



IN THE COURT OF APPEALS OF IOWA

DANIEL H. COSGRIFF, Individually)
and as Agent for ROBERT P. COSGRIFF,
DORTHEA VAZIS AND RICHARD COSGRIFF)

Filed August 30, 1983

Plaintiffs-Appellees,)

3-183
 2-69078

vs.)

KENNETH H. DIRCKS,)

Defendant-Appellant.)

Appeal from Cedar District Court, Nathan Grant, Senior Judge.

Defendant-lessee appeals from a judgment for \$5,666.13 which was awarded to plaintiffs-lessors under the trial court's construction of the parties' farm real estate lease agreement. REVERSED.

Bradley Norton of Norton & Freese, Lowden, for defendant-appellant.

S. David Peshkin, Des Moines, for plaintiffs-appellees.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel, and Hayden, JJ.

OXBERGER, C.J.

Defendant-lessee appeals from a judgment for \$5,666.13 which was awarded to plaintiffs-lessors under the trial court's construction of the parties' farm real estate lease agreement. On appeal, defendant asserts that the trial court erred in construing ambiguous terms of the lease contract in favor of the party who drafted the contract, and further erred by ruling that there was no accord and satisfaction. Procedurally, defendant argues that the trial court erred by ruling that plaintiff's reply to defendant's amended answer, in which defendant raised the affirmative defense of accord and satisfaction, was timely filed. We reverse.

Plaintiffs filed a petition in August 1981, seeking recovery of \$10,085.77 for rent allegedly due from defendant under the terms of the farm lease. The lease in question was executed by the parties on March 14, 1980, and had been drafted by the plaintiffs.

Pertinent provisions of the lease are as follows: Paragraph nine states that the landlord and tenant shall split certain specified operating expenses on a fifty-fifty basis. Paragraph thirty-seven provides that the landlord's share of the operating costs due are to be paid on December 20, 1980. Paragraph thirty-three states:

"Landlord is to receive as net operating rent, the sum of \$34,500 to be payable on January 10, 1981. In the event the net income after operating expenses exceeds the sum of \$34,500, the Landlord and the Tenant shall split the excess on a 50/50 basis."

The parties dispute the effect of the interaction of these provisions. Plaintiffs argue that they are entitled to reimbursement for their half of the specified operating expenses in addition to rent. Defendant argues that the lease terms provide that plaintiffs are to pay half of the specified expenses, and they are not entitled to reimbursement.

The respective payments made by the parties are essentially as follows: On December 20, 1980, plaintiffs paid defendant \$11,332.27, which was one-half of the specified operating expenses. On January 10, 1981, defendant paid plaintiffs \$34,500, pursuant to paragraph thirty-three of the lease. Defendant computed his net income after operating expenses as \$36,993, leaving an excess of \$2,493, and an additional check for \$1,246.50 was sent to plaintiffs. Plaintiffs allege they are entitled to \$45,832.27 in rent (\$34,500 plus \$11,332.27) and commenced this action when defendant refused to pay the difference of \$10,085.77.

After both the petition and answer were filed, defendant filed and served a motion for leave to amend his answer. Attached to defendant's motion was the proposed amendment, which raised the affirmative defense of accord and satisfaction. Defendant's motion was granted on March 8, 1981. Plaintiffs did not file a reply to defendant's amended answer until April 1, 1982. The trial court ruled that plaintiffs' reply was timely since "defendant should have filed an actual amendment and should have served it on the plaintiff in order to commence the ten-day answer period as set forth in IRCP 85(d)."

The trial court entered judgment for plaintiffs in the amount of \$5,666.13. It construed the lease to mean that the total expenses should be subtracted from gross income, with the net proceeds being divided equally between the parties, and with plaintiffs to be additionally reimbursed for their share of the specified operating expenses. The court cited Kellogg v. Iowa State Traveling Men's Association, 239 Iowa 196, 29 N.W.2d 559 (Iowa 1947), for its conclusion that there was no accord and satisfaction regarding the \$1,246.50 check received and cashed by plaintiffs.

I. Scope of Review

This being an ordinary action at law, our scope of review is on assigned error only. Iowa R. App. P. 4.

II. Construction of Contracts

The cardinal rule of contract construction is that the intent of the parties is controlling. Generally their intent is to be determined by the language of the contract. Iowa R. App. P. 14(f)(14). However, when the language of the contract is not clear and unambiguous, the court must resort to rules of construction. See Allen v. Highway Equipment Co., 239 N.W.2d 135, 139 (Iowa 1976). A contract is ambiguous if it is reasonably susceptible of different constructions. See Hubbard v. Marsh, 40 N.W.2d 488, 490, 241 Iowa 163 (1950).

In the present contract, paragraph nine provides that the landlord shall "furnish" 50 percent of certain specified operating costs, while paragraph thirty-three provides that the landlord shall receive as "net operating rent" the sum of \$34,500. Words employed in a contract are assigned their ordinary meanings unless it is demonstrated that the parties intended a different meaning. See Carson v. Great Lakes Pipe Line Co., 25 N.W.2d 855, 857, 238 Iowa 50 (1947). Nowhere in the contract is the term "net operating rent" defined; however, the word "net" commonly refers to the amount remaining after certain deductions have been made. The word "furnish" means to provide or supply, and is not a synonym for "advance." Thus, paragraph thirty-three suggests that the landlord should be reimbursed for his share of the operating expenses whereas paragraph nine suggests the opposite.

The trial court adopted an interpretation of the contract language which provided that plaintiffs were entitled to reimbursement for their share of the operating expenses set out in paragraph nine. Defendant cites as error that construction, and argues that the ambiguity should have been construed against plaintiffs.

The trial court's interpretation of the language of the contract is binding on this court only if it is supported by substantial evidence. Allen v. Highway

Equipment Co., 239 N.W.2d at 139. Evidence is substantial if a reasonable mind would accept it as adequate to reach a conclusion. Iowa State Fairgrounds Security v. Iowa Civil Rights Commission, 322 N.W.2d 293, 296 (Iowa 1982). Our review of the record discloses no substantial evidence to support the trial court's construction of the contract. Indeed, the extrinsic evidence offered does nothing to clarify the intent of the parties, and thus, the ordinary processes of interpretation are inapplicable.

When there is no satisfactory evidence from which may be ascertained the intent of the parties, the court should resolve the ambiguity against the party who drafted the contract. Pappas v. Bever, 219 N.W.2d 720, 722 (Iowa 1974); Phelan v. Peeters, 152 N.W.2d 601, 604 (Iowa 1967). The rationale behind this rule of construction is that the party drafting the document can more easily prevent mistakes in meaning than can the party with whom he is dealing. Moreover, a party is responsible for any ambiguity in his own expressions and is not privileged to induce another to contract with him on the supposition that his words mean one thing "while he hopes the court will adopt a construction by which they would mean another thing more to his advantage." 17A C.J.S. Contracts § 324 at 223.

Applying the foregoing rule of construction to the lease provisions at issue, it is clear that the trial court erred in holding that plaintiffs are entitled to reimbursement for their share of the operating costs specified in paragraph nine. Plaintiffs drafted this lease, and any ambiguity regarding operating costs which was not resolved by extrinsic evidence should have been resolved against them. We therefore reverse the trial court and hold that plaintiffs have been paid in full under the lease. Because our determination of this issue has been dispositive, we do not address the remaining issues raised by defendant in this appeal.

REVERSED.