IN THE COURT OF APPEALS OF IOWA

No. 7-486 / 06-1487
Filed December 12, 2007

CHAMBERLAIN, L.L.C.,
Plaintiff-Appellant,

vs.

CITY OF AMES, IOWA, and
AMES BOARD OF APPEALS,
Defendants-Appellees.

Appeal from the Iowa District Court for Story County, Dale E. Ruigh, Judge.

Appellant appeals the district court's order granting appellees' motion for summary judgment and denying appellant's motion for summary judgment. **AFFIRMED.**

John F. Lorentzen and John T. Clendenin of Nyemaster, Goode, West, Hansell & O'Brien, Des Moines, for appellant.

William A. Wickett and Cory D. Abbasm of Patterson Law Firm, L.L.P., and Jason C. Palmer and Andrew C. Johnson of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des Moines, for appellees.

Heard by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

SACKETT, C.J.

Plaintiff-appellant, Chamberlain, L.L.C. (Chamberlain), sued challenging the refusal of defendant-appellee, the Board of Appeals of the City of Ames (Ames), to order the issuance of a certificate of occupancy for a portion of a building Chamberlain constructed in the city. The district court denied Chamberlain's challenge granting Ames's motion for summary judgment and denying Chamberlain's. Chamberlain on appeal contends the district court erred in ruling that its claims of equitable estoppel and promissory estoppel failed as a matter of law. Chamberlain further contends that the issue had been litigated earlier in its favor and that the district court should have found issue preclusion applied. We affirm.

I. BACKGROUND.

The following facts are generally undisputed. The owners of Chamberlain, L.L.C. envisioned building a mixed use complex near the Iowa State campus. The first floor would contain retail space and the upper floors would contain apartment units. The design for some of the apartments included a loft or shelf area that could be used as sleeping or storage space. The size of the spaces would be similar to lofts often built by students in dormitories. Since the owners were uncertain whether the shelf areas would comply with the city building code requirements, they sought approval from the Ames building official before progressing with the project.

In August or September 2003, two Chamberlain owners and their architectural consultant met with the Ames building official and the Ames fire inspector. While the parties dispute whether actual design drawings with

dimensions were reviewed during the meeting, all agree that the topic of the meeting centered on whether the loft areas would be acceptable under the building and fire codes. The fire inspector expressed concern that additional protections would be needed if the spaces would be used for sleeping. The building official sought input on the design at a staff meeting of city building inspectors. The building official testified the determination from the meeting was,

> we believe[d] that they could do these platforms with the idea that they are sprinkled above and below. They could not put storage closer than 18 inches to the sprinkler head because that's a violation of the fire code. Need smoke detectors above and below. And we even went so far as to talk in our staff meeting do they need guardrails around these or not . . . and we agreed they should not have guardrails. Because that would invite people to go up there.

The building official conveyed the decision to Chamberlain and the architect by phone. The building official's affidavit states that he considered the building code in making his decision, that he interpreted the loft areas to be extensions of other code compliant rooms and thus, excluded from ceiling height restrictions, and that he believed this interpretation was consistent with the building code's intent and purpose. Chamberlain continued to develop the concept and the city issued a building permit in January 2004 after reviewing Chamberlain's phased project plans.

Chamberlain built the structure and secured tenants for the units. On June 3, 2004, when building was nearly complete, Chamberlain received a letter from the Ames Fire Chief who was the acting building official at the time. The letter stated that the loft areas did "not meet minimum height requirements for habitable space" and that "[e]vidence has been obtained that the planned use for the loft area is as habitable space." The letter stated that a certificate of

occupancy would not be issued unless significant modifications were made to the apartments. A memo from the fire chief to the city manager states that inspectors began noticing that the loft areas would be treated as living space in May of 2004 and that some tenants and parents of tenants complained to the city after being concerned about the reduced height in the loft areas.

Chamberlain appealed the fire chief's determinations to the board of appeals. The city attorney advised the board not to consider the fact that multiple interpretations of the code had been issued. The attorney advised the board only to evaluate whether the current interpretation made by the fire chief acting as building official was reasonable. The board of appeals found the interpretation not unreasonable and found the certificate of occupancy was properly withheld. Chamberlain was issued a certificate of occupancy after it barricaded the loft areas to prevent their use.

Chamberlain filed two actions in district court. First, they filed a petition for writ of certiorari seeking a declaration that Chamblerlain was illegally denied a certificate of occupancy when it justifiably relied on a valid code interpretation made by a previous authorized building official. A second petition was filed in equity contending the city was prevented from applying a new interpretation of the building code through the doctrines of equitable estoppel or promissory estoppel. The cases were consolidated and both parties moved for summary judgment. The district court held that there were no false representations or exceptional circumstances to support an equitable estoppel claim. It held that the original building official's interpretation of the building code was "contrary to the express terms of that code and that the resulting building permit was not

issued in compliance with the code." The judge determined that Chamberlain had no vested rights in invalid building code interpretations or invalid building permits. The court held Chamberlain's promissory estoppel claim also failed because there was no "clear and definite promise" to enforce. Last, the court rejected Chamberlain's claim that the original building official's determination prevented a new interpretation by the board of appeals through issue preclusion. Chamberlain appeals each of these conclusions.

II. SCOPE OF REVIEW. Our standard of review of rulings on motions for summary judgment is for correction of errors at law. *City of Johnston v. Christenson*, 718 N.W.2d 290, 296 (Iowa 2006). We review certiorari proceedings for correction of errors at law also. *Stream v. Gordy*, 716 N.W.2d 187, 190 (Iowa 2006). Thus, the same standard of review will be applied to each of Chamberlain's claims regardless of whether they arose from the action in equity or the certiorari proceeding. Summary judgment should be granted

> if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Iowa R. Civ. P. 1.981(3). Summary judgment is also appropriate when there is only conflict over the legal consequences that flow from undisputed facts or from the facts viewed in a light most favorable to the resisting party. *City of Akron v. Akron Westfield Cmty. Sch. Dist.*, 659 N.W.2d 223, 225 (Iowa 2003).

A writ of certiorari will only be granted if it is authorized by statute or "where an inferior tribunal, board or officer, exercising judicial functions, is alleged to have exceeded proper jurisdiction or otherwise acted illegally." Iowa

R. Civ. P. 1.1401. The court does not review the fact findings of the lower tribunal, board, or officer if competent and substantial evidence supported the findings, and the tribunal or officer did not otherwise act illegally. *Waddell v. Brooke*, 684 N.W.2d 185, 189 (Iowa 2004). Findings of fact by the tribunal or officer that are supported by substantial evidence are binding upon us. *Id.* at 190.

III. EQUITABLE ESTOPPEL.

Equitable estoppel is designed to prevent "one party who has made certain representations from taking unfair advantage of another when the party making the representations changes its position to the prejudice of the party who relied upon the representations." *ABC Disposal Sys., Inc. v. Dep't. of Natural Res.*, 681 N.W.2d 596, 606 (Iowa 2004). The required elements are:

> (1) a false representation or concealment of material facts; (2) a lack of knowledge of the true facts on the part of the actor; (3) the intention that [the representation] be acted upon; and (4) reliance thereon by the party to whom made, to his prejudice and injury.

City of Akron, 659 N.W.2d at 226 (citing *Johnson v. Johnson*, 301 N.W.2d 750, 754 (Iowa 1981)). Also, "[w]e have consistently held equitable estoppel will not lie against a government agency except in exceptional circumstances." *Fennelly v. A-1 Mach. & Tool Co.*, 728 N.W.2d 163, 180 (Iowa 2006) (quoting *ABC Disposal Sys., Inc.*, 681 N.W.2d at 607). Exceptional circumstances will be found when "in addition to the traditional elements of estoppel, the party raising the estoppel proves affirmative misconduct or wrongful conduct by the government or a government agent." *Fennelly*, 728 N.W.2d at 180 (quoting 28 Am. Jur. 2d *Estoppel and Waiver* § 140, at 559 (2000)). The burden of proving an equitable

estoppel claim is particularly heavy "when the government acts in a sovereign or governmental role rather than a proprietary role." *ABC Disposal Sys., Inc.*, 681 N.W.2d at 607. Good faith errors of government officials do not provide the exceptional circumstances required for an equitable estoppel claim. *See id.* (describing how no exceptional circumstances exist for equitable estoppel to be applied when department of natural resources official acted in good faith and within his authority, but made an erroneous interpretation of the law when he informed company that it did not need to obtain a sanitary disposal project permit). A city official's unintentional legal mistake may also prevent the finding of the requisite fraudulent misrepresentation or concealment of material fact. *See City of Akron*, 659 N.W.2d at 226 (finding false representation and concealment lacking when city administrator mistakenly believed he could enter into contracts for the city without approval by the city council even though the other party constructed a wind generator in reliance on the contract and the parties performed under the contract for eighteen months).

No Iowa cases clearly illustrate the "exceptional circumstances" required to apply equitable estoppel to municipalities. Chamberlain draws support from South Dakota's approach to the subject. In South Dakota exceptional circumstances are found and estoppel applied if a municipality is performing a government function and "officers . . . have taken some affirmative action influencing another which renders it inequitable for the municipality to assert a different set of facts." *Even v. City of Parker*, 597 N.W.2d 670, 674 (S.D. 1999). The government "conduct must have induced the other party to alter his position or do that which he would not otherwise have done to his prejudice." *Id.* In *Even*,

a citizen obtained a building permit to build a garage and then purchased over four thousand dollars of customized materials. *Id.* at 671. Several days after issuing the permit, the zoning administrator visited the home and told the citizen the type of garage he wanted to build was forbidden by a zoning ordinance. *Id.* The zoning administrator admitted he should have been more thorough in investigating the proposal for the structure. *Id.* at 675. The court held while the city had no duty to explain the types of structures permitted under the ordinance,

> the City may not, through its agents, affirmatively create an objectively reasonable impression in an applicant that he has fully complied with all zoning requirements and then proceed to withdraw permission after the applicant has taken steps towards construction which result in a substantial detriment to the applicant.

Id.

Chamberlain has not proved any official of the City of Ames engaged in affirmative misconduct. The record shows the officials acted in good faith but provided inconsistent interpretations. This type of good faith error does not supply the required exceptional circumstances for applying equitable estoppel to a municipality. *See ABC Disposal Sys., Inc.*, 681 N.W.2d at 607. We decline to adopt South Dakota's approach as outlined in *Even* due to, among other things, important factual distinctions. *Even* concerned a single landowner building a garage for his sole use rather than an apartment complex designed for occupancy. *Even*, 597 N.W.2d at 671-72. The zoning ordinance at issue in *Even* was targeted at neighborhood aesthetics, tipping the equities in the landowner's favor. *Id.* at 676. By contrast, the building code provisions at issue here were enacted to assure public safety. *See* Int'l Bldg. Code § 101.3 (2003) ("The purpose of this code is to establish the minimum requirements to safeguard

the public health, safety and general welfare through . . . safety to life and property from fire and other hazards attributed to the built environment"). Public safety was not an issue in *Even.* Consquently it provides no support for Chamberlain's claim he showed exceptional circumstances. The district court was correct in denying this claim.

IV. VESTED RIGHTS. Chamberlain claims the district court erred in concluding that they had not acquired a vested right in the original interpretation of the code and the building permit. Our courts have held that property rights to a building permit can vest "[w]here a building permit is regularly issued in accordance with the relevant zoning ordinance, . . . the permit holder has relied thereon [and] if there is no violation of the applicable ordinance." *City of Lamoni v. Livingston*, 392 N.W.2d 506, 510 (Iowa 1986) (citing *Rehmann v. City of Des Moines*, 200 Iowa 268, 292-93, 204 N.W. 267, 270 (1925)). However, if there is a lack of compliance with applicable requirements or the permit was not authorized, a permit can be revoked despite the permit holder's reliance. *City of New Hampton v. Blayne-Martin Corp.*, 594 N.W.2d 40, 44-45 (Iowa1999). If the "permit was granted wholly without legal authority, there was no power in the zoning officer or board of adjustment to grant it in the first place." *City of Lamoni*, 392 N.W.2d at 510.

Chamberlain seeks support from *Crow v. Bd. of Adjustment of Iowa City*, 227 Iowa 324, 288 N.W. 145 (1939). In *Crow*, a property owner wanted to build a veterinary clinic and dog hospital. *Crow*, 227 Iowa at 325, 288 N.W. at 146. The property was zoned for hospitals but the ordinance did not define "hospital." *Id.* at 325-26, 288 N.W. at 145-46. After Crow inquired whether the use was

permitted, the inspector discussed the issue with the city attorney and then informed Crow that the animal clinic was acceptable under the ordinance. *Id.* at 326, 288 N.W. at 145-46. After excavation began, neighboring land owners filed an appeal with the board of adjustment and the board revoked the building permit. *Id.* at 327, 288 N.W. at 146. The Supreme Court held that a legally issued building permit cannot be revoked at will. *Id.* at 327-28, 288 N.W. at 146. The building inspector was responsible for interpreting the ordinance and his interpretation was "not clearly erroneous nor without basis." *Id.* at 328, 288 N.W. at 147. Since the building inspector's issuance of the permit was valid, Crow had a vested right to proceed under the permit's authorization, and the board's revocation was illegal. *Id.* at 328-29, 288 N.W. at 147.

In this case the district court held the building official's interpretation which endorsed a ceiling height in the lofted spaces of forty-five inches "was directly contrary to the express provisions of the [building code]" and thus was invalid. The building code explicitly requires a ceiling height of seven and one half feet for all habitable spaces. The building official was aware of the ceiling height requirements but found the design was consistent with the intent and purpose of the building code and approved the areas as extensions of other code compliant spaces. We find no error in the district court's analysis. Unlike *Crow*, here there was no ambiguous term for the building official to define. The ceiling heights were explicit and the definition of habitable space clearly included Chamberlain's proposed use for the shelf spaces. Although the building code permits the official to approve alternative designs that vary from the requirements, modifications cannot lessen safety requirements. Int'l Bldg. Code §§ 104.10-.11. The code

also states that "[t]he issuance or granting of a permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of the jurisdiction." Int'l Bldg. Code § 105.4. "The building official is also authorized to prevent occupancy or use of a structure where in violation of this code." *Id.* Chamberlain acquired no vested rights to an occupancy certificate when the building official's original interpretation was invalid because it reduced the ceiling height requirement for habitable spaces and thereby lessened the safety standards demanded by the code. We affirm the district court on this issue.

V. PROMISSORY ESTOPPEL. Chamberlain next argues that the city should be precluded from applying a new interpretation of the building code and from denying the occupancy permit through the theory of promissory estoppel. Promissory estoppel operates "to form a contract, when the promisee suffered detriment in reliance on a . . . promise." *Schoff v. Combine Ins. Co. of America*, 604 N.W.2d 43, 48 (Iowa 1999) (quoting 4 Samuel Williston, *Williston on Contracts* § 8.4, at 41 (1992)). The elements of promissory estoppel are:

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

Schoff, 604 N.W.2d at 49.

The promise is only clear and definite if it is not ambiguous and asserted without doubt. *Id.* In *Schoff*, the court noted the importance of distinguishing a

representation from a promise. *Id.* at 51. Statements that merely convey an "impression or understanding of a certain fact" do not constitute a promise. *Id.* This is so even if the statement is made with the intention of influencing action. *Id.* When conditional terms are used in the statement, the promise is not sufficiently definite. *Chipokas v. Hugg*, 477 N.W.2d 688, 691 (Iowa Ct. App. 1991). The promise is clear if it is not ambiguous and it is definite if made without doubt or tentativeness. *Schoff*, 604 N.W.2d at 51. The Iowa Supreme Court has stated that a clear and definite promise is likely to be found where the promisor understood the party was seeking assurance prior to taking some action. *Nat'l Bank of Waterloo v. Moeller*, 434 N.W.2d 887, 889 (Iowa 1989).

The district court found that the series of communications and dealings between Chamberlain and the city was insufficient proof of a clear and definite promise. On appeal, Chamberlain contends the court misinterpreted their arguments. Chamberlain asserts there was a clear and definite promise made in conversations with the original building official that if Chamberlain built the apartments according to the building official's original interpretation, the project would be approved for occupancy. Chamberlain claims the issuance of the building permits and favorable inspections merely corroborates that the promise actually occurred.

The record supports a finding that the building official knew Chamberlain sought the building official's endorsement prior to investment in the project. The building official testified:

> [o]nce the plans came in we may have, you know, tweaked some of that information, but the idea was, you know, they wouldn't have to totally scrap all the plans and start over. The idea was this was a major interpretation of the building,

> and they wanted to – didn't want to waste a lot of months of drawing time for this to be thrown out later.

The Chamberlain owners testified that the initial meeting was an effort to seek "an interpretation," and "guidance." One owner stated "[w]e wanted to have the meeting to make sure that we were affirmed and approved to move forward with this concept." The original building official testified approval at this stage means "continue down this path." He stated his endorsement of the initial loft design meant, "[m]ore details will come out, and we'll verify the details and . . . the general idea was these loft bed situations were probably going to be allowed." Both parties agree that this meeting was one early stage in an ongoing process.

The district court correctly found that Chamberlain could not prove that a clear and definite promise was made to establish a promissory estoppel claim. Even only looking to the original meeting and notice of approval rather than the course of dealings, any assurance by the building official was not clear or definite. Both parties understood the purpose of the meeting was to obtain an opinion rather than an enforceable promise. The building official's interpretation encouraged Chamberlain to continue with the design plans with the lofts but provided no clear or definite promise that the feature would be approved in future inspections. Therefore, the district court properly found Chamberlain's promissory estoppel claim failed as a matter of law.

VI. ISSUE PRECLUSION. Chamberlain's final claim is that the board of appeals is prevented from reversing the original building official's interpretation through issue preclusion. Issue preclusion "'means simply that when an issue . . . has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit.'" *State v.*

Seager, 571 N.W.2d 204, 208 (Iowa 1997) (quoting *Ashe v. Swenson*, 397 U.S. 436, 443, 90 S. Ct. 1189, 1194, 25 L. Ed. 2d 469, 475 (1970)). Chamberlain argues that the building official's original interpretation was a final judgment. If the city disagreed with the original approval by the building official, Chamberlain argues the city could have appealed the decision to the board of appeals. Chamberlain asserts that the city cannot now relitigate the prior code interpretation with a new city building official. The district court rejected this claim and held that under the building code, building official decisions are not final judgments with preclusive effect. Rather, only board of appeals decisions are final determinations that implicate issue preclusion.

Four elements must be proved for a prior decision to have preclusive effect on subsequent litigation:

> (1) the issue concluded must be identical; (2) the issue must have been raised and litigated in the prior action; (3) the issue must have been material and relevant to the disposition of the prior action; and (4) the determination made of the issue in the prior action must have been necessary and essential to the resulting judgment."

Comes v. Microsoft Corp., 709 N.W.2d 114, 118 (Iowa 2006).

Chamberlain contends the reasoning in *City of Johnston v. Christenson*, 718 N.W.2d 290 (Iowa 2006) should be applied here. In *City of Johnston*, the court examined what types of proceedings are adjudicatory in nature and thus can have a preclusive effect. *City of Johnston*, 718 N.W.2d at 298. The court held that issue preclusion applied to board of adjustment decisions and a city could not relitigate the board's grant of a variance by denying site approval to the property owner who obtained the variance. *Id.* at 295, 303. The court stated that, "the City cannot use its site-plan authority to circumvent or overrule a

decision by the board of adjustment by rejecting a plan on a ground properly decided by the board of adjustment." *Id.* at 303. The court advised that the city must file a writ of certiorari when it disagrees with a board decision and it is bound by the board decision until the court rules. *Id.* Chamberlain extends this reasoning to assert the building official's decisions are also binding unless appealed to the board of appeals.

"Agency action may be adjudicatory if the agency determines an individual's rights, duties, and obligations created by past transactions or occurrences." *Id.* at 298, n.3. For issue preclusion to apply, the proceeding must contain the essential adjudicatory elements of: (1) adequate notice to those bound by the decision, (2) the right to present evidence and legal argument and rebut opposing parties, (3) a formulation of law and fact that relate to a transaction, situation or status, (4) a rule of finality at a specific point in the proceeding, (5) other procedural elements as may be necessary given the complexity and urgency of the matter. *Id.* (citing Restatement (Second) of Judgments § 83 (1982); *Iowa Elec. Light & Power Co. v. Lagle*, 430 N.W.2d 393, 397-98 (Iowa 1988)).

The district court held, as a matter of law, the decisional process of the building official in no way resembles adjudication similar to a court and issue preclusion would not apply. The district court found the meeting between the original building official and Chamberlain was more collaborative rather than an adjudicative. Chamberlain asserts the building official's role meets all the requirements under the Restatement. Chamberlain claims the owners of Chamberlain and city inspectors had notice of the building official's interpretation.

Chamberlain argues the owners were given the opportunity to provide evidence during the meeting and the city presented evidence of fire and safety issues. Chamberlain claims the third and fourth elements are met because the official is charged with rendering interpretations and issuing permits and the decisions are final unless further review is sought from the board of appeals. However, no cases were cited that specifically deem a city building official's determinations to be final adjudications where issue preclusion applies.

We agree with the district court that the process of obtaining the building official's interpretation was not adjudicatory in nature. The interactions were indeed collaborative. The testimony of Chamberlain's owners and the building official demonstrate how the meeting was informal and cooperative. Both testified that the purpose was to obtain advice about the building code. No one provided arguments to support or refute a specific interpretation of the building code. Therefore, the district court correctly held that issue preclusion did not apply to the building official's original interpretation of the building code as it applied to the Chamberlain project.

IV. CONCLUSION. The district court properly granted Ames's motion for summary judgment. Chamberlain provided no evidence of exceptional circumstances to justify applying equitable estoppel to a municipality. Also, Chamberlain could not acquire vested rights in an invalid building code interpretation that reduced safety standards. The initial meeting and original approval did not constitute a clear and definite promise under promissory estoppel principles and was not a final adjudication with preclusive effect.

AFFIRMED.