IN THE COURT OF APPEALS OF IOWA

No. 7-649 / 96-1242

000231

MEADOWBROOK CONDOMINIUM ASSOCIATION,

Plaintiff-Appellee,

vs.

MEADOWS HOMEOWNERS' ASSOCIATION,

Defendant-Appellant.

FILED
FEB 25 1998
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Gene L. Needles, Judge.

Defendant appeals the district court's ruling terminating its facility use agreement with plaintiff. **REVERSED IN PART AND REMANDED.**

Mark J. Wiedenfeld of the Wiedenfeld Law Office, Des Moines, and James Sawtelle of Sullivan & Ward, P.C., Des Moines, for appellant.

Richard K. Updegraff and John D. Hunter of Brown, Winick, Graves, Gross, Baskerville and Schoenebaum, P.L.C., Des Moines, for appellee.

Heard by Cady, C.J., and Sackett and Vogel, JJ.

SACKETT, J.

Plaintiff-appellee Meadowbrook Condominium Association and defendant-appellant Meadows Homeowners' Association entered into an agreement on July 30, 1984, whereby plaintiff's residents would be allowed to use defendant's recreation facilities and pay defendant monthly assessments. In January 1995, plaintiff sued claiming the agreement was breached because defendant did not maintain plaintiff's contributions in a separate fund and used them to improve and maintain areas not contemplated in the agreement. The trial court agreed with plaintiff and released both parties from the agreement. We reverse in part and remand.

The parties disagree as to our scope of review. Plaintiff contends it is at law because it was tried as a law action. Plaintiff relies on the alleged fact the case was tried at law and supports its position with *Brammer v. Allied Mut. Ins. Co.*, 182 N.W.2d 169, 172 (Iowa 1970). Plaintiff points to several places in the record where objections were made and ruled on and no challenge was made to the trial court's ruling on objection. Plaintiff further points out in addition to cancellation of the contract both parties sought money damages. Defendant advances our review is de novo because plaintiff sought rescission of the contract.

We agree with plaintiff our review is not de novo. Ordinarily the question of whether an action is tried as a legal or equitable proceeding is determined by the pleading, the relief sought, and the nature of the case. *See Citizens Sav. Bank v. Sac City State Bank*, 315 N.W.2d 20, 24 (Iowa 1982). However, we generally review a

case in the same manner it is tried regardless of the proper forum. *Sampson v. Sampson*, 189 N.W.2d 614, 614-15 (Iowa 1971). This case was tried as a law action. We review for correction of errors at law.

Plaintiff, an Iowa non-profit corporation, is the governing unit for 60 condominium units, and defendant, an Iowa non-profit corporation, is the governing unit of 110 single-family units and 52 cluster units. On July 30, 1984, the two entities signed an agreement entitled Facility Use Agreement wherein plaintiff would pay defendant monthly fees "for construction, expansion, improvement, maintenance or repair of recreation facilities and contiguous common areas" and defendant would allow the residents of plaintiff's complexes to use certain of defendant's recreation facilities, including tennis courts, swimming pool, clubhouse, and water retention system.

The dispute before us concerns the monthly assessments plaintiff was required to pay defendant under the provision in the agreement for "the ongoing needs to reconstruct, expand, improve, maintain, or repair the recreation facilities and contiguous common areas within the jurisdiction of the Association."

Plaintiff paid defendant the assessment until August 1994, and in November 1994 plaintiff quit paying entirely. Plaintiff contends it ceased making payments because the funds it paid were used for a greater area than was provided in the parties' agreement. Defendant disagrees with plaintiff's definition of the area for which the funds can be used, alleging all the property it owns should be included because the

entire area is connected by walkways and the residents of plaintiff's facilities have the right to use the entire area. Defendant contends plaintiff quit paying the fees because it no longer wanted to be bound by the agreement.

The trial court held the agreement did not contemplate the language used meant all of defendant's common areas and the agreement did not obligate plaintiff to pay for expenses unrelated to the recreation facilities and contiguous common areas.

The trial court went on to find defendant had breached the agreement by spending money not allowed by the terms of the agreement, specifically including but not limited to landscaping and construction of a living berm on common areas of defendant's facility the trial court determined not to be included in the scope of the agreement.

The court further absolved plaintiff of any obligations to defendant under the agreement and defendant of any obligation to plaintiff under the agreement.

Defendant first contends the court did not correctly interpret the terms "recreation facilities" and "contiguous common areas." The term "recreation facilities" is not specifically defined in the agreement. The agreement was prepared by plaintiff. Defendant contends it was error for the trial court not to include the children's playground areas or the paved bicycling and walking trails because these things clearly met the definition of recreation facilities. Defendant advances the same mistake was made in defining "contiguous common areas."

Defendant contends the agreement did not require it to put plaintiff's monies in a separate fund and it has not done so for ten years. Defendant further contends money representing unpaid fees should be paid over to it and judgment should be entered in defendant's favor and against plaintiff in such amount.

It is the cardinal principle of contract construction that the parties' intent controls. *See* Iowa R. App. P. 14(f)(14); *Berryhill v. Hatt*, 428 N.W.2d 647, 654 (Iowa 1988). When a contract is not ambiguous, it will be enforced as written. *Spilman v. Board of Directors*, 253 N.W.2d 593, 596 (Iowa 1977). Ambiguities in a contract are strictly construed against the drafter. *Village Supply Co. v. Iowa Fund, Inc.*, 312 N.W.2d 551, 555 (Iowa 1981); *Fashion Fabrics of Iowa, Inc. v. Retail Investors Corp.*, 266 N.W.2d 22, 27 (Iowa 1978); *Rector v. Alcorn*, 241 N.W.2d 196, 202 (Iowa 1976). Ambiguity exists when, after application of pertinent rules of interpretation to the face of the instrument, a genuine uncertainty exists concerning which of two reasonable constructions is proper. *Berryhill*, 428 N.W.2d at 654; *Gendler Stone Prods. Co. v. Laub*, 179 N.W.2d 628, 631 (Iowa 1970). The test for ambiguity is an objective one: "Is the language fairly susceptible to two interpretations?" *Central Bearings Co. v. Wolverine Ins. Co.*, 179 N.W.2d 443, 445 (Iowa 1970).

A contract is interpreted as a whole, and it is assumed in the first instance no part of it is superfluous; an interpretation which gives a reasonable, lawful, and

effective meaning to all terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect. *Fashion Fabrics*, 266 N.W.2d at 26.

A second principle of contract construction provides when a contract contains both general and specific provisions on a particular issue, the specific provisions are controlling. *Mopper v. Circle Key Life Ins. Co.*, 172 N.W.2d 118, 126 (Iowa 1969); *Schlosser v. Van Dusseldorp*, 251 Iowa 521, 526, 101 N.W.2d 715, 718 (1960).

A third principle of contract construction provides a contract will not be interpreted giving discretion to one party in a manner which would put one party at the mercy of another, unless the contract clearly requires such an interpretation. *Midwest Management Corp. v. Stephens*, 291 N.W.2d 896, 913 (Iowa 1980); *Harvey Constr. Co. v. Parmele*, 253 Iowa 731, 741-42, 113 N.W.2d 760, 766 (1962).

A fourth principle of contract construction provides, while words are to be given their ordinary meaning, particular words and phrases in a contract are not to be interpreted in isolation. *Connor v. Thompson Constr. & Dev. Co.*, 166 N.W.2d 109, 112 (Iowa 1969); *Rotterman v. General Mills, Inc.*, 245 Iowa 229, 235-36, 61 N.W.2d 718, 721 (1953).

Applying these principles, we first address defendant's contention the trial court erred in considering extrinsic evidence to define "recreation" and in not including the children's playground areas and the paved bicycling and walking trails in defining recreation facilities under the contract.

Defendant contends these areas fall within the definition of recreation areas and the contract was clear on this issue. The question is whether there are two reasonable constructions as to whether the children's playground areas and the bicycling and walking trails are recreation facilities. *Berryhill*, 428 N.W.2d at 654. Giving recreation its ordinary meaning,[1] we find no ambiguity as to whether the playground areas and trails are recreation facilities. They are recreation facilities. Absent exclusion of these areas from the contract definition of recreation facilities, the ordinary use of the word "recreation" would include these areas. We do not find the contact ambiguous as to this term. Consequently, the trial court should not have considered extrinsic evidence in interpreting this provision.

Having determined the trial court incorrectly excluded the children's playground areas and the bicycling and walking trails in determining recreation facilities, we reverse the trial court on this issue. We remand to the trial court to reconsider the other issues in accord with this finding. We do not retain jurisdiction. Costs on appeal are taxed one-half to each party.

REVERSED IN PART AND REMANDED.

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[1] Recreation is defined as "equipped so as to provide diversions or amusements." Webster's Third New International Dictionary (1993).