FILED
MAY 25 1982
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ROBERT RITZ,

Plaintiff-Appellant,

vs.

CARDINAL COMMUNITY SCHOOL DISTRICT, McCUNE AND REED, INC., CONTINENTAL INSURANCE COMPANY AND UNDERWRITERS ADJUSTING COMPANY,

Defendants-Appellees.

Filed May 25, 1982

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2-66497

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Appeal from Van Buren District Court, Dick R. Schlegel, Judge.

Plaintiff appeals the decree entered in this equity action for specific performance concerning the recovery of certain insurance proceeds for property damage to a schoolhouse which plaintiff agreed to buy from defendant school district. AFFIRMED.

Ronald K. Watkins of McGrath & McGrath, Keosauqua, for plaintiff-appellant.

Richard C. Bauerle of Johnson, Bauerle & Hester, Ottumwa, and Jerome M. Beaver of Dull, Keith & Beaver, Ottumwa, for defendants-appellees.

Considered by Oxberger, C.J., and Carter and Johnson, JJ.

PER CURIAM

Plaintiff appeals the decree entered in this equity action for specific performance concerning the recovery of certain insurance proceeds for property damage to a schoolhouse which plaintiff agreed to buy from defendant school district. He alleges, among other things, that the written agreements between him and the school district are ambiguous and incomplete and that the circumstances surrounding the transaction indicate that he is entitled to a higher cash settlement from defendant. We affirm.

Our review is do novo. Iowa R. App. P. 4.

In November of 1977, defendant school district ("Cardinal") contracted to sell plaintiff an old schoolhouse building and lot for $12,800. Because of certain abstracting problems, a new contract was executed on September 5, 1978. This new agreement contained the same general price terms—$12,800, with a ten per cent downpayment (which has already been paid) and the balance to be paid upon performance by Cardinal. On the same day, the parties executed a separate agreement ("agreement") relating to insurance proceeds to be received as a result of damages sustained by the school building during the intervening months: "It is hereby agreed that Cardinal Community School agrees to reimburse Robert Ritz for the total amount of money received from the insurance company for payment of vandalism damages to the Selma school building upon receipt of those funds." Although plaintiff did not actually sign this agreement, there is no dispute that he agreed to be bound by it.

Cardinal then contacted its insurance company (other defendants, hereinafter collectively referred to as "Continental") and eventually received an offer of $852.43 in settlement of the claim. When plaintiff learned of this figure, he told Cardinal that it was too low since he had received estimates that it would

cost more than $10,000 to make needed repairs. Cardinal offered to assign the insurance policy to plaintiff; Continental disallowed such assignment but agreed to the assignment of loss embodied in the agreement.

Plaintiff's petition requested that defendant Cardinal be required to specifically perform its obligation under the contract and, if the insurance proceeds were not sufficient to cover the repair costs, pay such additional costs. Plaintiff also wanted to use whatever amount of the unpaid balance on the contract ($11,520) which was necessary to pay for the repair costs above the amount representing Continental's settlement offer and deduct that first amount from the balance due Cardinal. Finally, plaintiff sought equitable relief from Continental because the latter allegedly induced Cardinal into inaction regarding settlement of the insurance claim.

The trial court issued its findings of fact and conclusions of law on January 2, 1981. The court found that plaintiff was limited in his monetary claim against Cardinal to the amount paid by Continental to Cardinal as per the agreement. The court also found that plaintiff failed to prove that Continental's agents induced Cardinal's inaction to plaintiff's disadvantage. In its decree, the court ordered the dismissal of plaintiff's petition as against Continental. In addition, Cardinal was ordered to specifically perform its obligation under the contract, i.e., to convey the property to plaintiff by warranty deed upon the latter's payment of the balance of the purchase price. Cardinal was also ordered to pay over to plaintiff, pursuant to the agreement, any amount paid by Continental under the insurance policy for damages to the school building. This appeal followed.

I. Plaintiff lists five different issues in his brief, but they are all variations on one theme: what are Cardinal's obligations under the agreement? Plaintiff

claims the agreement is vague and incomplete and that the circumstances surrounding the contract indicate that Cardinal was under a duty to recover a "fair and reasonable" amount of proceeds from Continental. Defendant claims the agreement is unambiguous in stating its duty only to pay over to plaintiff the money actually received from Continental.

We begin with the familiar proposition that, in the construction of written contracts, the first principle is that the parties' intent must control and that such intent is determined by looking at what the contract says except where the wording is ambiguous. Iowa R. App. P. 14(f)(14). Initially, we note that the agreement is incomplete in one small respect--it says that Cardinal agrees to reimburse plaintiff for money received "for payment of vandalism damages." It is clear, however, that Cardinal intended to give plaintiff all insurance proceeds received, whether it be for vandalism or storm damages. Wendell Johnson, superintendent of the school district, testified that such was indeed Cardinal's intent. There is no dispute that the agreement was intended to refer to all insurance proceeds received; therefore, in order to effectuate the intent of the parties, we construe the agreement in this manner.

Having said this, we agree with the trial court that plaintiff is limited by the agreement to receive only that amount of money actually paid by Continental to Cardinal. Such is the plain and unambiguous language of the agreement; nowhere does it mention any duty on Cardinal's part to pursue a "fair and reasonable" recovery. Plaintiff's unhappiness with Continental's settlement offer alone is not a sufficient reason to imply a term in the agreement which was not consented to by Cardinal.

II. Cardinal did not bring any cross-appeal, but asks this court to impose judgment in its favor against plaintiff for the balance of the purchase price

together with interest. Trial court refused to do so. In the absence of a cross-appeal, we see no reason to disturb the refusal to enter a judgment.

We do believe, however, that the trial court should have imposed a reasonable deadline for tender of the unpaid balance of the purchase price to defendant by plaintiff. We therefore direct that such payment be made within sixty days of the issuance of the procedendo. Absent payment within this time period, defendant shall have the remedies of an unpaid contract seller.

We have considered all the issues raised by the parties. The judgment of the trial court is affirmed in all respects.

AFFIRMED.