

IN THE COURT OF APPEALS OF IOWA

No. 8-557 / 07-1463
Filed October 1, 2008

DARLENE MAASSEN,
Plaintiff-Appellee,

vs.

ANNETTE VAN VOORST,
Defendant-Appellant.

Appeal from the Iowa District Court for Sioux County, James D. Scott,
Judge.

Seller appeals from damages ruling in district court that concluded she
was entitled to damages for breach of contract, but not forfeiture of down
payment. **AFFIRMED AND REMANDED FOR ENTRY OF JUDGMENT.**

Brian K. Van Engen of Oostra, Bierma & Van Engen, P.L.C., Sioux
Center, for appellant.

Michael J. Jacobsma of Jacobsma, Clabaugh & Freking, P.L.C., Sioux
Center, for appellee.

Considered by Sackett, C.J., and Mahan and Vaitheswaran, JJ.

MAHAN, J.

Annette Van Voorst appeals from the district court's ruling on her counterclaim that concluded she was entitled to damages for breach of contract, but not forfeiture of the down payment made on the contract for sale of a business. Darlene Maassen has submitted no brief. We affirm and remand for entry of judgment.

Maassen sued Van Voorst for breach of contract and fraudulent misrepresentation with respect to a contract for the sale of Van Voorst's "Curves" business. Maassen alleged Van Voorst had materially misrepresented the underlying lease governing the sale of the business and this misrepresentation was a breach of conditions precedent to the contract. Van Voorst counterclaimed for breach of contract and sought damages and attorney fees for that breach. The matter was tried to the court.

The district court found:

The contract required each party to indemnify and hold the other harmless from loss or damage suffered by reason of any untrue representations, breach of warranty, or non-fulfillment of any covenant contained in the agreement. The indemnity clause included a requirement that the party at fault pay the non-breaching party's legal fees and expenses. The agreement also entitled a non-breaching party to terminate the agreement through written notice "if any condition set forth herein has not been met at closing and has not been knowingly and lawfully waived in writing."

The court found Maassen had signed the sales contract without reading the lease, which was provided to her by the landlord prior to the closing. The court therefore concluded Van Voorst had not failed to disclose the terms of the lease and other obligations and that Maassen had failed to establish her claim of breach of contract. With respect to the fraudulent misrepresentation claim, the

court found that an accounting provided by Van Voorst contained a false and material misrepresentation because it omitted the tax, insurance, and maintenance liabilities of the underlying lease. The court found, however, that the misrepresentation was not made with intent to deceive and Maassen's claim failed.

On Van Voorst's counterclaim, the district court ruled that Van Voorst had complied with the contract terms and Maassen breached the contract when she failed to close the sale. The district court found Van Voorst's reasonable legal fees and expenses related to the breach of contract for the sale of the business was \$7000, which amount would be added to Van Voorst's "remaining damages of \$5,000" for a total of \$12,000. The court concluded this amount would not be in addition to the \$8000 down payment Maassen had made on the contract.

The court noted there was a forfeiture clause in the sales agreement, but concluded "[u]nder the circumstances of this case, Maassen should receive credit for the forfeited down payment when calculating her damages to Van Voorst. Equity is offended if Van Voorst is rewarded for her incomplete disclosure to the terms of the lease." The court entered judgment in the sum of \$4000 with interest in favor of Van Voorst. Van Voorst appeals.

We review for corrections of error at law. Iowa R. Civ. P. 6.4.

Van Voorst cites *Van Hosen v. Bankers Trust Co.*, 200 N.W.2d 504, 508 (Iowa 1972), for the proposition that parties may contract for a forfeiture. She argues that the contract clearly provided for forfeiture of the down payment in addition to damages for expenses caused by a breach. We recognize that parties may contract for forfeiture.

However, “since forfeitures are not favored, those claiming them should show the equities are clearly on their side.” *Van Hosen*, 200 N.W.2d at 508. Here, the district court found the equities were *not* on Van Voorst’s side. We find no error in the district court’s offset of the down payment from its findings of Van Voorst’s damages.

Van Voorst also claims the district court erred in calculating her damages. We agree. It is evident the district court incorrectly determined the actual damage amount before subtracting the down payment therefrom. The final damage award should have been \$5000 instead of \$4000. We therefore remand for entry of judgment in the amount of \$5000 together with interest thereon.

AFFIRMED AND REMANDED FOR ENTRY OF JUDGMENT.