

FEB -5 1980

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CLERK SUPREME COURT

THEONI MITCHELL,

)

Plaintiff-Appellant,

)

Filed February 5, 1980

vs.

)

FIRST FEDERAL SAVINGS & LOAN
ASSOCIATION OF COUNCIL BLUFFS,
A Corporation,

)

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2-63428

Defendant-Appellee.

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Appeal from Pottawattamie District Court - Leroy H. Johnson, Judge.

Plaintiff-lessor appeals trial court's judgment overruling her motion for new trial and dismissing her petition in a declaratory judgment action for construction of a lease with defendant-lessee alleging trial court erred, as a matter of law, 1) in finding plaintiff's attorney prepared an amendment to the lease and thereafter construing the provisions against plaintiff, and 2) in interpreting and construing the lease to exclude an adjacent vacated alley and improvements, on both the alley and leased property, from an appraisal for determination of future rental value. AFFIRMED.

William R. Johnson of Kennedy, Holland, DeLacy & Svoboda, Omaha, Nebraska;
and Michael Gallner of Gallner & Gallner, Council Bluffs, Iowa; attorneys for plaintiff-
appellant.

Peter J. Peters of Council Bluffs, Iowa, attorney for defendant-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Plaintiff-lessor, Theoni Mitchell, appeals trial court's judgment overruling her motion for new trial and dismissing her petition in a declaratory judgment action for construction of a lease with defendant-lessee, First Federal Savings and Loan Association. She alleges trial court erred as a matter of law 1) in finding plaintiff's attorney prepared an amendment to the lease and thereafter construing the provisions against plaintiff and 2) in interpreting and construing the lease to exclude an adjacent vacated alley and improvements on both the alley and the leased property, from an appraisal for determination of future rental value. We affirm.

On May 22, 1964, the parties entered into a lease agreement whereby defendant agreed to lease from plaintiff a 20' x 102' lot in downtown Council Bluffs for a period of thirty years. The property was one of several parcels purchased or leased by defendant for construction of a new office building and related drive-up banking facility.

Rental value of the property was set at \$280 per month for the initial ten year period of the lease. At the end of that term, a board of three appraisers was to determine the fair and reasonable rental value for the ensuing ten year period. This appraisal was to be repeated at the end of the second ten year period.

Under the original terms of the lease, defendant was to 1) pay all utilities, 2) pay all taxes, 3) elect to remove a building on the leased premises, 4) erect upon the leased premises such building(s) as defendant desired which would belong to plaintiff upon termination of the lease, and 5) maintain and repair any new improvements, provide and pay for fire and extended coverage and liability insurance. On May 31, 1966, the parties executed an amendment to the lease which 1) extended the term for an additional thirty years, 2) increased the rent for the initial ten year period from the original \$280 per month to \$325 per month, and 3) expanded the property leased to include an adjacent alley, in the event the city vacated it. Approximately four months following execution of the amendment, defendant requested the City of Council Bluffs vacate the adjacent alley. As partial consideration for the vacation, defendant dedicated an easement upon the rearmost portion of plaintiff's leasehold "for the purpose of allowing turn-around space for vehicular traffic." Subsequently, the city passed an ordinance vacating the alley as requested and authorizing its sale to defendant for \$7,500. On September 22, 1966, defendant received a quit claim deed from the city conveying all right, title and interest, in the vacated alley.

When the initial ten year period of the lease, as amended, expired on May 31, 1974, an appraisal was instituted to determine the fair and reasonable rental value for the next ten years. An appraisal report was completed April 11, 1975, listing improvements on plaintiff's property as 1) a brick wall containing a t.v. teller, 2) a second abutment containing a ticket box, and 3) considerable paving. The "fair and reasonable" rental value of the property as of June 1, 1974, was set at \$325 per month. Because the appraisal did not include the value of the vacated alley or any improvements by defendant on the alley or plaintiff's property, plaintiff filed this action for construction of the lease on March 30, 1978. The case was submitted September 8, 1978, and trial court entered its decree in favor of defendant on February 20, 1979.

L. Scope of Review. In an action at law tried to the court, we must sustain trial court's findings if they are supported by substantial evidence and did not result from an erroneous view of the law. Connie's Construction Co. v. Fireman's Fund Insurance, 227 N.W.2d 207, 209 (Iowa 1975). The issue before trial court in this case was the meaning of the lease phrases "fair and reasonable rental value" and "alley adjacent to the ... [leased] property, in the event that said alley is vacated." Plaintiff's petition for declaratory judgment states: "...There has arisen between the plaintiff and the defendant controversy involving certain questions relative to the construction, rights, status and legal relation of the parties pursuant to the aforementioned Lease and Amendment thereto ...".¹ (emphasis supplied.) Plaintiff's brief provides: "The issues presented to the trial court, and to this Court upon appeal, involve the interpretation of the provisions of the Lease ...and the Amendment to the Lease."² (emphasis supplied.)

Although the terms "interpretation" and "construction" frequently are used interchangeably, the distinction has importance, in a case tried to the court, in relation to our scope of review.³ Connie's Construction Co., 227 N.W.2d at 210. If trial court used extrinsic evidence to interpret the words of the lease, that interpretation is binding on this court if supported by substantial evidence. If there is no extrinsic evidence, trial court's interpretation is made as a matter of law and, as in the case of

¹ App. p. 3.

² Appellant's brief at 5.

³ Interpretation involves ascertaining the meaning of the contract words. Construction involves determining the legal effect of the contract language. Fashion Fabrics of Iowa v. Retail Investors, 266 N.W.2d 22, 25 (Iowa 1978).

construction, is reviewed as an issue at law. Fashion Fabrics of Iowa v. Retail Investors Corp., 266 N.W.2d 22, 25 (Iowa 1978); Connie's Construction Co., 227 N.W.2d at 210. Because trial court resorted to extrinsic evidence to reach its interpretation of the parties' lease, we conclude our review in this case is limited to determining whether trial court's findings are supported by substantial evidence. See Fashion Fabrics of Iowa, 266 N.W.2d at 26. Trial court's findings of fact thus have the effect of a special verdict. Kurtenbach v. TeKippe, 260 N.W.2d 53, 54 (Iowa 1977). In reviewing trial court's judgment, we view the evidence in the light most favorable to sustaining it. Briggs Transportation Co. v. Starr Sales Co., 262 N.W.2d 805, 808 (Iowa 1978).

II. Interpretation of the Lease Terms. Plaintiff alleges trial court erred in its interpretation and construction of the lease by not finding the periodic appraisals to determine "fair and reasonable rental value" should include 1) the vacated alley and 2) improvements made upon the alley and the leased property. She bases her contentions on the May 31, 1966 amendment to the lease which provides in part: "Said lease, as amended hereby, shall cover and include the alley adjacent to the above-described property, in the event said alley is vacated."⁴ Plaintiff asserts, contrary to trial court's finding, this language is clear and unambiguous.

A. The Vacated Alley. Ambiguity exists if the words of the lease reasonably may be given more than one meaning. Baron v. Crossroads Center of Iowa, Inc., 165 N.W.2d 745, 750 (Iowa 1969). We agree with trial court's conclusion the words of the amendment are unclear and ambiguous. While it is well settled in Iowa a lease is to be construed most strongly against lessor and in favor of lessee where the language of a lease is not clear, Chamberlain v. Brown, 141 Iowa 540, 549, 120 N.W. 334, 338 (1909), we conclude the rule has no application in this case where the lease was prepared following negotiations wherein both parties had legal representation. Kinney v. Capitol-Strauss, Inc., 207 N.W.2d 574, 577 (Iowa 1973). Despite this erroneous application, trial court's duty was to determine the intent of the parties, while avoiding an unfair and unreasonable result. Miller v. Geerlings, 256 Iowa 569, 579, 128 N.W.2d 207, 213 (1964); Freese v. Town of Alburnett, 255 Iowa 1264, 1269, 125 N.W.2d 790, 793 (1964). Plaintiff's urged interpretation would lead to a result that is both inequitable and unjust by requiring defendant to pay rent on land to which it has legal title. In light of these

⁴ App. p. 33.

principles and the extrinsic evidence of the surrounding circumstances as an aid in interpreting the words of the lease, we find trial court reasonably concluded: "If the alley had been vacated by the City but not sold then we would have an alley adjacent to the plaintiff's property which was vacated and which would be subject to the Lease. However, the alley was vacated and sold which is an event not covered by the Lease."⁵

B. Value of Improvements. Appellant next contends trial court should have included the value of improvements made to the premises by defendant in interpreting the "fair and reasonable rental value of the premises" for the 1974-84 lease period. Trial court concluded because "[n]either the original Lease nor the Amendment provide any guidance to the Court in this regard . . . the Lease must be construed favorably to the lessee in opposition to the lessor."⁶ For reasons cited above, we cannot agree the ambiguity must be resolved against plaintiff. However, in considering the lease as a whole,⁷ in an effort to effect the parties' intentions, we conclude the reasonable and equitable result requires exclusion of any improvements upon plaintiff's property made by defendant at its own expense in determining the fair and reasonable rental value of the leased premises.

Judgment of trial court is affirmed.

AFFIRMED.

⁵ App. p. 57.

⁶ App. p. 58.

⁷ A pertinent paragraph of the lease provides: "It is further agreed that the Lessee may erect upon such premises such building or buildings as it may desire, . . . such property to belong to the Lessor at the termination of this lease" App. p. 9.