

IN THE DISTRICT COURT OF CHERRY COUNTY, NEBRASKA

**CAROL WOBIG, Personal Representative
of the Estate of Stanley L. Boltz, Deceased,**

Plaintiff,

vs.

GEORGE JOHNSON,

Defendant.

Case No. CI01-3

JUDGMENT

- DATE OF TRIAL:** January 24, 2001.
- DATE OF RENDITION:** January 24, 2001.
- DATE OF ENTRY:** Date of filing by court clerk (§ 25-1301(3)).
- APPEARANCES:**
 - For plaintiff: Bill Quigley with plaintiff.
 - For defendant: W. Gerald O’Kief with defendant.
- SUBJECT OF JUDGMENT:** Summary trial on petition for restitution of premises.
- PROCEEDINGS:** At the hearing, these proceedings occurred:

The matter came on for summary trial on the petition for restitution of premises. The filing of an amended petition as a matter of right was noted. The defendant renewed his written demurrer to the amended petition. Arguments were heard. Ruling on the demurrer was deferred pending receipt of evidence. Opening statements were presented by counsel for plaintiff and counsel for defendant. Evidence was adduced for plaintiff. Carol Wobig was sworn and testified. The plaintiff rested. The defendant renewed his demurrer, and arguments of counsel were heard. The defendant further moved for a judgment of dismissal, and arguments of counsel were heard thereon. Findings and analysis were pronounced.

FINDINGS: The court finds and concludes that:

1. The findings and analysis pronounced in open court are adopted by reference.
2. Although not expressly so pronounced in open court, the court also concluded that the demurrer should be sustained. Because the agreement does not provide for forfeiture for or right of reentry upon breach of contract, there is no reasonable possibility of amendment to cure the defect, and the petition for restitution of premises must be dismissed.

3. Further, viewing the evidence in the light most favorable to the plaintiff, the evidence fails to support the requested relief of restitution of premises. The motion for dismissal as to the petition for restitution of premises only must be sustained.

4. No separate cause of action for damages, accounting, or any other legal or equitable theory is raised in the petition. The court lacks jurisdiction to further inquire into the matters between the two litigants. Judgment must be entered accordingly.

JUDGMENT: IT IS THEREFORE ORDERED AND ADJUDGED that:

1. The defendant's demurrer is sustained without leave to amend, and the petition for restitution of premises is dismissed at plaintiff's cost.

2. The defendant's motion for dismissal is sustained.

3. JUDGMENT of dismissal upon the petition for restitution of premises is entered in favor of defendant and against plaintiff, and the petition for restitution of premises is dismissed at plaintiff's cost.

4. This judgment does not affect any other rights and liabilities of or between the parties, and the absence of jurisdiction as to any other rights, liabilities, or issues is noted.

Signed at Valentine, Nebraska, on January 24, 2001.

DEEMED ENTERED upon filing by court clerk.

If checked, the Court Clerk shall:

• Mail a copy of this order to all counsel of record and to any pro se parties.

9 Done on _____, 20__ by ____.

Enter judgment on the judgment record.

Done on _____, 20__ by ____.

• Mail postcard/notice required by § 25-1301.01 within 3 days ("Petition for restitution of premises dismissed").

Done on _____, 20__ by ____.

• If not already done, immediately transcribe trial docket entry dictated in open court.

Done on _____, 20__ by ____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge