FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

HARVEY V. NOEL and HELEN S. NOEL, His Wife,

Appellants,

vs.

JEROME D. NOEL, Executor of the Estate of CHARLES EDWARD NOEL, Deceased,

Appellee.

Filed September 9, 1977

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2-57496

Appeal from Scott District Court - Alan L. Keck, Judge.

Appeal from dismissal of petition for declaratory judgment seeking to establish an oral agreement that plaintiffs have a right to occupy decedent's land until settlement of his estate and have a first option to purchase thereafter. - Judgment affirmed.

Harold C. Lounsberry, of Davenport, for Appellant.

Martin F. McCarthy, of McCarthy & Hart, of Davenport, for Appellee.

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

PER CURIAM

Plaintiffs brought a declaratory judgment to establish their right to possess farm land until settlement of the owner's estate and their right to buy the land from the estate. The land was owned by plaintiff Harvey Noel's father, Charles Noel. Defendant is the executor of Charles Noel's estate and is the brother of Harvey Noel. The trial court dismissed the petition.

Plaintiffs were occupying the land under written lease from Charles Noel. Initially a lease was executed March 1, 1963; a later lease was signed by the parties March 1, 1970. A dispute arose between Charles and his son Harvey resulting in a termination notice to Harvey effective March 1, 1973. Harvey responded with the instant suit claiming an oral agreement by which plaintiffs had the right to occupy the land until Harvey's estate was settled and that they then had a first option to purchase the land at the value appraised in the estate.

The first issue raised is whether the claimed oral agreements were separate and independent from the written lease. Trial court found both written leases were entered into subsequent to the alleged oral agreement, that the leases were plain and unambiguous and that any oral discussions were merged into the written instruments. We find the record supports the court and the parole evidence rule was properly applied. Becker v. Baker, 174 Iowa 97, 156 N.W. 317 (1916); Jacobsen v. Moss, 221 Iowa 1342, 1345, 268 N.W. 162 (1936). The claimed oral agreements are not collateral to the written leases such as to avoid the rule.

Plaintiffs' next claimed error is in the exclusion of evidence. An office memo of another lawyer was offered purporting to be a resume of a discussion with the executor. The exhibit was properly excluded as hearsay. Rubin Bros. Butter & Egg Co. v. Larson, 245 Iowa 741, 63 N.W.2d 908 (1954). Affidavits were also offered purporting to cover transactions between Charles Noel and plaintiff Harvey Noel. This evidence was inadmissible as hearsay and under §622.4, The Code.

Thirdly, plaintiffs claim the benefit of the doctrine of equitable estoppel. They assert they made valuable improvements to the land and buildings and defendant should be estopped to deny it. The trial court rejected the argument on

the ground there was no fraud, accident, or mistake pleaded. The court held there was a failure by plaintiff to carry the burden of proving their claims. By deposition before he died, and admitted at trial, the father, Charles Noel, vehemently denied plaintiffs' claims.

The principle of equitable estoppel is based on the idea that one who has made a certain representation should not thereafter be permitted to change his position to the prejudice of one who has relied on it. See Sanborn v. Maryland Casualty Company, 255 Iowa 1319, 1327, 125 N.W.2d 758, 763 (1964). The doctrine must be applied strictly and will not be enforced unless substantiated in every particular. Further, it will not be deemed to arise from facts which are ambiguous and nothing can be supplied by mere intendment. See Estoppel and Waiver, 28 Am. Jr.2d, §36. We agree with the trial court that the doctrine does not apply to this case. Judgment affirmed.