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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

CITY OF SUMNER, IOWA,)
Plaintiff-Appellee,) Filed October 27, 1981
vs.)
DUANE LIDDLE,) 1-189 / 2-65198
Defendant-Appellant.)

Appeal from Bremer District Court - Ray E. Clough, Judge.

Defendant appeals from a judgment in equity enjoining him from operation of an auto repair business in violation of plaintiff's city zoning ordinance. AFFIRMED.

R. L. Donohue and James S. Updegraff of Donohue Law Office, West Union, for defendant-appellant.

Gary J. Boveia, Waverly, for plaintiff-appellee.

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

DONIELSON, J.

Defendant Duane Liddle appeals from a judgment in equity enjoining him from operation of an auto repair business in violation of plaintiff's city zoning ordinance. Defendant asserts that the evidence was sufficient to justify the invocation of equitable estoppel against the plaintiff, and that the evidence was insufficient to justify the application of either laches or estoppel by acquiescence against him.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. We affirm.

I.

On January 5, 1979, plaintiff city filed a petition in equity seeking to enjoin defendant's commercial use of property zoned mixed residential. Defendant's answer asserted the defense of equitable estoppel. The court found that the city had misinformed him about the zoning classification and that equitable estoppel should be applied but for the fact that defendant had complied with the applicable zoning ordinance for nearly four years following his discovery of its existence. The court then enjoined his use of the property for commercial purposes.

In 1969 the city adopted a zoning ordinance stating that the official zoning map would be the final authority on zoning status. The map on display in the city clerk's office, however, erroneously showed the property in question under its pre-1969 commercial classification. Defendant testified that prior to his purchase of the property he personally inspected the map at the clerk's office. The clerk testified that she told him over the phone that the property was zoned commercial. The city attorney, then employed by defendant, issued defendant a title opinion advising him to fully investigate if he intended to use the property for commercial purposes; two supplemental opinions did not mention the zoning problem. The attorney testified that he specifically advised defendant of the zoning problem during a conversation which he thought took place before closing of the sale of the property. Defendant testified that no such conversation took place prior to closing of the sale. The trial court found that defendant was unaware of the zoning problem until after the sale was finalized.

II.

Defendant first claims that plaintiff is equitably estopped from asserting that use of defendant's property as an auto repair shop violates the plaintiff's zoning ordinance. As a general rule, equitable estoppel is not invoked against the state, Iowa Department of Transportation v. Nebraska-Iowa Supply Co., 272 N.W.2d 6, 14-15 (Iowa 1978); Iowa

Movers & Warehousemen's Association v. Briggs, 237 N.W.2d 759, 765 (Iowa 1976), nor is it ordinarily invoked against a municipal corporation in the exercise of its government functions. Halvorson v. City of Decorah, 258 Iowa 314, 321, 138 N.W.2d 856, 861-62 (1965); Alexander v. Randall, 259 Iowa 422, 427, 133 N.W.2d 124, 127 (1965). We need not decide here whether this case should be excepted from the general rule because we find that defendant has failed to establish all the necessary elements of estoppel.

"The burden to prove and establish estoppel is on the party asserting it, with strict proof of all the elements being demanded." Paveglio v. Firestone Tire & Rubber Co., 167 N.W.2d 636, 639 (Iowa 1969). Defendant must prove the four essential elements of estoppel listed in Axtell v. Harbert, 256 Iowa 867, 872, 129 N.W.2d 637, 639 (1964):

> "A. False representation or concealment of material facts,
>
> "B. Lack of knowledge of the true facts on the part of the person to whom the misrepresentation or concealment is made,
>
> "C. Intent of the party making the representation that the party to whom it is made shall rely thereon,
>
> "D. Reliance on such fraudulent statement or concealment by the party to whom made resulting in his prejudice."

Each element should be proven clearly, convincingly and satisfactorily. Dart v. Thompson, 261 Iowa 237, 244, 154 N.W.2d 82, 86 (1967).

It is clear from the record that the city clerk did falsely represent the property as being zoned commercial, however, it is not proven clearly and convincingly that defendant lacked knowledge, or that the city clerk intended defendant to rely on her misrepresentation, or that defendant's reliance was reasonable. Defendant was on notice that the property was subject to some kind of zoning regulations before he finalized the purchase. Defendant relied on the zoning map posted in the city clerk's office and the city clerk's representation that the property was zoned commercial, but failed to check with the city official most knowledgeable about zoning, the city zoning administrator. We do not find this reliance sufficiently reasonable to apply equitable estoppel and thus affirm the trial court. Iowa Movers & Warehousemen's Association v. Briggs, 237 N.W.2d at 767.

Furthermore, since defendant has failed to prove the elements required to invoke the doctrine of equitable estoppel, it is not necessary for this court to decide whether the doctrines of laches or estoppel by acquiescence are applicable to this case.

The holding in this case, however, does not act to bar any other remedies defendant may have to alleviate the burden caused by the manner in which his property is zoned.

AFFIRMED.

All judges concur, except Snell, J., and Oxberger, C.J.

SNELL, J. (dissenting)

I respectfully dissent. Ordinance 131 made the official zoning map in the office of the city clerk the "final authority as to the current zoning status of land." Defendant was misled by the city which displayed the wrong map. The trial court would have applied the doctrine of equitable estoppel against the city but for the defendant's delay in bringing this suit. I do not believe defendant lost his rights by the delay. He asked for a zoning change and was rebuffed. He tried to live with the zoning restrictions and suffered economic loss.

When the governmental authority seeks to invoke the equity jurisdiction of the courts to act upon statutory noncompliance of which it is a contributing cause, the policies underlying the estoppel doctrine call for its application. See Iowa Department of Transportation v. Nebraska-Iowa Supply, 272 N.W.2d 6 (Iowa 1978).

Oxberger, C.J., joins this dissent.