

SUPREME COURT OF SOUTH DAKOTA

LaMore Restaurant Group, LLC v. Akers

748 N.W.2d 756 (S.D. 2008) · No. No. 24650 · Decided April 16, 2008

SUMMARY

The Supreme Court of South Dakota held that a lease addendum creating an appraisal-based method for determining the purchase price of commercial properties was an enforceable contract, despite not specifying a valuation date. The court further held that the trial court properly considered appraisal customs and usage and required the first and third appraisers to use the same valuation date as the initial appraisal.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Barnett, Circuit Judge; Gilbertson, Chief Justice; Konen kamp, Justice; Zinter, Justice; Meierhenry, Justice
JURISDICTION	South Dakota
DECIDED	April 16, 2008
DOCKET	No. 24650
DISPOSITION	affirmed
PROCEDURAL POSTURE	Akers appealed from a judgment enforcing a lease addendum governing the sale and appraisal of two commercial properties and from the trial court's order selecting the valuation date for the appraisal process.
STANDARD OF REVIEW	Findings of fact are reviewed for clear error. Conclusions of law, the existence of a contract, contract interpretation, and whether contractual language is ambiguous are reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Robert Akers, Cynthia Akers v. LaMore Restaurant Group, LLC, Kenneth Herslip

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QUESTIONS PRESENTED

1. Whether the First Addendum constituted a valid and enforceable contract despite not specifying the date on which the third appraiser would value the property.
2. Whether the circuit court had authority to determine the valuation date for the first and third appraisers when the First Addendum did not expressly supply one.

HOLDINGS

1. The First Addendum was a valid and enforceable contract because its appraisal procedure supplied a practicable and reasonably certain method for determining the purchase price, even though it did not specify the valuation date to be used by the third appraiser.
2. The circuit court had authority to interpret the ambiguous appraisal provision and determine that the first and third appraisers should use April 27, 2005, the date used by the first appraiser, as the valuation date.

KEY QUOTATIONS

“The mere fact that the date of the third appraisal could affect the purchase price does not make it a material element of the contract.” (762)

“An agreement is not unenforceable for lack of definiteness of price or amount if the parties specify a practicable method by which the amount can be determined by the court without any new expression by the parties themselves.” (762)

“We, therefore, hold that the contract is valid.” (764)

“We find there was a sufficient basis for the trial court to interpret the contract as requiring the first and third appraisers to use April 27, 2005, effectively the date the option was exercised, as their date of valuation.” (766)

FACTUAL BACKGROUND

Robert and Cynthia Akers owned two commercial restaurant properties in Rapid City and leased them to LaMore, which operated Denny's restaurants there. After LaMore exercised its purchase option, the parties signed a First Addendum replacing the original appraisal procedure with a process under which appraisers would determine the purchase price. The first appraisal valued the properties at \$1.8 million, while a later second appraisal was substantially higher because of improvements made by LaMore and an outside offer received by Akers. Because the appraisals differed by more than seven percent, a third appraiser was required to work with the first appraiser, creating a dispute over the valuation date.

PROCEDURAL HISTORY

LaMore exercised an option to purchase two commercial restaurant properties and the parties executed a First Addendum establishing an appraisal-based method for determining the purchase price. After the parties

disagreed over selection of a third appraiser and the valuation date, the circuit court ordered the parties to select a third appraiser and later directed that the first and third appraisers use April 27, 2005, the date used by the first appraiser. The circuit court entered judgment enforcing the First Addendum, and the Supreme Court of South Dakota affirmed.

DISPOSITION

affirmed

CASES CITED

- City of Deadwood v. Summit, Inc., 2000 S.D. 29, ¶ 9, 607 N.W.2d 22, 25
- In Estate of Neiswender, 2000 S.D. 112, ¶ 12, 616 N.W.2d 83, 86
- Vander Heide v. Boke Ranch, Inc., 2007 S.D. 69, ¶ 17, 736 N.W.2d 824, 831-32
- Ziegler Furniture and Funeral Home, Inc. v. Cicmanec, 2006 S.D. 6, ¶ 14, 709 N.W.2d 350, 354
- Amdahl v. Lowe, 471 N.W.2d 770, 774-75 (S.D. 1991)
- Federal Land Bank v. Houck, 68 S.D. 449, 4 N.W.2d 213 (1942)
- McPherson v. Fargo, 10 S.D. 611, 74 N.W. 1057 (1898)
- Weitzel v. Sioux Valley Heart Partners, 2006 S.D. 45, ¶ 23, 714 N.W.2d 884, 892
- Nygaard v. Sioux Valley Hosp. & Health Sys., 2007 S.D. 34, ¶¶ 13, 15, 731 N.W.2d 184, 191-92
- Kuhfeld v. Kuhfeld, 292 N.W.2d 312, 315 (S.D. 1980)
- Kane v. McDermott, 191 Ill. App. 3d 212, 138 Ill. Dec. 541, 547 N.E.2d 708, 713 (1989)
- Miller v. McCullough, 236 Ga. 666, 224 S.E.2d 916 (1976)
- Marder's Nurseries, Inc. v. Hopping, 171 A.D.2d 63, 66, 573 N.Y.S.2d 990 (N.Y. App. Div. 1991)
- Wiggins v. Shewmake, 374 N.W.2d 111, 115 (S.D. 1985)
- Jensen v. Pure Plant Food Int'l Ltd., 274 N.W.2d 261, 263-64 (S.D. 1979)
- Mash v. Cutler, 488 N.W.2d 642, 647 (S.D. 1992)
- In re J.D.M.C., 2007 S.D. 97, ¶ 30, 739 N.W.2d 796, 806
- All Star Constr. v. Koehn, 2007 S.D. 111, ¶ 33, 741 N.W.2d 736, 744
- Ducheneaux v. Miller, 488 N.W.2d 902, 909 (S.D. 1992)

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