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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

C & F MAINTENANCE & PROPERTY MANAGEMENT, INC. and C. JAMES FABIAN a/k/a JAMES FABIAN,

Third-Party Plaintiffs-Appellants,

vs.

ELIASON AND KNUTH DRYWALL COMPANY, INC.,

Third-Party Defendant-Appellee,

and COMPLETE LINE REMODELING, INC,

Third-Party Defendant.

Filed August 26, 1987

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7-225
86-1243

Appeal from the Iowa District Court for Polk County (CL42-24447), Ray Hanrahan, Judge.

Third-party plaintiffs appeal from the trial court ruling sustaining the motion for summary judgment of third party defendant. **AFFIRMED.**

Stuart M. Pepper and Jeffery G. Flagg, Des Moines, for third-party plaintiffs-appellants.

Robin L. Goodman and Terrence A. Hopkins of Hopkins & Huebner, Des Moines, for third-party defendant-appellee.

Considered by Oxberger, C.J., and Snell and Hayden, JJ.

HAYDEN, J.

Third-party plaintiffs, C & F Maintenance & Property Management, Inc. (C & F) and C. James Fabian, appeal from the trial court's ruling sustaining the motion for summary judgment of third-party defendant, Eliason and Knuth Drywall Company, Inc. (Eliason). On appeal C & F asserts there exist a number of genuine issues of material fact. We affirm.

In 1972 Royal Inns of America (Royal Inns) constructed a motel in West Des Moines. By a city ordinance the Uniform Building Code (UBC) applied to the construction of the motel. The Code required the building to be one hour fire resistive. Generally this necessitates installing one-half inch thick sheetrock (gypsum board) throughout the facility. Eliason was hired to perform all of the drywall work on the motel and a contract was entered into between Royal Inns and Eliason. Eliason did not sheetrock the corridor and stairwell ceiling between the first and second floor and between the second floor and the roof. Another subcontractor installed an accoustical tile drop ceiling at these locations.

Royal Inns sold the motel in 1977 and it was later purchased by C & F in 1980. In 1981 the motel was devastated by a fire that resulted in two deaths. The fire swept through the areas without sheetrock within one-half hour. The areas with sheetrock did not burn. C & F sustained losses of at least 2.7 million dollars and had a wrongful death claim brought against it. C & F thereupon brought this third-party claim against Eliason for negligence and breach of contract.

C & F asserts the contract between Royal Inns and Eliason called for Eliason to install sheetrock to the corridor and stairwell ceilings. C & F contends Eliason negligently failed to do so and was therefore in violation of the UBC and in breach of the contract. Eliason asserts the contract only required it

to install sheetrock to the corridor and stairwell walls up to the ceilings. It is undisputed Eliason did sheetrock the walls.

The trial court, after hearing extrinsic evidence, determined Eliason's interpretation of the contract was correct and therefore granted it summary judgment. The issue on appeal is whether the jury, rather than the trial court, should have determined the contractual duty, if any, of Eliason to sheetrock the corridor and stairwell ceilings.

The disputed provision of the contract required Eliason to install "[s]heetrock to corridor and stairwell ceilings in rental areas." As stated above, Eliason contends the parties to the contract, Eliason and Royal Inns, intended this provision to require sheetrock to the corridor and stairwell walls up to the ceilings. Eliason relies upon the depositions of Merle Knuth, who was the manager of Eliason when the contract was signed, and Bryan Oldfield, who was a vice president of Royal Inns at that time. Mr. Knuth and Mr. Oldfield were responsible for negotiating and signing the contract for their respective employers.

Mr. Knuth and Mr. Oldfield stated Eliason was not to sheetrock the corridor and stairwell ceilings under the contract. Mr. Knuth noted that his bid proposal to Royal Inns suggested such an installation and provided a dollar amount to be added to the base figure if Royal Inns elected to add that additional work. Both he and Mr. Oldfield stated Royal Inns chose not to do so. Mr. Oldfield further stated the disputed provision of the contract quoted above was shorthand, denoting that sheetrock was only to be installed up to the corridor and stairwell ceilings. This was to specifically notify Eliason it was not to sheetrock those ceilings.

Additionally, it is undisputed Eliason did not sheetrock the corridor and stairwell ceilings or get paid for doing so. Nor was there any objection from Royal Inns that they did not do this work.

Against this extrinsic evidence of the intentions of the parties to the contract, C & F asserts the jury should be allowed to weigh the credibility of this evidence. C & F also introduces a statement of an expert witness, Carlyle Peterson (a structural engineer), regarding his interpretation of the contract. However, C & F provides no extrinsic evidence regarding the intentions of the parties contrary to the statements of Mr. Knuth and Mr. Oldfield. Nor does C & F provide evidence tending to challenge the veracity of those statements.

Generally interpretation, ascertaining the meaning of contractual words, is an issue for the court to decide as a matter of law unless it depends on extrinsic evidence or on a choice among reasonable inferences from extrinsic evidence. Farm Bureau Mut. Ins. Co. v. Sandbulte, 302 N.W.2d 104, 107-08 (Iowa 1981); Connie's Constr. Co. v. Fireman's Fund Ins. Co., 227 N.W.2d 207, 210 (Iowa 1975). However, if the extrinsic evidence is not controverted and different inferences may not be drawn therefrom, the interpretation falls within the general rule and is an issue for the court alone. General Casualty Co. v. Hines, 261 Iowa 738, 745, 156 N.W.2d 118, 122-23 (1968); State Farm Mut. Auto. Ins. Co. v. Townsend, 361 N.W.2d 332, 334-35 (Iowa App. 1984).

In this case, the extrinsic evidence is not controverted. Both signatories to the contract have stated Eliason was not obligated under the contract to sheetrock the corridor and stairwell ceilings. There is no extrinsic evidence to the contrary. Nor can different inferences be drawn from these statements. They are unambiguous and there is no evidence suggesting they are false or misleading. We conclude the trial court was correct in determining the interpretation of the contractual provision "[s]heetrock to corridor and stairwell ceilings

in rental areas" was for the court and not the jury. We also conclude the trial court's interpretation that Eliason was not required under the contract to sheetrock the corridor and stairwell ceilings was correct.

C & F next asserts Eliason negligently failed to follow the UBC by not installing sheetrock to the corridor and stairwell ceilings. As the trial court stated, "[Eliason's] obligation to comply with all building codes cannot be said to extend to work it did not contract to do." We agree. It is undisputed the work Eliason was obligated to and did perform complied with the UBC.

We now address the propriety of summary judgment under these circumstances. Summary judgment will not be granted unless it is shown there is no genuine issue of material fact. Matherly v. Hanson, 359 N.W.2d 450, 453 (Iowa 1984). This procedure is functionally the equivalent of a directed verdict, and every legitimate inference that reasonably can be deduced from the evidence should be afforded the nonmoving party; a fact issue is generated if reasonable minds can differ on how the issue should be resolved. Knapp v. Simmons, 345 N.W.2d 118, 121 (Iowa 1984).

As Eliason did not have a duty under the contract to sheetrock the corridor and stairwell ceilings, there is no genuine issue as to its negligent failure to do so. C & F asserts that issues of negligence, contributory negligence and proximate cause, the resolution of which require the determination of the reasonableness of the acts and conduct of the parties under all of the facts and circumstances of the case, cannot ordinarily be disposed of by summary judgment. See Daboll v. Hoden, 222 N.W.2d 727, 733 (Iowa 1974). We agree. However, the question of negligence is inapplicable in the absence of a duty. And the issue of the duty of Eliason under the contract did not depend upon the reasonableness of Eliason's conduct but upon the intent of the parties to the contract.

C & F's final assertion is that principles of issue preclusion and res judicata prevented Eliason from filing a second motion for summary judgment and a renewal of that second motion since its first motion was overruled. Eliason's first motion was filed on December 19, 1984, and overruled on April 25, 1985. Eliason's second motion was filed on June 26, 1986, and overruled on July 30, 1986. Immediately after entry of that ruling, Eliason moved to renew its second motion. On August 4, 1986, the trial court sustained this second motion.

C & F alleges Eliason merely realleged the same grounds using the same evidence. We disagree. Between the time of the first and second motion, Eliason located Mr. Oldfield and obtained his affidavit. Moreover, the parties were able to depose him on August 1, 1986, and this deposition was newly available to the trial court at the hearing on Eliason's renewed second motion, which was held that same day. We conclude principles of issue preclusion and res judicata did not prevent the filing of Eliason's second motion, the renewal of that motion, nor the trial court's ruling to sustain that motion.

AFFIRMED.