

**IN THE COURT OF APPEALS OF IOWA**

No. 6-438 / 05-1884  
Filed October 25, 2006

**MITCHELL DEVELOPMENT CORP.**,  
Plaintiff-Appellant,

**vs.**

**RANDALL BUCK**,  
Defendant-Appellee.

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Appeal from the Iowa District Court for Mitchell County, James M. Drew,  
Judge.

The plaintiff appeals from the dismissal of his action claiming breach of a  
real estate contract. **AFFIRMED.**

Mark L. Walk of Walk & Murphy, P.L.C., Osage, for appellant.

Brian R. McPhail of Gross & McPhail, Osage, for appellee.

Heard by Huitink, P.J., and Vogel, J., and Beeghly, S.J.\*

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

**BEEGHLY, S.J.**

The plaintiff, Mitchell Development Corporation (Mitchell), brought a breach of contract action against the defendant, Randall Buck. The district court dismissed the action, concluding the parties mutually agreed to abandon the contract. Mitchell appeals.

**Background Facts and Proceedings.**

Mitchell is an Iowa corporation that owns a bar in the town of Mitchell called the Mitchell Dam Bar. Stanley Walk is the secretary/treasurer of the corporation. Sometime during May of 2003, Walk discussed the sale of the Mitchell Dam Bar with Randall Buck. Pursuant to those discussions, the parties prepared an "offer to buy" which indicated the sale price of \$210,000 would include all equipment, inventory, and other assets of the bar. They expected that Buck would take possession of the business on June 1, 2003. This agreement was never signed by either party. In anticipation of his purchase, Buck obtained approval for a liquor license from the city, obtained a cigarette license, opened a checking account for the business, and applied for dram shop insurance.

Thereafter, on May 28, 2003, Buck and Walk signed a generic real estate contract, which did not contain any references to the inventory, supplies, or other equipment to be included in the sale. This contract apparently was signed by the parties, according to Buck, for the sole purpose of aiding Buck in his attempts to secure a liquor license. While the contract stated that \$2000 had been paid toward the purchase, this amount was in fact not paid. When Buck presented his application to the Iowa Alcoholic Beverages Division (ABD) on May 30, 2003, he was informed that he would not be given a license because Walk was in the

midst of certain gambling charges. Buck also alleged that sometime in May, he discovered problems with the bar's septic tanks, which he claimed would cost \$30,000 to remedy.

On June 2, Buck received notification from the ABD requesting more information for his liquor license application, and on June 4, he provided it with additional information in the form of answers to interrogatories. In those interrogatories, he stated "I purchased the whole property, fixtures, equipment and supplies." On June 5, ABD requested further information and on the following day, based on the response from ABD, Buck informed Walk he would not be going through with the purchase. A heated conversation ensued and Walk allegedly threatened to sue on the contract. The following day, Walk wrote a letter to Buck apologizing for his inappropriate behavior on the previous day. In addition, Walk stated:

Allen and I really do want to sell the Bar. Think about it and if you are still interested, make me a reasonable offer, with you assuming responsibility for the septic and honoring the gift certificates, tokens and tickets. Most of these have already been turned in, but lower the price to include these.

I will need to know by Monday, as Allen will be here and we will need to make a decision on what we want to do next.

No further discussions took place between the parties, and Mitchell subsequently sold the bar to another party for \$177,500.

On November 5, 2004, Mitchell filed a petition against Buck claiming he had breached the contract for the sale of the bar. Following a bench trial, the court entered an order dismissing Mitchell's action. It concluded that Buck and Mitchell mutually rescinded their agreement for the sale of the Mitchell Dam Bar. It found that "[a]lthough there is little direct evidence of a specific agreement to

abandon the contract, the parties' conduct gives rise to an inference that each intended to simply walk away from the transaction." Mitchell appeals from this ruling.

### **Scope of Review.**

The standard of review is not in dispute. When reviewing the judgment of a district court in a nonjury law case, our review is for correction of errors at law. *Business Consulting Servs., Inc. v. Wicks*, 703 N.W.2d 427, 429 (Iowa 2005). The trial court's findings have the effect of a special verdict and are binding if supported by substantial evidence. *Id.* Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. *Hansen v. Seabee Corp.*, 688 N.W.2d 234, 237-38 (Iowa 2004).

### **Analysis.**

Under Iowa law parties to a contract may impliedly rescind their contract through abandonment. See *Siebring Mfg. Co. v. Carlson Hybrid Corn Co.*, 246 Iowa 923, 928 70 N.W.2d 149, 153 (1955). No formal agreement of the parties is required to abandon a contract. *Iowa Chem. Corp. v. W.R. Grace & Co.*, 715 F.2d 393, 396 (8<sup>th</sup> Cir. 1983) (applying Iowa law). Abandonment may be inferred from the parties' conduct and the circumstances surrounding the parties' conduct. *O'Dell v. O'Dell*, 238 Iowa 434, 454 26 N.W.2d 401, 414 (1947). All that is required is a mutual intent to abandon "accompanied by acts indicating that purpose and intent" or non-use of a contract right "coupled with other circumstances and conditions which expressly show an intention to abandon" if acted upon by the other interested party. *Ray Coal Mining Co. v. Ross*, 169 Iowa 210, 217 151 N.W. 63, 65 (1915). "When the evidence is susceptible to differing

inferences, the issue whether the [abandonment] claim has been proven is for the trier of fact.” *Severson v. Elberon Elevator, Inc.*, 250 N.W.2d 417, 421-22 (Iowa 1977) (citing *Siebring Mfg. Co. v. Carlson Hybrid Corn Co.*, 246 Iowa 923, 70 N.W.2d 149 (1955)).

In support of its finding that the parties abandoned their contract, the court found the “most important” evidence to be Walk’s June 6, 2003 letter which was written after an apparent heated exchange the previous day, and after Buck claims they agreed to terminate the contract. In that letter, Walk first appears to be attempting to persuade Buck that the sale makes sense. He notes the confidence expressed by the bar’s bank in its business and explains the solutions to the apparent sewer problem. He then states:

Allen and I really do want to sell the Bar. Think about it and if you are still interested, make me a reasonable offer, with you assuming responsibility for the septic and honoring the gift certificates, tokens and tickets. Most of these have already been turned in, but lower the price to include these.

I will need to know by Monday, as Allen will be here and we will need to make a decision on what we want to do next.

So, make a proposal, if you want, so for so much cash, the Bar is yours and your responsibility.

From these comments, it is entirely reasonable to conclude that Walk did not believe a current firm agreement to sell existed at that time. His invitation to make a proposal “if you want” indicates that any previous agreement to sell the bar was no longer considered to be in force. Also, Walk’s invitation to make an offer “if you are still interested” is consistent with this finding. As the district court noted, “the letter is completely consistent with Buck’s claim that the parties mutually agreed to terminate the contract.”

Moreover, Buck's actions appear consistent with a party who believed a mutual abandonment had occurred. After a series of actions seeking a liquor license, Buck withdrew his application for a liquor license from consideration. He did not undertake any actions which indicated his intent to hold Walk to their earlier expectations of a sale.

**Conclusion.**

We conclude the district court's findings are supported by substantial evidence in the record, and thus they are binding upon us. We therefore affirm its conclusion that the parties mutually rescinded their agreement for the sale of the Mitchell Dam Bar.

**AFFIRMED.**