

IN THE COURT OF APPEALS OF IOWA

FILED

FEB 23 1983

CLERK SUPREME COURT

DONALD P. BREUER,

Appellant,

vs.

DAVENPORT COMMUNITY SCHOOL
DISTRICT, CITY OF DAVENPORT,
IOWA, SCOTT COUNTY, IOWA, and
HAL H. WILLIAMS,

Appellees.

Filed February 23, 1983

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2-68449

Appeal from the Iowa District Court for Scott County, James R.
Havercamp, Judge.

Plaintiff appeals from the trial court's adverse ruling on the defendant
school district's motion for summary judgment in his appeal from a condemnation
award, ruling the plaintiff had no interest in property condemned by the school
district. AFFIRMED.

Elliott R. McDonald, Jr., of McDonald, Stonebrake & Cepican, P.C., for
appellant.

Terry M. Giebelstein, of Lane & Waterman, for appellee Davenport
Community School District.

James L. Abshier, City Attorney, and Scott Hartsook, Assistant City
Attorney, for appellee City of Davenport.

Theodore J. Priester, Assistant County Attorney, for appellee Scott County.

John O. Moeller for appellee Hal H. Williams.

Considered by Donielson, Acting C.J., Johnson and Schlegel, JJ.

SCHLEGEL, J.

Plaintiff appeals the trial court's ruling sustaining defendant District's motion for summary judgment in his appeal from a condemnation award. He claims that the trial court erred in concluding that the written agreement between plaintiff and defendant Williams eliminated any compensable interest that plaintiff may have had in the condemned property. We affirm.

The Davenport Community School District caused condemnation proceedings to be commenced against certain property in Davenport, Iowa. On July 10, 1981, the date when the condemnation commission viewed and inspected the property, defendant Hal Williams was the owner of record of the subject property and real estate records on that date did not disclose the interest of the plaintiff in the property. However, Williams and the plaintiff had a written agreement dated December 1, 1979 and recorded on August 4, 1981. The written agreement was labeled a lease and provided that the plaintiff as the lessee would lease the property from Williams as the lessor for a monthly rent of \$655. The agreement covered a term from December 1, 1979, to November 30, 1980, and provided for automatic renewal if neither party objected.

The agreement also contained the following language in Paragraph 16:

If during the term of this lease the building or premises shall be . . . taken by eminent domain, . . . this lease shall cease, and become null and void from the date [thereof], and Lessee shall immediately surrender said premises and rent shall be adjusted to the time of such surrender. . . . In case of termination of the lease under this numbered paragraph, the Lessor may re-enter and re-possess said premises discharged of the lease and may remove all parties therefrom."

Plaintiff later claimed that the agreement was made on a form provided by the defendant, that neither party had legal advice at the time of entering the agreement and that the agreement was meant to be a contract for the sale of real estate whereby the plaintiff would pay Williams the sum of \$655 per month for ten years and the real estate would then be transferred to the plaintiff. The

condemnation commission issued an award to Williams in the amount of \$53,000, and no award was made to the plaintiff.

On August 7, 1981, plaintiff filed a notice of appeal from the condemnation commission's award. On August 14, 1981, he filed a petition seeking damages from the school district's condemnation of the property. He claimed that he owned an interest in the property condemned on the basis of the written agreement and that such an interest was compensable in eminent domain proceedings. The school district filed an answer denying that the plaintiff had an interest in the property.

On February 1, 1982, the school district filed a motion for summary judgment, alleging that the plaintiff had no compensable interest in the subject property on the basis of the written agreement and particularly the condemnation clause or alternatively that the plaintiff was entitled to a maximum award in the amount of \$500 for an occupant's moving expenses under Iowa Code section 472.14. Plaintiff filed a resistance, asserting that the written agreement was intended to create a contract for the sale of real estate. He alleged that the school district's motion for summary judgment sought an illegal forfeiture of his interest in the property since the provisions of Iowa Code chapter 656 as to real estate contract forfeitures had not been followed.

The trial court entered its ruling sustaining the school district's motion for summary judgment. It was concluded that the condemnation clause validly shifted the risk of loss by condemnation to plaintiff regardless of whether he was a contract purchaser or a lessee and therefore was not an invalid forfeiture clause. The court also held that the meaning of the clause was clear and unambiguous, making it unnecessary to consider the parties' circumstances. Plaintiff was, however, awarded the statutory maximum, \$500, for occupant's moving expenses as authorized by Iowa Code section 472.14. His appeal followed.

Summary judgment is appropriate only if the moving party is able to show that there is no genuine issue as to any material fact and that it is entitled to a

judgment as a matter of law. Iowa R. Civ. P. 237(c). "In reviewing the trial court's grant of summary judgment, we view the facts in the entire record in the light most favorable to the party opposing the motion." Barnhill v. Davis, 300 N.W.2d 104, 105 (Iowa 1981).

Our review of the record in this case convinces us that the trial court properly sustained the motion for summary judgment. The language of the condemnation clause could not be more clear—if the property is taken by eminent domain, the agreement between plaintiff and Williams "shall cease, and become null and void." Thus, when the school district condemned the property, of which Williams was record title holder, plaintiff lost his interest, whether that of lessee or contract purchaser, in the property because the agreement no longer existed. He therefore had no compensable interest because he had no interest at all. While it may be true that plaintiff did not thoroughly read or understand the condemnation clause, he remains bound thereby:

[I]f a party to a contract is able to read [the contract], has the opportunity to do so, and fails to read the contract he cannot thereafter be heard to say that he was ignorant of its terms and conditions for the purpose of relieving himself from its obligations.

Joseph L. Wilmotte & Co. v. Rosenman Bros., 258 N.W.2d 317, 323 (Iowa 1977), quoting Preston v. Howell, 219 Iowa 230, 236, 257 N.W. 415, 418 (1934). The parties here were on equal terms with regard to bargaining power; thus, plaintiffs claims of unconscionability and contract of adhesion are not well-founded. See C. & J. Fertilizer, Inc. v. Allied Mutual Insurance Company, 227 N.W.2d 169 (Iowa 1975).

Finding no reversible error, we affirm the summary judgment entered in defendants' favor.

AFFIRMED.