

IN THE COURT OF APPEALS OF IOWA

No. 8-1047 / 08-0821
Filed February 19, 2009

R.L. SMITH, L.T.D.,
Plaintiff-Appellee/Cross-Appellant,

vs.

COMMUNITY NATIONAL BANK,
Defendant,

and

GARY E. SINDELAR, INC.,
Defendant-Appellant/Cross-Appellee,

and

GARY E. SINDELAR, Individually,
Defendant-Appellant/Cross-Appellee,

and

**FNIS FLOOD SERVICE, LP d/b/a LSI
FLOOD SERVICES,**
Defendant.

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

Defendant appeals from the district court's judgment finding the defendant
in breach of contract. **AFFIRMED.**

Robert W. Goodwin of Goodwin Law Office, P.C., Ames, for appellant.

John J. Rausch of Rausch Law Firm, P.C., Waterloo, for appellee.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

SACKETT, C.J.

Defendants, Gary E. Sindelar, Inc. and Gary E. Sindelar, individually, appeal from the district court judgment finding Sindelar breached an oral contract with the plaintiff, R.L. Smith, L.T.D. Sindelar contends the court erred in finding (1) the parties' orally agreed that Sindelar would conduct a flood plain search on certain property, (2) that Sindelar breached the agreement by not adequately searching flood records and not conveying known information about flooding issues to Smith, and (3) Smith was not required to mitigate damages by appealing the city's decision rejecting the proposed development plans. We affirm.

I. BACKGROUND.

Defendant, Gary Sindelar, is a civil engineer with forty years of experience who partially owns an engineering company. In February 2005, the plaintiff, R.L. Smith, entered into a purchase agreement to buy 5.5 acres in Raymond, Iowa, for \$175,000. Smith wanted to develop the land and have it subdivided into residential lots. As part of the agreement, Smith was to secure funding by April 15, 2005, and closing was to take place by May 16, 2005. Another condition of the agreement was that Smith was to obtain "full subdivision approval by April 30, 2005, including wetland clearance, flood clearance, city approvals, roadway approvals and drainage approvals." Smith hired Sindelar to perform the engineering work required to develop the land. Sindelar orally agreed "to prepare [the] preliminary plat, plans and specifications, construction observation, and final plat" for the property.

Upon first looking at the property together, Sindelar claims he asked Smith whether there were any flood issues with the land. Smith purportedly responded that he believed there were no flood issues. Although no specific flood issues were known by Smith, Sindelar testified he could tell from the lay of the land that drainage issues would need to be considered in developing the plat. Smith believed there were no flood issues because the bank Smith obtained financing from to make the purchase conducted a flood analysis and determined the existing structure on the land was not in a flood zone. Sindelar testified that he relied on Smith's assurance there was not a flood issue with the property.

Sindelar began the engineering work for the property and composing the preliminary plat. As part of this process, Sindelar had surveyors analyze the property from maps in the county office. He asked his surveyors to look at the property on the city of Raymond flood map. The city of Raymond flood map was from 1976 and did not show the property since it was not incorporated into the city at that time. The surveyors did not look at a county flood map which showed parts of the property did lie in a flood zone. Therefore, Sindelar considered drainage issues and flood elevation calculations based on one-hundred year flood estimates in his design of the preliminary plat, but he did not identify any of the property as lying in a flood zone. In evaluating the preliminary plat, the city engineer had some concern about elevation of the lots and drainage. An email to Sindelar from the city manager on April 7, 2005, listed proposed changes to the preliminary plat and stated,

Also, prior to the final platting we would recommend that you investigate the potential for any of these lots to flood. If filling of

these lots will negatively impact upstream or downstream residents in the area alternate storage will need to be provided. Also a minimum Finished Floor elevation may need to be established if backwater is a concern on any of these lots.

After some revisions were made, the planning and zoning committee and the city council approved the preliminary plat in April 2005. On April 22, 2005, Smith purchased the property.

As Sindelar developed the final plat for the property, the city determined from its own research of FEMA and county flood maps that parts of the property were in a flood zone. The city engineer forwarded this information on to Sindelar on May 24, 2005, and indicated that certain criteria must be met prior to construction. Sindelar requested the city provide him the maps to confirm this and asked Smith to provide the information showing the property was not in a flood zone. On June 3, 2005, Sindelar submitted the final plat to the city engineer and several days later the engineer forwarded the FEMA maps to Sindelar showing the flood zone designation. On June 13, 2005, the city engineer provided comments on the final plat and explained that due to the flood zone designation, additional requirements were needed, including submitting certain information to the department of natural resources and FEMA. Smith was copied on this letter. Smith then provided Sindelar with the bank's flood evaluation and noted that it may not be helpful since it only determined an existing structure on the land was not in a flood zone and did not analyze the entire property.

Sindelar began working with the department of natural resources, FEMA, and the city to meet the necessary requirements to proceed with the

development. Meanwhile, some neighboring landowners submitted a letter to the mayor, city council, and planning and zoning committee requesting the city address, among other things, flood issues prior to taking further action on the development. Sindelar submitted an updated final plat in January of 2006. The city engineer made additional comments and planned to recommend approval of the plat to the city council once the remaining issues were resolved. It appears Smith and Sindelar were willing to address these remaining concerns. At a planning and zoning committee meeting on February 7, 2006, the final plat was considered. The city engineer noted the final plat met requirements set by the DNR and the city's flood ordinance. Some residents attended and voiced their concerns. The committee then unanimously denied recommending approval of the final plat to the city council. The city council rejected the final plat on February 20, 2006. Though attempts were made to revive the project and submit a new preliminary plat, apparently those efforts failed.

Smith filed a petition at law asserting in part, that Sindelar's failure to identify the property as being in a flood zone and disclose it to Smith prior to Smith's purchase of the property was a breach of their oral contract and caused damage to Smith. Following a bench trial, the district court found the parties did have a contract that Smith breached by not adequately searching the flood maps prior to Smith's purchase of the property, and by not informing Smith that there was a possibility of flood plain issues given the lay of the land. It awarded damages to Smith in the amount of \$211,261.98. Sindelar appeals, contending there was no "meeting of the minds" between the parties to create a contract

term requiring Sindelar to conduct a flood plain search on the property. He also argues there is not substantial evidence to support a finding that he breached the contract. Last, he contends the district court should have required Smith to mitigate his damages by appealing the city's rejection of the final plat.

II. SCOPE OF REVIEW.

A breach of contract action tried at law is reviewed for correction of errors of law. Iowa R. App. P. 6.4; *Land O' Lakes, Inc. v. Hanig*, 610 N.W.2d 518, 522 (Iowa 2000). The findings of fact below have the effect of a special verdict and are binding if supported by substantial evidence. Iowa R. App. P. 6.4; *Van Oort Constr. Co., Inc. v. Nuckoll's Concrete Serv.*, 599 N.W.2d 684, 689 (Iowa 1999). Substantial evidence exists if a reasonable person would find it adequate to reach a conclusion. *Land O' Lakes*, 610 N.W.2d at 522. We view the evidence in a light most favorable to the court's ruling and construe its findings broadly and liberally in favor of the judgment. *Equity Control Assocs., Ltd. v. Root*, 638 N.W.2d 664, 670 (Iowa 2001).

III. ANALYSIS.

Sindelar contends there was not substantial evidence to support the court's finding that there was a contract between the parties and that Sindelar breached the contract. The court determined the parties did have a contract where Sindelar agreed "to do what was necessary to gain approval of the platting of a subdivision." It found Sindelar breached the contract by not making an adequate search of the existing records which would have established that the property was in a flood zone prior to development of the preliminary plat. It also

determined Sindelar breached the contract by not advising Smith that he believed there was a possibility of flood plain issues due to the lay of the land.

“For a contract to be valid, the parties must express mutual assent to the terms of the contract.” *Schaer v. Webster County*, 644 N.W.2d 327, 338 (Iowa 2002) (citations omitted). We determine whether there is mutual assent and a meeting of the minds from objective evidence, not from the hidden intent of the parties. *Id.* The terms must be sufficiently definite for a court to determine the duty of each party and the conditions of performance. *Seastrom v. Farm Bureau Life Ins. Co.*, 601 N.W.2d 339, 346 (Iowa 1999). “A party breaches a contract when, without legal excuse, it fails to perform any promise which forms a whole or a part of the contract.” *Molo Oil Co. v. River City Ford Truck Sales, Inc.*, 578 N.W.2d 222, 224 (Iowa 1998).

Viewing the evidence in a light most favorable to the court’s ruling, there is substantial evidence to support the court’s finding there was a meeting of the minds between the parties and a contract was formed. There is also substantial evidence to support the court’s determination that Sindelar breached the contract. Sindelar’s own actions indicate that research of flood issues was part of the agreement. He admitted that he had surveyors look for the property on flood maps and admitted the surveyors looked at incorrect maps. He also testified that upon first seeing the land, he immediately believed drainage and flooding would be issues to consider in his work. His failure to adequately research the flood maps was a breach of the contract.

Sindelar also contends the district court erred in not requiring Smith to appeal the city council's rejection of the final plat to mitigate damages. Under Iowa Code section 354.10 (2007), a developer can appeal to the district court when a governing body improperly fails to approve a final plat. The district court determined that Smith was not required to appeal because it would have been unsuccessful given that the city council had legitimate grounds to reject the final plat. We agree with the district court. The record shows that the city had appropriate reasons for denying approval of the plat.

IV. CONCLUSION.

We affirm the district court. Substantial evidence supports the court's findings that the parties had an oral contract and that Sindelar breached the agreement. The district court did not err in finding Smith was not required to appeal the city council's rejection of the final plat in order to mitigate damages. In light of this conclusion, we need not consider Smith's cross-appeal.

AFFIRMED.