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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

Filed September 6, 1984

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4-211
83-1096

OWEN CRIST AUTO BODY SERVICES, INC.,

Plaintiff-Appellant,

vs

CITY OF DES MOINES, A MUNICIPAL CORPORATION, AND DES MOINES PUBLIC HOUSING AUTHORITY

Defendants-Appellees.

Appeal from the Iowa District Court for Polk County--M. C. Herrick, Judge.

Plaintiff appeals from dismissal of a petition at law seeking a declaratory judgment relating to construction of certain urban renewal statutes. REVERSED AND REMANDED.

Jack W. Rogers of Putnam, Putnam & Rogers, Des Moines, for plaintiff-appellant.

James E. Nervig, Assistant City Attorney, and Nolden Gentry of Brick, Seckington, Bowers, Swartz & Gentry, Des Moines, for defendants-appellees.

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

SACKETT, J.

Plaintiff, Owen Crist Auto Body Services, Inc., is an auto body shop which was constructed in conformity with zoning regulations of defendant City of Des Moines.

Pursuant to the Federal Housing Act of 1949, 63 Stat. 413, as amended, and Chapter 403, Code of Iowa, defendant city adopted an urban renewal plan entitled "R-40 Urban Renewal Plan." The property and business facilities of plaintiff Crist were included in the plan but Crist's property was not designated by defendant city for purchase under the plan.

The city contends Crist's property was subject to the conditions of the plan in the event Crist purchased any R-40 Urban Renewal property.

A parcel of land in question designated "R-40" lay adjacent to Crist's property. Section C 2d of the Urban Renewal Plan stated:

> "Applicability of Urban Renewal Controls to real property not to be acquired:
> These regulations and controls do not apply to property not to be acquired unless the owner thereof acquires project land."

In February of 1981, Crist submitted a proposal to the Urban Renewal Board to purchase tract R-40. Crist's proposal was in response to a public offering of the land by defendant city. Defendant Public Housing Authority also made a proposal for purchase of tract R-40. The proposals of Crist and the Public Housing Authority were both for the purpose of a parking lot which was within the purview of the plan.

Crist contends the city agreed to accept his proposal subject to working out certain details of the sale.

The city's legal department contended that if Crist acquired the R-40 parcel for a parking lot it was a substantial change in the plan requiring certain procedural changes and required one hundred percent of the consent by all redevelopers of the property in the plan. If Crist was unable to obtain one

hundred percent consent of all the redevelopers of the property in the plan, the city legal department contends that in order to purchase tract R-40 Crist would be required to place all of its operations under an enclosed roof.

Crist was unable to obtain the consent of the one hundred percent of the redevelopers necessary to modify the plan. Defendant Public Housing Authority refused to consent.

The city then sold the parcel for parking purposes to defendant Public Housing Authority.

Crist filed a petition for Declaratory Judgment, asking in part the court to to declare that the sale of the tract to Crist does not constitute a substantial change in the plan and that the consent of the redevelopers is not necessary to proceed with the sale. Crist's petition further requested the court to declare that the provision in the plan requiring the owner of property in the plan be subject to unreasonable and unconstitutional demands upon the property it owns when it acquires parcels in the plan be declared unreasonable and unconstitutional. Crist further asked for a determination of the constitutionality of permitting a public agency to purchase a tract in the plan without restrictions as compared to restrictions imposed upon private persons.

The defendants moved to dismiss the petition claiming that the city did not have the power to convey parcel R-40 to Crist because to do so would violate the applicable Urban Renewal Plan and if the city did have the power to convey that the question of whether to convey to Crist was a question to be decided by the city in its sole discretion and that decision may not be disturbed by the court.

The trial court sustained the defendants' motion to dismiss for the reason that the City of Des Moines had the legal right to convey the property in question to the Des Moines Public Housing Authority, and that the discretion to do so is vested in the City Council and may not be altered or changed by the court. From this ruling Crist has appealed.

I.

Crist contends that the trial court erred in sustaining the defendants' motion to dismiss and in dismissing the petition on the grounds that the city had discretionary powers to convey the land.

Iowa Rule of Civil Procedure 104(b) provides:

> "Failure to state a claim on which any relief can be granted, may be raised by Motion to Dismiss such claim, . .

Iowa Rule of Civil Procedure 69 provides:

> (a) Claim for Relief. A pleading which sets forth a claim for relief . . . shall contain (1) a short and plain statement of the claim showing the pleader is entitled to relief, and (2) a demand for judgment for the relief to which he deems himself entitled . . .

Crist's petition prayed for a judgment declaring that the sale of R-40 to Crist does not constitute a substantial change in the plan, that defendant public housing be divested of their ownership, that the requirements of the plan are unconstitutional and unreasonable and that a determination be made of the constitutionality of permitting a public agency to purchase a tract without restrictions imposed upon private persons.

The petition states facts on which relief can be granted. Grounds of a motion to dismiss a pleading because it does not state a cause of action must be based on the contents of the pleading assailed. Facts not so appearing, except those of which judicial notice must be taken, must be ignored. Moravek v. Davenport Community School District, 262 N.W.2d 797, 800 (Iowa 1978). The allegations are construed in their light most favorable to the pleader and doubts are resolved in his favor. Curtis v. Board of Supervisors of Clinton County, 270 N.W.2d 447, 448 (Iowa 1978).

II.

Defendants contend that the trial court was correct in sustaining the motion because the city has, as the trial court ruled, the legal right and discretion to convey the property to the defendant Public Housing Authority.

Iowa Code 403.12(1)(a)[1] makes provision for sale of urban renewal property to a municipality without complying with the provision of Iowa Code 403.8(2). Defendants contend that because of this discretion the court may not pass on the wisdom of the council's decision. Crist has requested a determination of the constitutionality of such a provision.

The applicable statute allows the waiver only on a sale to a municipality. No determination can be made from the record before us that property can be conveyed to defendant Public Housing Authority by virtue of the exemption of 403.12(1)(a).

We therefore reject defendants' arguments that the city has the legal right and discretion to convey to defendant Public Housing Authority.

Defendants contend that the dismissal was justified because a conveyance to Crist would have violated the applicable urban renewal plan. This contention of the defendants is without merit because Crist's petition is seeking a determination of the reasonableness and constitutionality of that provision.

III.

Defendants further assert that declaratory relief is unavailable to Crist. We disagree. Crist was a bidder at a public sale. His purchase of the applicable tract would have been consummated but for the urban renewal modification provision. The procedure for declaratory relief should be given a reasonably liberal construction. Keller v. City of Council Bluffs, 246 Iowa 202, 206, 66 N.W.2d 113 (1954). Crist has been deprived of his right to bid on the property.

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Powers of municipality.

1. For the purpose of aiding in the planning, undertaking or carrying out of an urban renewal project located within the area in which it is authorized to act, any public body may, upon such terms, with or without consideration, as it may determine:

a. Dedicate, sell, convey or lease any of its interest in any property, or grant easements, licenses or other rights or privileges therein to a municipality; Iowa Code §403.12(1)(a)(1981).

"Where plaintiff is arbitrarily and unreasonably deprived of its right to bid at a public sale, it has standing to maintain an action to challenge the sale to another bidder as an adversely affected . . ." Inn Operations, Inc. v. River Hills, Etc. Co., 261 Iowa 72, 87, 152 N.W.2d 808 (1967). In Inn Operations "Plaintiff had been invited to submit proposals on the development of a parcel. Plaintiff, along with others, had gone to the expense and trouble to do so. Plaintiff could expect fair treatment and an opportunity to bid with the others, when the city had decided what restrictions would be acceptable to it and adopted them. The determination of plaintiff's standing must therefore depend on whether the condition by which it was prevented from participating in the sale was proper and valid."

We hold that the trial court erred in sustaining the defendants' motion to dismiss.

REVERSED AND REMANDED.