

IN THE COURT OF APPEALS OF IOWA

No. 6-748 / 06-0188
Filed December 13, 2006

DAVID YOUNG,
Plaintiff-Appellant/Cross-Appellee,

vs.

KEN-MO FARMS, INC., AND TERRY MOZENA,
Defendants-Appellees/Cross-Appellants.

Appeal from the Iowa District Court for Dubuque County, Lawrence H. Fautsch, Judge.

David Young appeals the dismissal of his petition alleging fraudulent misrepresentation. Ken-Mo Farms, Inc. cross-appeals the district court's refusal to award attorney fees. **AFFIRMED.**

Robert Murphy, Dubuque, for appellant.

Les V. Reddick of Kane, Norby & Reddick, P.C., Dubuque, for appellee.

Considered by Sackett, C.J., and Vaitheswaran, J., and Robinson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

VAITHESWARAN, J.

David Young purchased an apartment complex from Ken-Mo Farms, Inc. Following the purchase, Young sued Ken-Mo and a realtor named Terry Mozena. He alleged that the Defendants made false representations concerning rent, utilities, and the condition of a boiler. Ken-Mo and Mozena denied the allegations and filed a counterclaim for breach of contract and attorney fees. The case proceeded to trial. At the close of Young's case, the district court dismissed Mozena from the lawsuit, concluding he was not a proper party. After trial, the court dismissed Young's petition but refused Ken-Mo's request for attorney fees. Young appeals and Ken-Mo cross-appeals.

In ruling against Young, the district court relied on language in the purchase contract stating, "[N]o representations made by the Seller or its Agent in the negotiations of this sale are being relied upon unless incorporated herein or attached hereto in writing." The court concluded that this language precluded Young "from recovering in this action."

On appeal, Young contends the court erred in reading the contract to bar his fraudulent misrepresentation claim. He asserts: "Because misrepresentations were made here, not only on expenses but also on rentals, the provision of the contract to the contrary, particularly a boiler plate non-negotiated provision, should not be held to be controlling."

We need not reach Young's assertion that misrepresentations were made or Ken-Mo's related contention that Young failed to prove the elements of a fraudulent misrepresentation claim. This is because we agree with the district court that the plain language of the contract precludes Young's fraudulent

misrepresentation claim. See *SDG Macerich Properties, L.P. v. Stanek, Inc.*, 648 N.W.2d 581, 586 (Iowa 2002) (“The contract will be strictly construed if its words are clear and unambiguous.”). Additionally, there is no dispute that the contract was prepared by Young’s realtor and not by Ken-Mo. Therefore, the language is to be construed against him, if construction is necessary. See *Vint v. Ashland*, 258 Iowa 591, 594, 139 N.W.2d 457, 459 (1966).

We turn to Ken-Mo’s cross-appeal concerning the district court’s refusal to award attorney fees. The contract authorizes the payment of attorney fees where either party “fails to fulfill the agreement.” The district court concluded that Young did not breach the contract by filing his “good faith action against Defendant based on alleged misrepresentations, regardless of the outcome of the action.” We discern no abuse of discretion in this ruling. See *McNally & Nimergood v. Neumann-Kiewit Constructors, Inc.*, 648 N.W.2d 564, 570 (Iowa 2002) (reviewing attorney fee award entered pursuant to contract under this standard).

AFFIRMED.