

FILED

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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

HARVEY V. NOEL,

Claimant-Appellant,

vs.

JEROME D. NOEL, Fiduciary of the
Estate of **CHARLES E. NOEL**,

Defendant-Appellee.

Filed October 28, 1987

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7-272
86-1337

Appeal from the Iowa District Court for Scott County (No. Pro. 41117),
Linda K. Neuman, Judge.

Claimant appeals from the district court's ruling denying his claim in quantum meruit for services rendered as a tenant to the decedent landlord for which he received no compensation. **REVERSED AND REMANDED.**

Harold C. Lounsberry, Davenport, for claimant-appellant.

Michael J. McCarthy of McCarthy & Lammers, Davenport, for defendant-appellee.

Considered by Donielson, P.J., and Schlegel and Sackett, JJ. Snell, J., takes no part.

DONIELSON, P.J.

Claimant appeals from the district court's ruling denying his claim in quantum meruit for services rendered as a tenant to the decedent landlord for which he received no compensation. We reverse and remand.

The claimant, Harvey V. Noel, is the son of the decedent, Charles E. Noel. Harvey was a tenant on the Noel farm from 1963 to 1973. Harvey performed work, labor, and services in making improvements on the farm without the benefit of a written contract. There was a written lease agreement between the parties which provided that the landlord would provide the materials and the tenant would make all the repairs. Charles died in 1973. Harvey brought a claim in quantum meruit for \$17,298.49 as a result of the improvements made on the real estate between 1963 and 1970 for which he did not get paid from Charles or his estate.

In 1984 a trial court dismissed Harvey's quantum meruit claim on the ground that it was barred by the statute of limitations. This court reversed the trial court decision on the grounds that the quantum meruit claim was not time barred. Noel v. Noel, 384 N.W.2d 3 (Iowa App. 1985). On remand, the trial court dismissed Harvey's claim on the grounds that the written lease agreement governed the payment of repairs and this written agreement superseded any implied contract governing the same subject matter. Harvey appeals from this decision.

Because the claim involved is in probate and a law action pursuant to Iowa Code § 633.33, our scope of review is for correction of errors at law. Iowa R. App. P. 4; Solbrack v. Fosselman, 204 N.W.2d 891, 893 (Iowa 1973). Findings of fact made by the district court are binding on us if supported by substantial evidence. Iowa R. App. P. 14(f)(1).

One of the issues involved in the case at hand is the interpretation of a written lease agreement. As noted by the supreme court in Farm Bureau Mut. Ins. Co. v. Sandbulte, 302 N.W.2d 104, 107-08 (Iowa 1981), "[i]nterpretation, the process of determining the meaning of words used, is . . . a matter for the court to decide as a matter of law, unless it depends upon extrinsic evidence or a choice among reasonable inferences to be drawn from it." Furthermore, because this is an issue of law, the trial court's interpretation is not binding on appeal. Id. at 108.

Harvey's first claim is that the district court erred in finding that the lease contained an express provision dealing with both repairs and improvements. He argues that the lease only mentioned repairs, and not improvements. The fiduciary of Charles's estate contends that the lease covers both repairs and improvements. Harvey claims the lease merely required him to make the ordinary and usual repairs necessary to maintain the building and premises and did not cover the following improvements made by him:

a.	Repair of farm house and yard in 1963 and 1964	\$ 4,799.70
b.	Repair of garage, woodshed, and outbuildings in 1964	1,589.39
c.	Work on garage, driveway, fencing, and barn in 1965	1,346.17
d.	Line fencing in 1966	175.00
e.	Remodeling rental house and repair hall in 1967 and 1968	3,125.00
f.	Clearing and fencing bottom land in 1969	2,729.75
g.	Renovating basement, barn, storms and screens, limestone, gravel, and miscellaneous in 1970	3,533.48

In his amended petition Harvey alleged:

That the said work and labor and services were performed without a written contract or agreement between the plaintiff and the deceased, but the deceased at all times knew the said work and labor and services were being performed, knew that the plaintiff expected to be compensated therefor, accepted the said work, and received the benefits therefor.

A lease was executed March 1, 1963, between Charles Noel and Harvey Noel. The pertinent portions relevant to the issue at hand are:

And the said second party further agrees to surrender said premises at the end of the Lease, or sooner determination thereof, in as good condition as reasonable use thereof will permit, damages by the elements excepted.

* * *

[A]nd the lessor also reserves the right to make all such repairs and improvements as he shall elect to make during the term of this Lease

* * *

It is further agreed that if any fences should be built or repaired on the premises in the opinion of the lessor, then the lessor shall furnish all material at the nearest town to the premises, and the lessee shall haul the same to the premises and make all the repairs and build all new fences at his own cost, and this provision shall apply to hauling materials for any and all other repairs made on the premises during the term of the lease.

Another lease was executed between the parties on March 1, 1970, which recited:

And the second party covenants with the first party that at the expiration of the term of this lease he will yield up the possession to the first party, without further demand or notice, in as good order and condition as when the same was entered upon by the second party, loss by fire, inevitable accidents and ordinary wear excepted,

* * *

The said second party shall keep said premises, including the hedges and fences, in proper repair, provided that the landlord shall furnish necessary material, that he or his agent may consider, needful to repair said premises within a reasonable time after being notified, and the second party shall haul said material to said premises without charge.

Determination of the issue posed requires interpretation of the leases involved. In order to ascertain the intent or purpose of the parties, we need to look at all the relevant circumstances (words and conduct) surrounding a transaction to determine a reasonable, lawful, and effective meaning to an agreement. See Pathology Consultants v. Gratton, 343 N.W.2d 428, 434 (Iowa 1984). When terms of an agreement have a different meaning to the parties, courts will prevail against the party who had reason to know of the different meaning attached by the other party. Iowa Code § 622.22 (1985). Where the language is clear in the contract, there is no need to interpret; the plain meaning of the language prevails. Chariton Feed & Grain, Inc. v. Harder, 369 N.W.2d 777, 785 (Iowa 1985). Contracts are interpreted in a manner consistent with a course of performance, course of dealing, or usage in the trade. Iowa Code § 554.2208(2) (1985). However, express terms will be preferred to course of performance, course of dealing, or usage in the trade. Iowa Code § 554.1205 (1985). Courts will interpose the less favorable language against the person who drafted the language. See Bankers Life Co. v. Aetna Casualty & Surety Co., 366 N.W.2d 166, 169 (Iowa 1985).

"Improvements" are defined in Builders Land Company v. Martens, 255 Iowa 231, 233-34, 122 N.W.2d 189, 190 (1963), as follows:

At pages 414-415, 42 C.J.S., as to the word "improve" it is said:

"IMPROVE. A common word in everyday use, having a well understood meaning, although it has also been said to be a word without fixed meaning in law, its significance and application being determined in each case by the relation of the parties to be affected, and the object to be accomplished by the statute or contract in which the word is used. It implies a thing or subject in existence to improve; and has been variously defined in its general sense as meaning to make better; to advance in value, to augment, to enhance, to increase; to ameliorate by care or cultivation, to enhance the quality or value of some existing thing or subject; better to adapt something to the purpose for which it is intended; to change or make better; . . ."

* * *

"In law, 'improvements' is a term meaning changes in the condition of property by which its value is increased. It is usually employed in the plural form, and with reference to real property. Illustrations may be found in the erection of buildings upon land, the construction of sewers, the grading and paving of streets, the removal of obstructions to streams, the draining of swamps, the clearing of woodland, and many other changes by which the realty affected is made better."

Id., citing Chase v. City of Sioux City, 86 Iowa 603, 606, 53 N.W. 333, 334 (1892).

"Repairs" are defined as "restoration to soundness; reparation; work done to property to keep it in good order." Black's Law Dictionary 1462 (4th Ed. 1968). A covenant to repair is not a covenant to improve. 49 Am. Jur. 2d Landlord & Tenant, § 855.

The first lease involved in this case did make a differentiation between improvements and repairs: provisions are included in the first lease relative to repairs and improvements by the lessor and only repairs by the lessee. The second lease did not mention improvements at all.

Because there is no ambiguity in the language employed in the leases, we find a proper interpretation of the leases requires differentiation between repairs and improvements and therefore reverse the district court in the finding that the leases covered both repairs and improvements to be made by Harvey. The plain language of the agreement will prevail.

Harvey next contends that the district court erred in holding that "... in Iowa the law will not imply a contract where there is an express contract." We find the district court additionally held that "an express contract and an implied contract cannot coexist with respect to the same matter, the former superseding the latter" (emphasis added). The district court held that the subject matter (repairs and improvements) was the same in both the alleged implied contract and the express lease and, hence, the rationale for its ultimate ruling that Harvey was precluded from recovery on an implied contract theory. We find the subject matter is not the same in both the written lease and the alleged

implied contract, but the aforementioned principle of law is still valid; thus, both an implied contract and written lease may be in existence in this case. This is not to say we find an implied contract is in existence. The merits of that issue are not before us.

Harvey's third argument on appeal is that the district court erred in holding that Harvey has failed to prove by a preponderance of the evidence its right to recovery on any theory urged before the court.

Because we have held that the leases differentiate between repairs and improvements, we remand to the district court to consider this matter on the merits for recovery on quantum meruit; specifically, evidence regarding the alleged claim of \$17,298.49 and whether the seven items of "improvements" listed are in fact improvements or repairs (perhaps through a comparison of those items now claimed as improvements and those items paid as repairs throughout the ten-year lease term), whether they were authorized, whether they benefited the landlord, whether they were removed, whether there is any dispute as to the amounts attached to the various claims, and whether the amounts include labor and/or materials.

We are unsure from Harvey's brief on what theories he is pursuing recovery on quantum meruit: whether he is appealing from the district court's initial finding of no oral contract between the parties, whether he is alleging payment for services because of an expectation of a legacy, or whether, even without a valid oral agreement, he is still entitled to quantum meruit because of his performance and Charles's acceptance and benefit. However, the district court shall address Harvey's proposed theories on remand when this case is tried on the merits. The trial court is also directed to consider the issue of an implied contract collateral to or independent of the lease.

Harvey also requests costs of the transcript because he feels the transcript was unnecessary but requested by defendant. Because we are remanding this matter to consider the propriety of the claim, perhaps the lengthy transcript will address some of those issues. Thus, we decline to order defendant to pay for the costs of the transcript at this time.

We therefore reverse and remand this case to the district court for further findings in accordance with the foregoing decision.

REVERSED AND REMANDED.