

SUPREME COURT OF IOWA

Larry Stewart d/b/a Larry Stewart Realty v. Jeffrey P. Sisson

No. 21 / 04-1323 · No. No. 21 / 04-1323 · Decided March 24, 2006

SUMMARY

The Iowa Supreme Court considered whether an oral agreement for a real estate broker to privately procure a buyer, without listing the property, constituted a “listing agreement” subject to Iowa Administrative Code rule 193E—1.23’s writing requirement. The court held that the agreement was not a listing agreement because the owner did not authorize public listing of the property, and therefore the rule did not bar the broker’s claims. The court reversed the summary judgment and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Iowa
JURISDICTION	Iowa
DECIDED	March 24, 2006
DOCKET	No. 21 / 04-1323
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a summary judgment for the property owner dismissing a real estate broker's claims for a commission arising from an oral agreement to procure a buyer for a business.
STANDARD OF REVIEW	Summary judgment rulings are reviewed for correction of errors at law. Summary judgment is proper only when, viewing the evidence in the light most favorable to the nonmoving party, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published Iowa Supreme Court opinion; precedential.
PARTIES	Larry Stewart d/b/a Larry Stewart Realty v. Jeffrey P. Sisson

TOPICS

[contracts](#)[real estate](#)[statutory interpretation](#)[summary judgment](#)[appellate procedure](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether an oral agreement under which a real estate broker privately procures a buyer for property without publicly listing it is a "listing agreement" subject to Iowa Administrative Code rule 193E-1.23's writing requirement.
2. Whether the district court properly granted summary judgment and dismissed Stewart's contract and companion claims based solely on rule 193E-1.23.
3. Whether the appellate court could decide the separate issue of the applicability or enforceability of the rule governing brokerage agreements when that issue was not raised as a ground for summary judgment in the district court.

HOLDINGS

1. An agreement for a broker to privately procure a buyer while not placing the property on a public list is not a "listing agreement" within the meaning of rule 193E-1.23.
2. Because the agreement was not a listing agreement, rule 193E-1.23 did not apply and could not support summary judgment dismissing Stewart's claims.
3. The court would not decide whether rule 193E-1.42 independently barred enforcement because Sisson did not raise that ground in the summary-judgment motion or in the district court.

KEY QUOTATIONS

"An agreement that provides the property is not to be "listed" is not a "listing agreement.""

"Agreements to perform brokerage services other than "listing" the property are "brokerage agreements" under rule 193E—1.42, but are not "listing agreements" under rule 193E—1.23."

"The agreement between Stewart and Sisson was not a "listing agreement." Rule 193E—1.23 did not apply, and the district court erred in dismissing the claims by Stewart on that basis."

FACTUAL BACKGROUND

Jeffrey Sisson owned a sports bar and restaurant and contacted licensed real estate broker Larry Stewart about selling it. Sisson allegedly agreed to pay Stewart ten percent of the sale price if Stewart found a buyer, but asked Stewart not to publicly list the business because disclosure of the sale might reduce business and value. Stewart located and contacted Michael Walter, obtained confidential financial information from Sisson, and prevented Walter from negotiating directly with Sisson; Sisson later sold the business to Walter without involving Stewart.

PROCEDURAL HISTORY

Stewart sued Sisson for breach of contract after Sisson sold the business to a buyer Stewart had contacted without paying Stewart a commission. Stewart amended the petition to add fraudulent misrepresentation, reckless misrepresentation, breach of implied contract, and unjust enrichment. The district court dismissed the claims, the court of appeals reversed and remanded, and after remand the district court granted Sisson summary

judgment on the ground that Iowa Administrative Code rule 193E-1.23 barred recovery. The Supreme Court of Iowa reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings. The opinion leaves open whether the oral agreement is a brokerage agreement under Iowa Administrative Code rule 193E-1.42 and, if so, whether the failure to reduce it to writing precludes enforcement; those issues must first be addressed in the district court.

CASES CITED

- Otterberg v. Farm Bureau Mutual Insurance Co., 696 N.W.2d 24, 27 (Iowa 2005)
- In re Estate of Graham, 690 N.W.2d 66, 69-70 (Iowa 2004)
- Wernimont v. Wernimont, 686 N.W.2d 186, 189 (Iowa 2004)
- Hubbell Commercial Brokers, L.C. v. Fountain Three, 652 N.W.2d 151, 155-57 (Iowa 2002)
- Milholin v. Vorhies, 320 N.W.2d 552, 553-54 (Iowa 1982)
- Maynes Real Estate v. McPherron, 353 N.W.2d 425, 426-27 (Iowa 1984)
- McHugh v. Johnson, 268 N.W.2d 225, 227 (Iowa 1978)
- Westfield Insurance Cos. v. Economic Fire & Casualty Co., 623 N.W.2d 871, 876 (Iowa 2001)
- Rodgers v. Baughman, 342 N.W.2d 801, 805 (Iowa 1983)
- Warder & Lee Elevator, Inc. v. Britten, 274 N.W.2d 339, 342 (Iowa 1979)
- In re Interest of G.J.A., 547 N.W.2d 3, 6 (Iowa 1996)
- Messina v. Iowa Department of Job Service, 341 N.W.2d 52, 56 (Iowa 1983)
- State v. Beslanowitch, 248 N.W.2d 286, 288 (Minn. 1976)
- Leo Eisenberg & Co. v. Payson, 732 P.2d 1128, 1130 (Ariz. Ct. App. 1987)
- Grempler v. Multiple Listing Bureau of Harford County, Inc., 266 A.2d 1, 3 (Md. 1970)
- Estate of Harris v. Papa John's Pizza, 679 N.W.2d 673, 679 (Iowa 2004)
- DeVoss v. State, 648 N.W.2d 56, 61 (Iowa 2002)
- Conkling v. Standard Oil Co., 138 Iowa 596, 600, 116 N.W. 822, 824 (1908)
- In re Detention of Hodges, 689 N.W.2d 467, 469 (Iowa 2004)
- Podraza v. City of Carter Lake, 524 N.W.2d 198, 202 (Iowa 1994)
- Pond v. Anderson, 241 Iowa 1038, 1049, 44 N.W.2d 372, 379 (1950)
- Catamount Slate Products, Inc. v. Sheldon, 845 A.2d 324, 328 (Vt. 2003)
- Gardner v. Gardner, 454 N.W.2d 361, 363 (Iowa 1990)
- Aluminum Co. v. Musal, 622 N.W.2d 476, 479 (Iowa 2001)

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