IN THE COURT OF APPEALS OF IOWA

No. 9-088 / 98-290

PROJECTS PLUS, LTD., and WENDELL W. COREY,

Plaintiffs-Appellants,

FILED

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vs.

LEONARD W. SAPP, GLEN P. GARRISON, and LINCOLN HERITAGE PROPERTIES, INC.,

Defendants-Appellees.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

The plaintiffs appeal a district court order granting the defendants' motion for summary judgment on plaintiffs' breach of contract action for commissions due on commercial leases. **AFFIRMED IN PART; REVERSED IN PART AND REMANDED.**

Brian D. Miller of Oltrogge Law Office, P.C., Clear Lake, for appellants.

Timothy D. Roberts of Anderson, Roberts & Porth, P.L.C., Burlington, for appellees.

Heard by Streit, P.J., and Vogel, and Zimmer, JJ.

ZIMMER, J.

Plaintiffs Projects Plus, Ltd. and Wendell W. Corey appeal a district court order granting in full the defendant's motion for summary judgment on plaintiffs' breach of contract action for commissions due on commercial leases. Though appeal was noticed on the entire summary judgment ruling, plaintiffs have only challenged part of the district court's order. To the extent of that challenge, we reverse. In all other respects, the summary judgment ruling is affirmed.

Wendell Corey is the president of Projects Plus, Ltd., an Iowa corporation located in Mason City. On September 2, 1987, Corey, on behalf of Projects Plus, entered into a written contract wherein the defendants, Leonard Sapp, Glenn Garrison, and Lincoln Heritage Properties, Inc., agreed to pay commissions for all leases obtained by Projects Plus in certain shopping centers owned by defendants. In 1988, plaintiffs entered into a written contract/partnership agreement with defendants wherein the defendants promised to make distributions of net cash receipts and sales proceeds to Projects Plus. In 1989, defendants sold two properties, Burlington Plaza and Clinton Plaza, to a third party. Defendants however, did not distribute sales proceeds to Projects Plus or Corey, but rather applied the proceeds to debt owed on Burlington Plaza and a third property, Cedar Falls Holiday Plaza.

On July 18, 1996, Projects Plus, Corey, and defendants entered into an agreement whereby plaintiffs agreed to release any and all claims they may have possessed regarding the Holiday Plaza and Burlington Plaza properties. In exchange,

plaintiffs were granted an option to purchase these properties. The contract read in pertinent part:

> The undersigned Optioner hereby grants to Optionee the exclusive right and option to purchase the real estate commonly known as Burlington Plaza and Holiday Plaza . . . .
>
> *Consideration.* In the event this Option is not exercised . . . this agreement shall automatically constitute the full and unconditional release of each Optioner, Burlington Plaza Limited Partnership, Holiday Plaza Limited Partnership, and Lincoln Heritage Properties, Inc. of any and all claims, whether now known or unknown, of or by, Wendell W. Corey, Projects Plus, Ltd. . . . relating directly or indirectly to the subject properties.

The unexercised option expired August 30, 1996. The release did not name or list the Clinton Plaza West property. The contract clearly indicates, and the parties do not dispute, that the "subject properties" are Burlington Plaza and Holiday Plaza.

On September 2, 1997, plaintiffs filed a petition against defendants, alleging defendants breached the September 1987 contract by not paying them certain allegedly earned commissions. Defendants filed an answer alleging, for purposes of this appeal, that plaintiffs had released all claims they may have had against defendants by failing to exercise the purchase option under the 1996 contract.

Defendants filed a motion for summary judgment, claiming there were no genuine issues of material fact regarding the release provisions of the option contract. The district court granted summary judgment, concluding the terms of the option contract constituted a global release of all claims plaintiffs had regarding the shopping centers. Thereafter, plaintiffs filed a Rule 179(b) motion, claiming the release made no mention of the Clinton Plaza, and consequently did not bar plaintiffs from bringing claims regarding that property.

They further argued that because the court stated during hearings it would only rule on claims against the Burlington and Cedar Falls properties, summary judgment should only have been granted with respect to their claims against those properties. They argued their claims concerning the Clinton Plaza property should have remained intact. The district court overruled the motion.

On appeal, plaintiffs do not challenge the district court's entire ruling. Rather, they contend that to the extent summary judgment was granted, it should have been granted only to the claims against the Holiday Plaza and Burlington Plaza properties and that any claims against the Clinton Plaza property should remain. They argue a genuine issue of material fact exists regarding whether the purchase–option and release contract excluded the Clinton property.

I. Scope of Review. Summary judgment is proper when there is no genuine issue of fact and the moving party is entitled to judgment as a matter of law. *See* Iowa R. Civ. P. 237(c); *Pierce v. Iowa-Missouri Conference of Seventh-Day Adventists*, 534 N.W.2d 425, 426 (Iowa 1995). A fact question is generated if reasonable minds could differ on how the issues should be resolved. *See Pierce v. Iowa-Missouri Conference of Seventh-Day Adventists*, 534 N.W.2d at 426. We review for correction of errors at law. *See* Iowa R. App. P. 4; *Huber v. Hovey*, 501 N.W.2d 53, 55 (Iowa 1993).

II. Appropriateness of Summary Judgment. Plaintiffs argue the release of claims concerned only the Burlington Plaza and Holiday Plaza properties, and therefore does not preclude claims concerning the Clinton Plaza properties. Defendants contend the option contract was a global release of all claims held by plaintiff, known or not, and that if

plaintiffs wished to reserve certain claims, additional reservations should have been made part of the contract.

A release is a contract, and its validity is governed by the usual rules relating to a contract. *See Stetzel v. Dickenson*, 174 N.W.2d 438, 439 (Iowa 1970). In construing written contracts, we are guided by the cardinal principle that intent of the parties must control; and, except in cases of ambiguity, this is determined by what the contract itself says. *See* Iowa R. App. P. 14(f)(14). Construction of a contract is the process of determining its legal effect and is always a question of law for the court. *See Farm Bureau Mut. Ins. Co. v. Sandbulte*, 302 N.W.2d 104, 107 (Iowa 1981).

In the matter presently before us, the parties' dispute does not turn on the legal effect of the release contract. Rather, whether the release reaches the Clinton Plaza property hinges on the factual question of whether the Clinton Plaza property is related to the Burlington Plaza or Holiday Plaza properties. We note the release contract does not mention Clinton Plaza by name, legal description, or other identifying factor, which might allow the court to resolve the dispute as a matter of law. Defendant impliedly concedes the factual nature of this dispute in arguing that the properties are related not because any language in the contract or extraneous evidence of intent so demonstrates, but rather because of evidence that proceeds from the sale of Clinton Plaza in 1989 were subsequently used against debt on the subject properties. After carefully reviewing the parties' briefs and the language of the option-release contract, we determine reasonable minds could differ as to whether the Clinton Plaza property is directly or indirectly related to the subject properties so as to bring it within its release provisions.

Because there is a dispute over material facts, we determine the district court erred in granting in full defendant's motion for summary judgment. We determine plaintiffs' claims regarding Clinton Plaza, to the extent the district court found them precluded by the option-release contract, should have survived summary judgment. The surviving portions of the district court's summary judgment are otherwise affirmed. We remand this case for further proceedings consistent with our decision today.

AFFIRMED IN PART; REVERSED IN PART AND REMANDED.

No. 98-290. [9-088] PROJECTS PLUS v. SAPP

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge. **AFFIRMED IN PART; REVERSED IN PART AND REMANDED.** Heard by Streit, P.J., and Vogel, and Zimmer, JJ. Opinion by Zimmer, J.

(6 pages $2.40)

Plaintiffs Projects Plus, Ltd. and Wendell W. Corey appeal a district court order granting in full the defendant's motion for summary judgment on plaintiffs' breach of contract action for commissions due on commercial leases. Plaintiffs and defendants entered into a contract wherein defendants would pay plaintiffs commissions on leases obtained by plaintiffs in certain shopping centers owned by defendants. The parties subsequently entered into another contract whereby plaintiffs were granted an option to purchase two shopping centers — Holiday Plaza and Burlington Plaza — owned by defendants in exchange for plaintiff's release of any and all claims plaintiffs may have had against defendants concerning those two shopping centers. The option went unexercised and eventually expired. Plaintiffs subsequently filed a petition alleging defendants breached the commissions contract concerning various shopping centers. The district court granted summary judgment to defendants, concluding the option contract constituted a global release of all claims plaintiffs had against defendants. Plaintiffs contend on appeal that summary judgment should not have been granted with regard to a third shopping center — Clinton Plaza — for which commissions are allegedly due. **OPINION HOLDS:** The option-release contract, per its language, pertains to claims relating directly or indirectly to certain named "subject properties," i.e. Holiday and Burlington Plazas. As a matter of law, we cannot say Clinton Plaza is a one of the "subject properties" under the option-release contract. Rather, we determine this is a factual question. Furthermore, we determine reasonable minds could differ as to whether Clinton Plaza is directly or indirectly related to the subject properties so as to bring it within the release provisions of the option-relelase contract. Because there is a dispute over material facts, we determine the district court erred in granting defendant's motion for summary judgment. We determine plaintiffs' claims regarding Clinton Plaza, to the extent the district court found them precluded by the option-release contract, should have survived summary judgment.