exists, and whether the court correctly applied the law. *Sons of the Union Veterans of the Civil War v. Griswold Am. Legion Post 508*, 641 N.W.2d 729, 731 (Iowa 2002).

***II. Undisputed Facts***

The trust was created in 1999 by Tim J. Campbell, Jr. (Campbell) and his sister, Margaret B. Caylor (Caylor) of Texas. The settlors were each trustees. Campbell was a practicing attorney in Newton, Iowa. The trust was funded with Jasper County farmland.

Campbell died unexpectedly on March 15, 2004. An unrecorded real estate contract, on an Iowa State Bar Association form, dated January 15, 2004, was discovered among his records. The sellers were "Tim J. Campbell, Jr. and Margaret B. Caylor, Trustees of the Caylor-Campbell Farm Trust." It was signed

only by Campbell. "Robert A. Howe and Kimberly K. Howe, husband and wife," were the buyers. The real estate description contained 111 acres. The total purchase price was \$100,000 with \$2000 down, with the balance payable in installments, ending with a balloon payment of \$50,000 on March 1, 2009. Possession was delayed until March 1, 2005. The earnest money payment was paid by check payable to Tim J. Campbell, Jr. The first installment of principal for \$8000 was promptly paid on March 1, 2004, again by check, payable to Tim J. Campbell, Jr. and Margaret B. Caylor. Endorsements on both checks were by Campbell alone.

After Campbell's death, his son, Richard S. Campbell, was appointed successor trustee. In July 2004, the trust's attorney notified the Howes, by certified letter, that the land contract was not executed according to the trust documents; that Campbell had no authority to convey the real estate; and the contract was void. The same letter enclosed a \$10,000 check for reimbursement of the principal paid. The Howes refused to accept the tender or to execute a quit claim deed, which prompted this action for declaratory judgment.

The trust document contained the following provision:

Legal instruments can be signed by any one of the Trustees. For conveyances or encumbrances of real estate, the signing Trustee must certify that the signing is at the directions of, or consent of, the other Trustees.

The trust moved for summary judgment pursuant to Iowa Rule of Civil Procedure 1.981(1), alleging it was entitled to a judgment, as a matter of law, based upon undisputed facts showing that the land contract did not convey any interest in the subject real estate. An affidavit by Caylor attested to the fact she

did not authorize, approve, or have knowledge of the sale “until I heard from my brother that the property had been sold after he had signed the contract.” A deposition of Robert Howe confirmed the Howes were aware of the trust with two trustees on the contract date, but made no further inquiry concerning its terms or the authority of Campbell to execute the contract on behalf of the trust. Howe admitted that neither he nor his wife received any written or oral certification that its execution was sufficient on the contract date.

The Howes contested the motion for summary judgment by a written resistance. They contended that correspondence received from Campbell in December 2003,<sup>1</sup> the month preceding the contract, constituted the certification relating to Caylor’s consent; that the employment of the pronoun “we,” when referencing the offers to sell during the negotiation period, was relied upon by them as consent; and that these letters were material facts that warranted an interpretation by the eventual fact-finder as to the question of consent and compliance with the terms of the trust by Campbell.

The district court found there were no disputed material facts--that the Howes (1) had constructive notice of the fee ownership of the real estate by the trust through the recording of the deed to it, Iowa Code § 558.11 (2003); (2) the Howes’ reliance upon the December 2003 correspondence was not tantamount to consent or approval by the trustee, Caylor; and (3) the absence of the affidavit

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<sup>1</sup> A typewritten letter under the letterhead of Campbell’s law firm, dated December 15, 2003, stated, “We have not thought about selling but because of your raising the point we have decided that we might make an offer to you to sell.” The text of the letter continued with offers to sell. A handwritten letter, dated December 29, 2003, states, “We are reluctant to reduce our offered price, but will reduce it to \$100,000.00.”

required by section 614.14 and the failure to obtain the certification required by the trust instrument is deemed to void the real estate contract.

### ***III. Analysis***

The Howes' defense in district court was tied principally to the two letters provided to them in December 2003. The use of the pronoun "we" does not begin to rise to the level of a certification or to "certify." The word "certify," in the document creating the trust, implies a more formal event. The term "certify" is defined in Black's Law Dictionary 241 (8th ed. 1999), as "[t]o authenticate or verify in writing," and "[t]o attest as being true or meeting certain criteria." Viewing the correspondence, in the light most favorable to the buyers, the words "we," when used by Campbell, only referenced an offer and did not constitute general or specific consent by Caylor, as co-trustee, for any of the multiple terms of the contract itself. The correspondence was not a part of the contract, nor incorporated into it.

The Howes' argument that the certification customarily would be placed upon the deed after the abstract was examined and the terms of the trust known, does not retroactively approve its absence on the contract of conveyance itself. The clear language of the trust document must be given effect. *In re Trust of Killian*, 459 N.W.2d 497, 499 (Iowa 1990). The Howes' interest in the real property is determined as of the time of the motion. There was no certification of direction or approval present up to that time, to show compliance with the terms of the trust when only one trustee had signed a real estate contract.

The district court separately relied upon the absence of certification by Campbell on the conveyance, as well as the existence of Iowa Code section 614.14, the applicability of which was advanced by the trust in its brief. That statute is contained in the limitation of actions chapter. It addresses bona fide purchasers in the face of adverse or stale claims, and is not persuasive under these facts. See Iowa Code § 614.14. Nevertheless, the trial court's application of the law is correct concerning the need to comply with the terms of the trust, which is alone sufficient.

#### ***IV. Preservation of Error***

The Howes forward in their appellate brief, as grounds for reversal: (1) Iowa Code section 633.4603; (2) Caylor's implied ratification; and (3) Campbell's agency/attorney relationship with his sister. The Howes did not file a motion pursuant to Iowa Rule of Civil Procedure 1.904(2) to enlarge or amend. A motion pursuant to rule 1.904(2) is essential to preservation of error when a trial court fails to resolve an issue, claim, or defense, or other theory properly submitted to it for adjudication. *City of Fort Dodge v. Civil Serv. Comm'n*, 562 N.W.2d 438, 440 (Iowa Ct. App. 1997).

The rule's purpose is to advise counsel and the appellate court of the basis for the district court's decision in order that counsel may direct an attack upon specific adverse findings or lack of findings in the ruling, in the event of an appeal. *Id.* If no motion pursuant to rule 1.904(2) is made, no opportunity is provided to the district court for correction of a ruling, if any correction is appropriate. Issues must ordinarily be presented to and passed upon by the

district court before they may be raised and adjudicated on appeal. *Benavides v. J.C. Penney Life Ins. Co.*, 539 N.W.2d 352, 356 (Iowa 1995). Because no motion for enlargement of findings was made under rule 1.904(2), the reviewing court assumes as fact an unstated finding that is necessary to support the judgment. *Hubby v. State*, 331 N.W.2d 690, 695 (Iowa 1983).

Section 633.4603 is part of our trust code. It is a part of a subject entitled "Rights of Third Parties." Section 633.4603 reads:

Obligations of Third Parties.

1. With respect to a third party dealing with a trustee or assisting a trustee in the conduct of a transaction, if the third party acts in good faith and for a valuable consideration and without knowledge that the trustee is exceeding the trustee's powers or is improperly exercising them, the following apply:

a. A third party is not bound to inquire as to whether a trustee has power to act or is properly exercising a power and may assume without inquiry the existence of a trust power and its proper exercise.

b. A third party is fully protected in dealing with or assisting a trustee, as if the trustee has and is properly exercising the power the trustee purports to exercise.

The trust, in its brief in support of its summary judgment motion in district court, alluded to the existence of the statute without setting forth its terms, but concluding it was not applicable to these set of facts. The Howes' resistance and affidavits made minor reference to it. Rather, the Howes strongly asserted that the letters from Campbell constituted compliance with the trust's provisions and that Campbell, as trustee, was acting for the other trustee. That assertion, in itself, implies their knowledge that something more was necessary to support Campbell's signature, i.e., consent of trustee Caylor.

Iowa Code section 633.4603, whether raised or not, was not addressed by the district court, which relied upon the lack of any certification of consent. That statute, ratification, and agency were never the subject of a rule 1.904(2) motion to enlarge or amend. Accordingly, these issues were not preserved for appeal.

Summary judgment for the trust was appropriate. There were no contested or disputed facts. The real estate contract was not executed pursuant to the terms of the trust. Therefore, it did not convey any interest to the purchasers. The summary dismissal of the counterclaim for specific performance was also appropriate.

**AFFIRMED.**