FILED
MAY 31 1979
SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

GEORGE HARBERT, Plaintiff-Appellee,	)	Filed May 31, 1979
vs.	)	
GREENFIELD PLAZA-HILLS OF COVENTRY SEWERAGE TRUST, Defendant-Appellant.	)	120 2-62124

Appeal from Warren District Court - Thomas S. Bown, Judge.

Defendant sewerage trust appeals from a declaratory judgment in which the trial court declared that a contract between defendant and plaintiff landowner requires the defendant to pay for any improvements to its sewerage system necessary to cope with increased loads from the landowner's intended housing development. AFFIRMED.

Robert B. Seism of Scalise, Seism, Gentry, Brick & Brick, Des Moines, Iowa, for appellant.

P. F. Elgin of Elgin, Hoyman and Clogg, Indianola, Iowa; and M. G. Ouderkirk of Indianola, Iowa; for appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

The defendant, Greenfield Plaza-Hills of Coventry Sewerage Trust, which operates a sewerage system serving two rural housing developments, appeals from a declaratory judgment construing a written agreement for sewer service. Defendant's obligations, if any, under the agreement are as a successor to the original providers of sewer and water service under said agreement.[1] Plaintiff-appellee is the other party to said agreement. Because the matter was tried in equity in the lower court, our review is de novo. R. App. P. 4. Upon such review of the record we affirm the trial court.

At issue in this case is a contract between plaintiff and defendant's predecessor trust. The contract provided that plaintiff was to allow defendant's sewer lines to run across his land in return for $1,000 and the right to hook into the line. The material paragraphs of the contract are as follows, ("First party" is the predecessor of defendant trust; "second party" is plaintiff Harbart):

> 15. That the consideration of the foregoing rights and privileges shall be the payment of the sum of $1,000 upon the execution of this agreement by the first party to the second party, and the further right of the said second party, their heirs, successors, and assigns, as conditioned herein, to connect to and be served by the water line and sewer lines herein referred to, and to receive water and use said sewer line for the purpose of disposing of sewage for the term of this contract as hereafter provided. The said Second Party, at its expense, shall have the right to construct trunk sewers, water mains, and whatever facilities necessary to serve the entire premises herein described and now owned by the Second Party [approximately 160 acres of land is described elsewhere in the agreement as the property of plaintiff to which reference is made] and that the aforesaid connection shall be made at any place along the entire mains and water lines.
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> 17. That all such services of sewer and water shall be approved by the Board of Health of the State of Iowa, and that it shall be the responsibility of the first party herein to meet said requirements.

Paragraph 16 of the agreement provides that plaintiff-developer shall pay a "connection fee" of $50 per dwelling, business or building to be served and that the owners of the premises to be served by the sewer and water shall thereafter pay a sewer fee and water fee not to exceed that charged by the sewerage trust to its other customers.

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[1] In its answer, defendant concedes that it is a successor-obligor under the agreement with respect to sewer service but does not concede that such is the case with respect to water service. The trial court's decree imposes burdens under the agreement upon defendant with respect to both sewer and water service. No issue on appeal is raised by defendant with respect to water service.

Plaintiff, prior to subdividing the property which is the subject of the agreement, sought a declaratory judgment and asked the trial court to declare that under the agreement between the parties; (1) plaintiff is entitled to make connections to defendant's sewer and water lines traversing plaintiff's property and (2) the defendant sewerage trust is obligated to meet the requirements of the state board of health with respect to sewer and water service afforded plaintiff's property under said agreement. By later amendment to his petition plaintiff also seeks a declaration that as between the parties the defendant is obligated to bear the costs of improvement to the sewer line and disposal system necessitated by subdivision of plaintiff's property. The latter issue appears to be the central problem in this litigation because of estimates that it will cost approximately $300,000 to increase the capacity of defendant's sewerage system sufficiently to accommodate plaintiff's lands under existing health standards.

After trial of the issues the trial court entered a declaratory judgment the material provision of which is as follows;

> That the Defendant should be and is required under the terms of said agreement to provide, at Defendant's expense, water lines and sewage disposal lines and system to serve the property of the Plaintiffs, which is the subject matter of this suit, and under the terms of Paragraph 17 of the easement, the Defendant is monetarily responsible and liable for any costs which may arise by reason of requirements of the State Board of Health or its successor.

In the trial court the defendant opposed the interpretation of the agreement urged by plaintiff. In addition, it alleged that even if its obligations under the agreement were as alleged by plaintiff, it is excused from performance on grounds of impracticability due to unreasonable expense not within the contemplation of the parties at the time of the making of the agreement. On this appeal no reliance is placed by defendant upon the latter ground. Its arguments relate entirely to the proper interpretation to be placed upon the written agreement. Defendant, on appeal, does not urge that it is not obligated under the agreement to provide sewer service for plaintiff's lands. Its contention is that under the agreement plaintiff and not defendant should be required to pay for the cost of the enlargements required in order to permit this.

Defendant's argument in this regard centers largely on two contentions. First, it is urged that the language "Second Party, at its expense, shall have the right to construct trunk sewers, water mains, and whatever facilities necessary to serve the

entire premises herein described" (emphasis added), places upon plaintiff the financial obligations resulting from increasing the capacity of defendant's sewerage system. We disagree. The language quoted, when considered in context, relates to the trunk sewers and water mains to be installed on the plaintiff's lands other than the main sewer and water lines installed by defendant's predecessors. This language does not refer to major alterations to defendant's sewerage system necessary to serve these trunk sewers and water mains. Secondly, defendant contends that there is no provision in the agreement which states that it shall be responsible for costs of increasing its capacity to accommodate plaintiff's lands. It therefore argues that because plaintiff's claims are based upon an express agreement the court is not free to confirm an implied agreement that defendant bear these costs. We do not find that the case of Smith v. Stowell, 256 Iowa 165, 173-74, 125 N.W.2d 795, 800 (1964), relied on by defendant, supports this contention on the present facts. Under the agreement defendant is obligated to provide sewerage service to plaintiff's property and, in the process, comply with existing health standards. Such compliance is required at the time connection to defendant's system is attempted. The cost of such compliance is a necessary incident of the obligation placed upon defendant under the agreement. We find that our interpretation of the agreement avoids any conflict between the language of paragraph 15 and paragraph 17 and gives meaning and effect to all parts of the agreement. This is an approved principle of interpretation[2] and the one which we follow here.

Lastly, we consider defendant's claim that the trial court's decree also places upon it the burden of paying the costs of trunk sewers to be constructed upon plaintiff's property. This contention is apparently the result of an isolated reference to "trunk sewer lines" in the trial court's conclusions of law. This is not the import of the decretal portion of the trial court's order. Under that decree, as we interpret its meaning, the lines and system which defendant is obligated to furnish to the property of plaintiff do not include small trunk lines to be constructed on plaintiff's property in order to connect with the main sewer lines built across plaintiff's property by defendant's predecessors. The decree of the trial court is affirmed.

AFFIRMED.

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[2] Greenberg v. Alter Co., 255 Iowa 899, 904, 124 N.W.2d 438, 441 (1963); 17 Am. Jur. 2d, Contracts § 259.