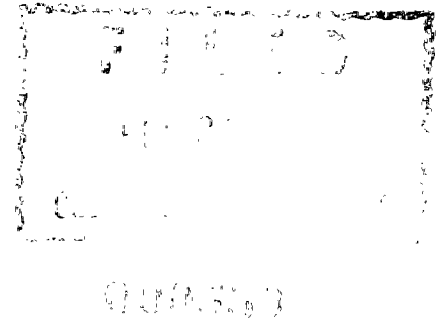


IN THE COURT OF APPEALS OF IOWA

No. 4-569 / 93-1838



MODAY REALTY CO., A New York Partnership,

Plaintiff-Appellant/Cross-Appellee,

vs.

MARY ELLEN CORSIGLIA, RICHARD CORSIGLIA,
LAURA DECRESSEY, JAY A. WHITNEY, and
JOSEPH H. WHITNEY,

Defendants-Appellees/Cross-Appellants.

Appeal from the Iowa District Court for Scott County,
Bobbi M. Alpers, Judge.

Plaintiff appeals, and defendants cross-appeal, from an
order determining the fair rental value of land which is
the subject of a lease between the parties. **AFFIRMED.**

Richard A. Davidson of Lane & Waterman, Davenport, for
appellant.

Wayne M. Newport of Newport & Newport, Davenport, for
appellees.

Heard by Hayden, P.J., and Sackett and Huitink, JJ.

~~CONFIDENTIAL~~
SACKETT, J.

The question in this appeal is whether the trial court correctly determined the annual rent under a renewal option in a written lease for an 11.89 acre tract of land in Bettendorf, Scott County, Iowa. The land, now improved with a shopping center, was bare land on November 21, 1958, when the lease was entered. The shopping center is owned by plaintiff-appellant, Moday Realty Company. The bare land is owned by defendants-appellees Mary Ellen Corsiglia, Richard Corsiglia, Laura Decreese, Jay A. Whitney, and Joseph H. Whitney. Plaintiff and defendants are both assignees of the original parties to the lease.

Plaintiff, on appeal, contends the annual rent fixed by the trial court is too high; defendants, on cross-appeal, contend the annual rent fixed by the trial court is too low. We affirm.

At the time the land was leased in 1958, it was vacant but it was leased in anticipation that the current shopping center would be built. The original lease term ran for thirty years or until November 17, 1988, and contained an option for an additional thirty years. The option provides for rent adjustments every ten years.

The lease directs if the parties cannot agree on a rent, appraisers should be appointed. If the appraisers do not agree on a rent, then the lease directs the district

000717

court sitting in equity determine the rent.¹

Plaintiff renewed the lease. Plaintiff and defendants were not able to agree on the annual rents to be paid for the period of November 17, 1988, to November 17, 1999. Appraisers were appointed and could not agree on a rent. This action was filed.

At trial, expert evidence came from three appraisers. Plaintiff called as a witness one appraiser who gave the opinion the land, if not improved, would have had a value of \$88,000 an acre in 1987. The appraiser further testified the value of the land as to the buildings on similar properties in the area was 30.04%. The appraiser used this formula to determine a fair annual rental would be 30.04% of the net income from the property and determined a fair rent in 1988 would be \$52,370.

Defendants called two appraisers. The first appraiser valued the entire tract, if vacant, at \$1,150,000 and figured defendants were entitled to an eleven percent

1. The actual provision is:

First party [Defendants] hereby grants to second party [Plaintiff] the right to renew this Lease at the end of the thirty year term for another thirty year period, subject only to such adjustment of rent as may be equitable between the parties in view of the economic conditions existing at that time. In the event that agreement cannot be reached as to the amount of rent, both parties agree that three appraisers shall be appointed . . . , whose purposes will be to fix the fair rental value of the land, and in the event of their failure to agree, or in the event that either party hereunder refuses to accept the appraisal figure the fair value of the rental shall be determined by a court of competent jurisdiction sitting in equity, and during the renewal of this Lease for the second thirty-year term the fair rent value of the land shall be fixed at the beginning thereof in this manner . . . (Emphasis added.)

return on their investment. The appraiser testified a fair rental value would be \$126,500. The second appraiser for defendants considered other leases for land only in the general area and gave the opinion this resulted in an annual rental value of \$112,900. He also valued the real estate as if it were not improved at \$1,184,000 and used a multiplier of twelve percent to arrive at an annual rental of \$135,000.

The trial court, after hearing the evidence, determined plaintiff should pay to defendants an annual rent of \$104,632. This appeal follows.

Plaintiff contends the trial court should have fixed the rental at \$80,000 a year. Defendants contend the trial court should have fixed the rental at \$132,337.15 a year. Plaintiff contends the trial court did not do equity. It contends the trial court failed to consider the fact the original parties to the lease were aware of the purpose of the lease and the fact the property would be improved with a shopping center. Plaintiff further argues the actual rents it receives from its tenants must be considered along with the fact it assumes all the risk attendant to rentals.

Defendants contend the court should have considered the economic condition of the area, not the economic condition of the plaintiff and the trial court arbitrarily discounted the testimony of their experts.

We consider the arguments collectively. The case was tried in equity, consequently, we review de novo. Citizens Savings Bank v. Sac City State Bank, 315 N.W.2d 20, 24 (Iowa 1992). We look first to the terms of the lease and the principles of contract construction. It is the cardinal principle of contract construction the parties' intent controls; and, except in cases of ambiguity, this is determined by what the contract itself says. See generally Iowa R. App. P. 14(f)(14); Iowa Fuel & Minerals, Inc. v. Iowa State Bd. of Regents, 471 N.W.2d 859, 862 (Iowa 1991); Berryhill v. Hatt, 428 N.W.2d 647, 654 (Iowa 1988). When a contract is not ambiguous, it will be enforced as written. Spilman v. Board of Directors, 253 N.W.2d 593, 596 (Iowa 1977); see also Village Supply Co. v. Iowa Fund, Inc., 312 N.W.2d 551, 555 (Iowa 1981); Fashion Fabrics of Iowa, Inc. v. Retail Investors Corp., 266 N.W.2d 22, 27 (Iowa 1978); Rector v. Alcorn, 241 N.W.2d 196, 202 (Iowa 1976). The purpose of contract interpretation is to ascertain the intent of the contracting parties at the time the contract was made. Home Federal Sav. and Loan Ass'n v. Campney, 357 N.W.2d 613, 617 (Iowa 1984); see Freese v. Town of Alburnett, 255 Iowa 1264, 1267, 125 N.W.2d 790, 792 (1964). When a contract contains both general and specific provisions on a particular issue, the specific provisions are controlling. Mopper v. Circle Key Life Ins. Co., 172 N.W.2d 118, 126 (Iowa 1969); Schlosser

v. Van Dusseldorp, 251 Iowa 521, 526, 101 N.W.2d 715, 718 (1960).

Plaintiff advances the lease provides little guidance for the court in determining the annual rent. The sole direction from the lease is rent should "be equitable between the parties in view of the economic conditions existing at the time." The lease does not direct any specific economic conditions be considered or excluded. We, therefore, consider all evidence of all economic conditions existing at the time of the renewal.

We look also to the principle of contract construction that provides a contract will not be interpreted giving discretion to one party in a manner which would put one party at the mercy of another, unless the contract clearly requires such an interpretation. Midwest Management Corp. v. Stephens, 291 N.W.2d 896, 913 (Iowa 1980); Harvey Constr. Co. v. Parmele, 253 Iowa 731, 741-42, 113 N.W.2d 760, 766 (1962).

We consider the economic condition of plaintiff, including the rental received from the shopping center and the attendant risks. We consider the economic condition of defendants, including the return they would receive if the land were bare. We consider the economic conditions of the area. We give weight to the testimony of all three appraisers. These factors must all be considered to follow the direction of the lease in making an equitable determination of the rent to be paid. However, unlike the

plaintiff and defendants, our reading of the trial court's ruling convinces us the trial court considered all these factors in arriving at her decision. We have reviewed the facts, including and especially the appraisals, and find no reason to depart from the trial court's decision.

AFFIRMED.