FILED
AUG 26 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

MILLARD H. KRASNE, as Executor of the Estate of Rose Krasne; et al.,

Plaintiffs-Appellants,

vs.

CITY OF COUNCIL BLUFFS as Council Bluffs Urban Renewal Authority,

Defendant-Appellee.

Filed August 26, 1980

0-171
2-64016

Appeal from Pottawattamie District Court - E. F. Hanson, Judge.

The plaintiffs appeal from the trial court judgment for defendant city in action for breach of a contract. - AFFIRMED.

Frank W. Pechacek, Jr., of Smith, Peterson, Beckman & Wilson, Council Bluffs, for plaintiffs-appellants.

Douglas S. Lash, of Porter, Lash, Reilly & Tauke, Council Bluffs, and Ken Whitacre, Office of City Attorney, Council Bluffs, for defendant-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

The plaintiffs appeal from a trial court judgment for defendant city in action for breach of contract between the parties concerning the sale of real property to the city. We affirm.

In 1971, the city purchased plaintiffs' properties for an Urban Renewal Project. During negotiations a question of tax exemption on these properties arose. Prior to 1971, the county automatically granted tax exemptions for properties acquired for these purposes for the year of sale. However, the county assessor changed his position and proposed these properties to be in a situation where taxation was required. This issue had not been resolved before the contract was executed or properties transferred. To allow for the uncertain status, a provision in the contract was amended to read:

> 12. The seller shall pay 100% of the 1970 taxes payable in the year 1971 and all unpaid taxes for prior years that are a lien on the property. In the event title to this property passes to the City of Council Bluffs prior to the second Monday in September of any year, then no taxes will be due the following year provided, however, the property is exempted from tax assessments under City ownership. If title passes to the City subsequent to that date, or if the property is not exempted from taxes under City ownership, a prorata share of the taxes for the year in which title passes to the City, due and payable the following year, will be paid by the seller in an amount equal to the percentage of time between January 1 of said year and the date title passes to the City, which percentage bears to the total year. Under this agreement, if the seller will be responsible for payment of taxes due in the year following transfer of title to the City, the seller agrees that the City may withhold from the monies due the seller at the time of passing title to the City an amount of money equal to the seller's prorata share, plus 10% based on the actual amount of tax due and payable in the year title passes, which money is to be held in trust by the City for the account of the seller for the payment of the seller's share promptly when payable to and a final accounting to be made to the seller immediately after payment.

The property was transferred to the city prior to the specified date. The city took action to gain a determination of the tax status on an informal basis by conferring with the county assessor and the Attorney General and, finally by initiating suit against the county in the district court. The plaintiffs were apprised of the city's actions and were asked to review the petition prior to filing suit. The district court found the properties to be tax exempt, and the county appealed. The Supreme Court of Iowa found the trial court lacked jurisdiction of the matter because administrative remedies were

appropriate but had not been sought, nor exhausted prior to judicial action. City of Council Bluffs v. Pottawattamie County, 254 N.W.2d 18 (Iowa 1977). The court did not address the merits of the tax question, but its decision resulted in taxation of the properties for the year of sale, which tax was paid by the city from the escrowed funds retained from the purchase price owed to the plaintiffs.

Plaintiffs then brought this action for damages for their failure to obtain the return of the escrowed funds. Their petition alleged, in part:

> That under the terms of the Offer of Sale of Land which was entered into between the plaintiffs and the defendant the parties entered into a contractual agreement wherein the defendant would refund to the plaintiffs the funds which were put in escrow to pay property taxes if it was determined that the city, as owner of the property, was exempted from paying property taxes.
>
> That the actions of the defendant in failing to submit the issues of exempt property to the Pottawattamie County Board of Review constituted a breach of the contract of the Offer of Sale of Land.
>
> That the defendant has failed to refund the property taxes which it has held in escrow and has therefore breached its contract with the plaintiffs.

At the close of the evidence the trial court sustained the city's motion to withdraw the case from the jury and entered judgment for the city based upon its determination that plaintiffs had failed to establish a right of recovery as a matter of law.

Plaintiffs urge on appeal that the trial court erred in withdrawing the case from the jury. Although no statutory provision specifies the exact procedure which was followed in this case, Iowa law recognizes the court's power to refuse to submit an issue to the jury. It is the court's province to apply the law where there is no dispute on the evidence or as to the inferences to be drawn from the facts. City National Bank of Auburn, Ind. v. Mason, 192 Iowa 1048, 186 N.W. 30 (1922); Vickery v. Armstead, 190 Iowa 803, 180 N.W. 893 (1921). In determining whether there were issues in the present case for the jury to decide, we must consider both the nature of plaintiffs' claim and the evidence offered in support of said claim.

Initially, we note that there is no dispute that the condition required by the contract for return of the escrowed funds did not occur. The property was not "exempted from taxes." In the escrow provisions of the agreement, the city was to be protected in the event it had to pay the tax. The issue in this regard is not exempt status in the abstract, but rather actual success in escaping the tax liability.

In apparent recognition of this fact, the plaintiffs' alleged theory of recovery is the failure of the city to take the correct procedural steps to secure a determination of the taxable status of the property after the city took title thereto. Specifically, the issue turns upon plaintiffs' allegation that the city breached the contract by "failing to submit the issue of exempt property to the Pottawattamie County Board of Review."

The trial court, although recognizing that the City assumed some obligation to secure a determination as to whether or not the involved property was exempt from taxation, ultimately concluded in its ruling withdrawing the case from the jury that

> . . . there is nothing in the record from which the Court could instruct relative to the standard of care or standard of skill required of the defendant's attorney in carrying out the obligation of the City to procure a definitive finding as to the tax-exempt status of the property, the jury could arrive at its decision on breach of the obligation only through speculation and conjecture.

As we interpret the contract in the present case, it does not set forth the extent to which the city was required to go in determining the taxable status of the property. The parties at the time of the making of the agreement hoped that this could be accomplished merely by negotiations with the assessor. Although the city undertook the obligation to carry the matter further by initiating legal proceedings, we can find nothing in the record to indicate that it thereby incurred any contractual responsibility if the effort to secure the desired determination failed for any reason.

Because the agreement does not spell out the efforts which the city was required to undertake in pursuing this matter, it must be construed according to the practical construction placed thereon by the concerned parties. Loulie v. Plumb, 250 N.W.2d 56, 59 (Iowa 1977); Collins v. Isaacson, 261 Iowa 1236, 1243, 158 N.W.2d 14, 18 (1968). The record clearly reflects that the manner in which the city did proceed was acquiesced in by the attorneys representing the plaintiffs. No suggestion was made that there was any necessity to go before the board of review until after the declaratory judgment action had failed. Absent a contractual duty on the city's part to proceed with such undertaking, we believe that plaintiffs' theory of breach of contract must fail. A claim of negligence has not been asserted. The trial court was correct in removing the case from the consideration of the jury and in entering judgment for the defendant.

Based upon our view of the issues, it becomes immaterial in deciding this appeal what the result would have been had the proper procedural steps been taken to secure a determination of the taxable status of the property before the board of review. Therefore, those issues relating to the admissibility of evidence on this issue need not be considered.

AFFIRMED.