

IN THE COURT OF APPEALS OF IOWA

No. 9-487 / 08-1640
Filed October 21, 2009

**JOHN T. JONGMA, ALICE M. JONGMA,
THE ALICE M. JONGMA REVOCABLE TRUST by
and through ALICE M. JONGMA, Trustee,
and THE JOHN T. JONGMA REVOCABLE TRUST
by and through JOHN T. JONGMA, Trustee,
Plaintiffs-Appellants,**

vs.

**GRAND PORK, INC.,
Defendant-Appellee.**

Appeal from the Iowa District Court for Sioux County, Gary Wenell, Judge.

The plaintiffs appeal from the district court order granting summary judgment in favor of the defendant. **AFFIRMED.**

Ron D. Danks and Carly Smith of Myers, Myers, Danks & Smith, Pleasantville, for appellants.

Daniel E. Dekoter of Dekoter, Thole & Dawson, P.L.C., Sibley, for appellee.

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

EISENHAUER, J.

The plaintiffs appeal from the district court order granting the defendant summary judgment. They contend the court erred in applying the statute of frauds to the case. They also contend the court erred in holding the promissory estoppel exception did not apply. Because we find no error, we affirm.

I. Background Facts and Proceedings. John and Alice Jongma own property in Sioux County. In October 1997, they entered into two agreements with Major Pork, L.L.P. (Major Pork), which granted easements to allow Major Pork to place manure on their property. The easements were to last a maximum of ten years. The agreements did not require Major Pork to deposit any waste on the Jongmas' property, and provided the Jongmas the right to determine the amount of waste deposited on their property.

In February 1998, the Jongmas sold ten acres to Major Pork by way of warranty deed. Major Pork intended to construct hog confinement facilities on the property. The deed states, "And reserving however to the [Jongmas], their heirs, personal representatives, successors and assigns the right to the use of all excrements and associated animal waste products on said property."¹

The warranty deed and manure easements were recorded with the Sioux County Recorder. For the next three years, Major Pork allowed the Jongmas to

¹ The language of the warranty deed reserves the right to use of all excrement and animal waste to "the grantees," or Major Pork. This was a scrivener's error and the plaintiffs sought reformation of the contract to correct the error. In its ruling on summary judgment, the district court found reformation to be unnecessary because of its ultimate conclusion that the plaintiffs no longer possess any interest in the application of manure.

haul away manure for use in their farming operation and paid the Jongmas for its application.

In February 2001, the parties entered into two new “Manure Application Agreements.” The agreements were for a term of ten years, beginning on January 1, 2001, but would terminate prior to the scheduled termination date “if the Operator ceases to produce livestock at the location specified.” Each agreement further states: “This agreement constitutes the entire agreement between the parties; and it supersedes all negotiations and other discussions prior to and after the execution of this agreement.”

In August 2001, the Jongmas entered into a contract to sell land around one of Major Pork’s hog confinement facilities to Allan Kramer. The contract included sale of “the right to receive application of ½ of the Major Pork, L.L.P. manure rights currently provided for by Manure Easement Agreement recorded in 1998 File – Card No. 2516.”

In June 2002, Major Pork entered into a contract to sell their hog confinement facilities to a group of local farmers, who later formed Grand Pork, Inc. (Grand Pork). The following month, the Jongmas signed a document entitled, “Consent to Assignment of Manure Easement Agreement,” by which the Jongmas consented to assignment of the 1998 manure easement from Major Pork to Grand Pork. It states the Jongmas “acknowledge that the term of the agreements is for ten years from October 29, 1997, and the agreement shall remain in effect throughout that period.”

In August 2002, Major Pork deeded their property to Grand Pork. Major Pork also assigned to Grand Pork “certain assets, including, but not limited to: 1. Manure Easement Agreement dated October 29, 1997 and filed April 23, 1998, in File – Card No. 2516, of the records of the Sioux County Recorder.” John Jongma met with Grand Pork and agreed to apply manure to his own field, rather than having a third party do so. Grand Pork agreed to pay him .8 cents per gallon of manure applied. In 2002, Jongma was paid \$21,000 for the application of manure.

On August 30, 2002, John Jongma entered into a contract with Kramer, agreeing to sell Kramer the “remaining rights of manure” from one of the hog confinement facilities for \$17,250. Kramer later filed a breach-of-contract suit against Jongma regarding the transaction. The matter was settled, with Jongma forgiving Kramer’s debt in exchange for regaining ownership of the manure rights.

Prior to settling his dispute with Jongma, Kramer was awarded the contract to apply manure by Grand Pork at the rate of .04 cents per gallon. After settlement, Jongma offered to take all the manure from Grand Pork’s facilities and apply it at the rate of .03 cents per gallon. However, if Grand Pork did not agree to his proposal, Jongma wished to terminate the comprehensive manure plan.

On February 1, 2007, the Jongmas filed suit against Grand Pork. They alleged they had an agreement with Major Pork entitling them to all of the manure produced from the hog confinement facilities, the agreement was binding

upon Grand Pork, and Grand Pork had breached it. The petition also alleged Grand Pork's act of awarding Kramer the manure was an intentional interference with a contractual relationship, and bad faith in denial and/or breach of contract.

Grand Pork filed a motion for summary judgment, which the plaintiffs resisted. Following a hearing, the district court entered its order, granting the motion. The court concluded the manure easements set forth in the 1997 and 2001 agreements ended when Major Pork sold the property. The court held the agreements were fully integrated and therefore parol evidence of any other terms of the agreement was inadmissible. It also held the elements of promissory estoppel were not established. Because the court found the plaintiffs were unable to prove the existence of an enforceable agreement with Grand Pork, it dismissed their claims for breach of contract and interference with a contractual relationship. It also found Grand Pork had not breached the implied covenant of good faith and fair dealing.

II. Scope and Standard of Review. We review a district court's ruling on summary judgment for correction of errors at law. *Overturff v. Raddatz Funeral Servs., Inc.*, 757 N.W.2d 241, 244 (Iowa 2008).

In reviewing the grant of summary judgment . . . the question is whether the moving party demonstrated the absence of any genuine issue of material fact and showed entitlement to judgment on the merits as a matter of law. An issue of fact is 'material' only when the dispute is over facts that might affect the outcome of the suit, given the applicable governing law. The requirement of a 'genuine' issue of fact means that the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Our task on appeal is to determine only whether a genuine issue of material fact exists and whether the law was correctly applied. We examine the record in a light most favorable to the party opposing

the motion for summary judgment to determine if movant met his or her burden.

Bill Grunder's Sons Constr. v. Ganzer, 686 N.W.2d 193, 196 (Iowa 2004). Furthermore, every legitimate inference that can be reasonably deduced from the evidence should be afforded the resisting party. *Lewis v. State ex rel. Miller*, 646 N.W.2d 121, 124 (Iowa Ct. App. 2002). An inference is legitimate if it is “rational, reasonable, and otherwise permissible under the governing substantive law.” *Id.* (citing *Butler v. Hoover Nature Trail, Inc.*, 530 N.W.2d 85, 88 (Iowa Ct. App. 1994)). An inference is not legitimate if it is based upon speculation or conjecture. *Id.* If reasonable minds may differ on the resolution of an issue, a genuine issue of material fact exists. *Id.*

III. Breach of Contract. In order to succeed on a breach of contract claim, a plaintiff must prove:

(1) the existence of a contract; (2) the terms and conditions of the contract; (3) that [he or she] has performed all the terms and conditions required under the contract; (4) the defendant's breach of the contract in some particular way; and (5) that plaintiff has suffered damages as a result of the breach.

Kern v. Palmer College of Chiropractic, 757 N.W.2d 651, 657-58 (Iowa 2008).

The district court found the plaintiffs had failed to show a genuine issue of material fact as to whether a contract exists between the parties. The court found Grand Pork had not breached any contract that granted the plaintiffs a right to all manure produced in the hog facilities.

The plaintiffs cite to the language of the 1998 deed as the basis for their manure rights. The deed does reserve to the plaintiffs “the right to use all excrements and associated animal waste products” produced from the hog

confinement facilities. However, the deed is only signed by the plaintiffs. No representative of Major Pork executed the deed. We then turn to the agreements signed by the plaintiffs and Major Pork, which were later recorded as easements.

The first agreement between the parties signed in 1997 and recorded in 1998 states the Jongmas had easement rights in the manure for a period of ten years from October 29, 1997, or until Major Pork repaid its loans to the lender. It further provides that Major Pork, its successors and assigns, have full right to determine the amount of manure to be deposited on the Jongmas' property.

In 2001, Major Pork signed new agreements with the Jongmas for a term of nine years beginning on January 1, 2001. The agreement states, "The agreement shall terminate prior to the scheduled termination date only if either party assigns its interest to another party without the consent of the other party, *or if the Operator ceases to produce livestock at the location specified.*" (Emphasis added.) The agreement also states, "This agreement constitutes the entire agreement between the parties; and it supersedes all negotiations and other discussion prior to and after the execution of this agreement."

Citing the language of the 2001 agreements, the district court concluded that once Major Pork sold the property to Grand Pork and ceased to operate the hog confinement facilities, any interest the plaintiffs had in the manure terminated. Because the easement was terminated, it could not be assigned to Grand Pork and no contract existed between the parties. However, Major Pork assigned the 1998 easements to Grand Pork at the same time it deeded Grand Pork the property.

Assuming arguendo that the 1998 easements were not superseded by the 2001 agreement, we conclude the undisputed facts show Grand Pork has not breached a contract with the plaintiffs. The terms of the 1998 easements state Major Pork is not obligated to deposit any waste, and its successors and assigns “shall have the full right to determine the amount of waste to be deposited on said property.” Grand Pork’s decision not to deposit manure on the Jongmas’ property comports with this provision and does not breach the parties’ agreement.

The plaintiffs argue the district court erred in refusing to look at the subsequent conduct of the parties in determining the terms of the contract. In particular, they cite Grand Pork’s act of paying John Jongma for pumping and applying manure to another farmer’s field in December 2002. The plaintiffs argue this evidence shows Grand Pork acted in conformity with Jongma’s belief he had a right to the manure produced from Grand Pork’s facilities and that Grand Pork was responsible for paying the pumping and application costs. The district court found this evidence is barred by the parol evidence rule.

The parol evidence rule is not a rule of evidence, but a rule of substantive law. *Montgomery Props. Corp. v. Economy Forms Corp.*, 305 N.W.2d 470, 475 (Iowa 1981). Although extrinsic evidence may be admissible to explain the real meaning of the parties by the language used in a contract, the parol evidence rule forbids the use of extrinsic evidence to vary, add to, or subtract from a written agreement. *Id.* at 475-76. The reason for the rule is that

when the parties have discussed and agreed upon their obligations to each other and reduced those terms to writing, the writing, if

clear and unambiguous, furnishes better and more definite evidence of what was undertaken by each party than the memory of man The rule rests upon a rational foundation of experience and policy and is essential to the certainty and stability of written obligations. It is designed to permit a party to a written contract to protect himself against perjury, infirmity of memory, or the death of witnesses.

Id. at 476 (quoting 30 Am. Jur. 2d Evidence § 1016, at 151-52 (1967)).

The terms of the 1998 easements are clear and unambiguous on their face. They specifically state:

Major Pork hereby [grants] unto [the Jongmas] . . . an easement for a period of ten (10) years . . . for the purpose of depositing all animal waste products from livestock operations conducted on the dominant estate, Parcel A . . . including the right to bring and maintain all equipment necessary to deposit and disseminate said animal waste, on, over, across and through the subservient estate now owned by [the Jongmas] which is described as Parcel B.

. . . Said easement shall be further limited by the amount of waste to be deposited upon said real estate. The amount shall be mutually agreed upon by the parties hereto [Major Pork] shall have the right, but not the obligation, to apply animal waste products to Parcel B at a rate not to exceed the nutrient uptake requirement of the crop. . . .

. . . .
The fact that this agreement has been granted to [Major Pork] in no way obligates [Major Pork] or commits [Major Pork] to deposit any waste, whatsoever, upon Parcel B. Subject to the limitations on the maximum amount of waste, [Major Pork], its successors and assigns, shall have the full right to determine the amount of waste to be deposited on said property.

Under the express terms of the easements, Major Pork was not obligated to deposit any manure on the Jongmas' property. Nor is there any mention of the Jongmas having rights to the manure. Major Pork, and now Grand Pork, was left with the right to determine how much manure it would provide to the Jongmas. Because the easement is clear and unambiguous, parol evidence is not

admissible. See *Dunn v. Dunn*, 219 Iowa 349, 355, 258 N.W. 695, 698 (1935) (stating “the general and settled rule is that parol evidence is not competent to change a written instrument which is clear and unambiguous . . .”).

Although it was not pleaded specifically in their petition, the plaintiffs argued the doctrine of promissory estoppel circumvents the statute of frauds. The statute of frauds precludes evidence of a contract for the creation or transfer of interest in land or those not to be performed within a year of making unless written and signed by the parties. See Iowa Code § 622.32(3)-(4) (2007).

The doctrine of promissory estoppel can be applied to circumvent the statute of frauds when necessary to prevent an injustice. *Kolkman v. Roth*, 656 N.W.2d 148, 156 (Iowa 2003). It requires the party asserting it as a means to avoid the statute of frauds to prove:

(1) a clear and definite promise; (2) the promise was made with the promisor’s clear understanding that the promisee was seeking assurance upon which the promisee could rely and without which he would not act; (3) the promisee acted to his or her substantial detriment in reasonable reliance on the promise; and (4) injustice can be avoided only by enforcement of the promise.

Id. We require strict proof of all the elements. *Id.*

In rejecting the plaintiffs’ claim, the district court found that even if the plaintiffs had proved the necessary elements with respect to Major Pork, there is insufficient evidence to support a promissory estoppel claim against Grand Pork. The court held there is no case law to support the plaintiffs’ conclusion that Grand Pork’s constructive or actual knowledge of an agreement between themselves and Major Pork establishes a promissory estoppel claim. We find no error in the court’s ruling.

Having considered the plaintiffs' arguments in the light most favorable to them, we find they have not shown the existence of a contract that bound Grand Pork to allow them to use all the manure produced at the hog confinement facilities. Accordingly, we affirm the district court's grant of summary judgment in favor of Grand Pork on the plaintiffs' breach of contract claim.

IV. Remaining Claims. As the plaintiffs' remaining claims are dependent upon a reversal of the district court's grant of summary judgment on the breach of contract claim, we need not address them.

We affirm the district court ruling granting summary judgment in favor of Grand Pork.

AFFIRMED.