FILED
OCT 29 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

347

SPONSLER NITROGEN SERVICE, INC. and **JAMES SPONSLER,**

Plaintiffs-Appellants,

vs.

YORKSHIRE, INC.,

Defendant-Appellee.

Filed October 29, 1985

5-378
84-1566

Appeal from the Iowa District Court for Wayne County - M. C. Herrick, Judge.

Plaintiffs appeal from summary judgment in favor of defendant to determine the rights of the parties to improvements plaintiffs made to a railroad right-of-way now owned by defendant. **AFFIRMED.**

Charles L. Elson of Elson & Fulton, Leon, for plaintiffs-appellants.

William L. Shelton and Richard L. Ambelang of Shelton, P.C., Chariton, for defendant-appellee.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ.

DONIELSON, P.J.

Plaintiffs appeal from summary judgment in favor of defendant to determine the rights of the parties to improvements plaintiffs made to a railroad right-of-way now owned by defendant.

Plaintiff James Sponsler has occupied part of a railroad right-of-way in Humeston for about twenty years. From 1963 to 1974, he subleased the right-of-way, and from 1974 on, he leased it directly from the railroad. He made various improvements between 1963 and 1978. The leases provided that the lessee was to remove the improvements at the end of the lease or they would become the property of the lessor. The leases also provided that the lessee was to pay all taxes on the right-of-way and improvements.

In 1980, the railroad abandoned the right-of-way. In 1984, defendant Yorkshire, Inc., the owner of the land adjoining the right-of-way, filed an affidavit of ownership of the right-of-way pursuant to Iowa Code section 327G.77, which provided that if a railroad easement is extinguished, the property shall pass to the owners of the adjoining land; whereby the owners may perfect their title by filing an affidavit of ownership. After perfecting title, Yorkshire also served on Sponsler a notice of lease termination.

Sponsler then brought the present action against Yorkshire to determine the rights of the parties to the improvements he had made by seeking (1) equitable relief, arguing that Yorkshire would be unjustly enriched if it were allowed to retain the improvements, and (2) relief under Iowa Code chapter 560 (improvements to real estate made in good faith by occupying claimant with color of title). Yorkshire answered Sponsler's petition and discovery ensued.

Yorkshire moved for summary judgment by asserting that Sponsler had no color of title and the improvements had not been made in good faith. Sponsler resisted the motion for summary judgment. The district court ruled that color

of title and good faith were necessary for both equitable relief and relief under chapter 560, and that Sponsler could not establish either color of title or good faith. The district court accordingly granted Yorkshire's motion for summary judgment.

On appeal, plaintiffs assert (1) that there was a genuine issue of material fact regarding their state of mind when making the improvements, and (2) that they can establish color of title to the railroad right-of-way.

Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 237(c). Entry of summary judgment is proper when the only conflict under the record concerns legal consequences flowing from undisputed facts. Brown v. Monticello State Bank, 360 N.W.2d 81 (Iowa 1984).

The facts in this case are undisputed: Sponsler leased property from the Burlington Northern Railroad in 1963 and made improvements on the land which were permitted by the lease; Burlington Northern Railroad abandoned its right-of-way in 1984 and, pursuant to the perfection provisions under Iowa Code section 32G.77, the property passed to the adjacent property owners—Yorkshire; Yorkshire served Sponsler with a notice of lease termination. Sponsler's primary claim in resisting summary judgment was that Burlington Northern, not Yorkshire, was his landlord such that a claim under section 560 is available to him. This contention raises a legal, not factual, issue appropriate for summary judgment. On appeal, Sponsler claims factual issues recording his state of mind and color of title exist. Because Sponsler did not raise these factual issues in his resistance below, we are unable to consider such issues for the first time on appeal. See State Farm Mutual Automobile Insurance Co. v. Pflibsen, 350 N.W.2d 202, 207 (Iowa 1984).

As to review of the trial court's ruling, the facts of the entire record are viewed in the light most favorable to the party resisting summary judgment. Martin v. Life Investors, Inc., 356 N.W.2d 597 (Iowa Ct. App. 1984). To prevail under an unjust enrichment theory or section 560, Sponsler had to establish good faith and a colorable claim of title. Resnick v. City of Fort Madison, 259 Iowa 578, 145 N.W.2d 111 (Iowa 1966).

To show good faith, Sponsler had to have some reasonable basis for the belief that he had title to the land. See Moser v. Thorp Sales Corp., 312 N.W.2d 881, 894 (Iowa 1981), appeal from remand, 334 N.W.2d 715 (Iowa 1983). We are unable to find any evidence in the record to support such a good faith belief under an unjust enrichment theory or section 560.1. Paying taxes and improving land, as a matter of law, cannot be the equivalent of a good faith belief in title to land when these terms were part of a leasehold arrangement.

Because it was undisputed that Sponsler was only a tenant, he could not under these circumstances have asserted an ownership right based on a colorable claim of title to support an unjust enrichment theory. Sponsler, however, places great weight on the fact that Burlington Northern, not Yorkshire, was his landlord to establish color of title under sections 560.2(2)-(3). According to Sponsler, Yorkshire succeeded to Burlington Northern's interest but did not enter into a landlord-tenant relationship with Sponsler. While the parties never entered into a written lease, it is clear that Yorkshire was a successor in interest to the property rights of Sponsler's landlord. We find that for purposes of section 560.2, read in pari materia with section 327G.77, an adjacent landowner who becomes owner of an abandoned railroad right-of-way can be deemed to have landlord status so as to preclude a tenant from claiming that only the railroad was his landlord.

Not only is this result legally correct, it is justified because Sponsler agreed to remove improvements made to the land upon termination of the lease or else such improvements would become the lessor's property. Thus, at the conclusion of all litigation involving this matter, including any further appeal, Sponsler shall have a reasonable time to remove the structures presently on the land or negotiate a new lease. This time period shall mitigate any undue hardship this decision renders on Sponsler.

AFFIRMED.