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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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CITY OF DUBUQUE,	)	
Plaintiff-Appellant,	)	Filed March 23, 1988
vs.	)	
FLYNN READY-MIX CONCRETE COMPANY,	)	8-21 87-733
Defendant-Appellee.	)	

Appeal from the Iowa District Court for Dubuque County (No. 44236), James L. Beeghly, Judge.

City of Dubuque appeals from a ruling on Flynn's Iowa Rule of Civil Procedure 179(b) motion in Flynn's favor. **AFFIRMED.**

James A. O'Brien, Assistant City Attorney, Dubuque, for plaintiff-appellant.

Donald G. Thompson of Bradley & Riley, Cedar Rapids, and Robert M. Bertsch and Stephen C. Krumpe of O'Connor & Thomas, Dubuque, for defendant-appellee.

Heard by Oxberger, C.J., and Donielson and Schlegel, JJ.

DONIELSON, J.

The City of Dubuque appeals from a ruling on Flynn's Iowa Rule of Civil Procedure 179(b) motion in Flynn's favor, contending the agreement between the parties for unpaid rent should be reformed because of mistake on behalf of the City and inequitable conduct on behalf of Flynn. We affirm the judgment of the district court.

The City and Flynn first entered into a lease for certain real estate in 1957. In 1974, the City declared the lease to be in default and negotiations began for a new lease. Flynn first proposed a cumulative one percent increase per year. The City desired an escalation clause using the cost of living adjustments. The reason for the City's concern was that the lease period, with renewals, could extend for thirty years. Flynn later proposed a higher rent amount but with a non-cumulative price adjustment mechanism. Eventually, the lease provision in question read as follows:

> The annual rental . . . shall be $10,391.67 . . . the base rental shall be increased or decreased by the same percentage of the increase or decrease, as the case may be, in the Revised Consumers Price Index . . . . In no event shall the annual rental be reduced below the base rental.

The City argued that the rental provision in the lease required the rental adjustments to be cumulative. Flynn argued that the percentage charges would not be cumulative, but would be applied to the same $10,000 base rental amount each year.

The district court first reformed the contract to conform with the City's interpretation of the lease. Then, the court ruled, following Flynn's Iowa Rule of Civil Procedure 179(b) motion, that the language, though confusing, comports with Flynn's interpretation. The court noted that the City's failure to properly review the contract should not allow them to now reform the contract.

Our scope of review is for the correction of errors at law. Iowa R. App. P. 4. Findings of fact are binding upon us if supported by substantial evidence. Iowa R. App. P. 14(f)(1).

The City argues on appeal several theories of relief, including, inter alia, mutual mistake between the parties as to the terms of the contract and, alternatively, that the City had been unilaterally mistaken as to the meaning of the rent escalator clause in the lease due to fraud or inequitable conduct on the part of Flynn during the course of negotiations over the lease. The City also asserts the equitable remedies of rescission, cancellation, avoidance, or reformation should be applied in this instance. Additionally, the City questions whether it was required to act in good faith or fair dealing or was required to exercise ordinary care based on the alleged ambiguity of the lease.

We summarily reject the City's arguments. The language of the lease is sufficiently clear. Both sides had legal counsel when the lease was drawn. Flynn's position was never misrepresented; at all times Flynn's attorney desired that the rent not be tied directly to inflation. The City failed to exercise its duty of conducting its negotiations with due care; the lack of the City's failure to scrutinize the lease should not permit the City now to reform the contract to its liking. The City had ample time to review the lease drafts. It is not the court's position to make a new contract for the parties, but instead to give effect to the contract in accordance with commonly accepted and ordinary meanings. Kinney v. Capitol-Strauss, Inc., 207 N.W.2d 574, 576-77 (Iowa 1973).

Accordingly, we affirm the judgment of the district court.

AFFIRMED.