

FOURTH DIVISION
September 25, 2014

No. 1-13-3438

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ILLINOIS CONFERENCE OF THE UNITED)	Appeal from the
CHURCH OF CHRIST, an Illinois not-for-profit)	Circuit Court of
corporation,)	Cook County.
)	
Plaintiff-Appellee,)	
)	
v.)	09 CH 49453
)	
CHURCH OF THE OPEN DOOR/UU-UCC,)	
an Illinois not-for-profit corporation,)	
)	
Defendant-Appellant,)	
)	
and)	
)	
ATTORNEYS' TITLE GUARANTY FUND,)	The Honorable
INC., an Illinois corporation,)	Rodolfo Garcia,
)	Judge Presiding.
Defendant.)	

JUSTICE HOWSE delivered the judgment of the court.
Justices Epstein and Taylor concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's order granting summary judgment in favor of plaintiff is affirmed where defendant failed to purchase a new church property within two years pursuant to the terms of the agreement between the parties.

¶ 2 Plaintiff Illinois Conference of the United Church of Christ (the Conference) filed a declaratory judgment action claiming and asserting full rights to funds being held in a joint order escrow account because defendant Church of the Open Door (Open Door) failed to use the funds in the escrow account to purchase a new church property within two years as was required by a written agreement between the parties. The trial court entered summary judgment in favor of the Conference. Open Door now appeals the trial court's entry of summary judgment in favor of the Conference alleging that the Conference wrongfully withheld permission for Open Door to purchase a property within the two-year period. For the reasons below, we affirm the trial court's ruling.

¶ 3

BACKGROUND

¶ 4 The Conference is an umbrella organization for the United Church of Christ congregations in the northern two-thirds of Illinois. Open Door was founded in 1996 and was affiliated with the United Church of Christ at the time it was formed.

¶ 5 On or about October 15, 1997, the Conference conveyed a church property located at 5954 South Albany Ave., Chicago, Illinois (the Old Church Property) to Open Door via a Quit Claim Deed. As recited in the conveying deed, the Conference reserved and retained a right of reversion in the Old Church Property.

¶ 6 Several years later, Open Door expressed interest in selling the Old Church Property. The Conference agreed to release its interest in the Old Church Property in exchange for either (1) a reversionary interest in any new church property purchased by Open Door within two years

of the sale of the Old Church Property, or (2) entitlement to the proceeds from the sale of the Old Church Property if Open Door did not purchase a new church property within two years of the sale of the Old Church Property. The parties agreed that the proceeds from the sale of the Old Church Property would be placed in a joint order escrow account. The Old Church Property was sold, and the net proceeds of the sale amounted to approximately \$350,000.00.

¶ 7 On or about July 28, 2006, the Conference and Open Door deposited the \$350,000.00 into an escrow account and executed a memorandum of agreement (the agreement). Of relevance to this appeal, the agreement specifies that the net proceeds from the sale were to be used "to purchase a new church facility" and the Conference had to approve of the purchase in order for the proceeds to be released. The agreement further contains the following provision regarding that purchase:

"In the event that the New Property Fund is not used to purchase a New Property within two years of opening the escrow, the such [sic] funds shall be paid to the Conference to be used for church extension and church rebuilding purposes."

¶ 8 In October 2006, Open Door requested approval from the Conference to purchase a new property located at 6000 South Ashland, Chicago, Illinois (the Ashland property). The Ashland property was a mixed-use residential and commercial building that contained retail space on the first floor. Open Door intended to use the Ashland property as a "storefront church" with residential apartments that Open Door intended to rent as offices or residences for income. The Conference alleges it withheld approval for the purchase because the Ashland property was zoned as "C1-C2, Neighborhood Commercial District," meaning that the property could not be used as a church or for other religious assembly until a special use zoning permit was filed,

reviewed and approved by the City of Chicago. After the Conference withheld approval for the purchase of the Ashland property, Open Door concedes that it never sought any special use permits, never challenged the Conference's decision to withhold approval of the purchase, and never purchased a new church property or an alternate property at any time within two years after execution of the agreement. Of note, there is a letter in the record from the attorney retained by Open Door to handle the purchase of the Ashland property to the seller of the Ashland property dated October 25, 2006, that states:

"...as we discussed, I believe the one issue which may create impediment (for the Conference as well as the buyer) is the lack of appropriate zoning for a church. This property is presently zoned commercial. While I recognize that the matter has never been a problem to date, this issue has been mentioned as possibly hurting buyer's chance of getting approval. It is my understanding that seller is contracting the alderman for some type of assurance that any zoning change sought would be green lighted. I look forward to any written assurance that can be given."

¶ 9 In May 2009, Open Door was removed from the Conference's organization based on assertions by the Conference that Open Door had disbanded and no longer existed.

¶ 10 On December 10, 2009, the Conference filed a complaint in chancery division claiming and asserting full rights to the funds being held in the joint escrow account and requesting that those funds be released to the Conference. The Conference thereafter filed a motion for summary judgment arguing that because Open Door failed to purchase a new church within two years of the escrow account being created, it was entitled to summary judgment and the funds in

the joint escrow account. In response, Open Door asserted that that the Conference materially breached the agreement back in October 2006 when it wrongfully withheld approval for the purchase of the Ashland property, thus releasing Open Door of its obligation under the agreement to purchase a new property within two years. Open Door further claimed that the Conference materially breached an implicit term of the agreement when it wrongfully expelled Open Door from the Conference's organization in May 2009, again denying the Conference the ability to enforce the agreement against Open Door. The Conference responded that because the Ashland property was not zoned for church use, it could not approve the purchase until a zoning variance was approved by the governing authorities of the City of Chicago. In rebuttal, Open Door asserted that, although the Ashland property was not zoned for church use, the Conference knew or should have known that the City of Chicago's zoning ordinances would not be enforced against Open Door and were unenforceable against Open Door under the federal statute, "Religious Land Use and Institutionalized Persons Act" (RLUIPA).

¶ 11 The trial court granted summary judgment in favor of the Conference and ordered the Clerk of the Circuit Court to release the funds in the escrow account to the Conference without delay. In so ruling, the trial court judge noted in his written order that there was "[n]o evidence in the record that defendant Church of the Open Door ever challenged the City of Chicago's zoning ordinance" or "that it ever applied for a special permit for the use of the property to be purchased for religious assembly" and "no facts or evidence that it initiated litigation or that it took any steps to legally compel [the Conference's] approval of the intended purchase[.]" Further, the trial court noted that Open Door's argument regarding the RLUIPA did not give rise to a genuine issue of fact that would make summary judgment inappropriate "based on the clear and unambiguous terms of the Agreement."

¶ 12 Open Door appeals the trial court's order granting summary judgment in favor of the Conference arguing that the Conference materially breached the agreement by wrongfully withholding approval for the purchase of the Ashland property and wrongfully expelling it from the Conference's organization, thereby releasing it from its duty to purchase a new church property within two years. Open Door also argues that the trial court gave more weight to the term in the agreement limiting its purchase time to two years than those terms in the agreement that the Conference allegedly breached. The Conference argues that it could not approve the purchase of the Ashland property because it was not zoned to be used as a church. The Conference argues that pursuant to clear and unambiguous language in the agreement, since Open Door did not purchase a new church property within two years of the escrow order being created, the Conference was to be paid the funds in the escrow account. For the reasons that follow, we affirm the trial court's ruling granting summary judgment in favor of the Conference.

¶ 13 ANALYSIS

¶ 14 Summary judgment is appropriate when the pleadings, affidavits, depositions, admissions, and exhibits on file, when viewed in the light most favorable to the nonmoving party and strictly against the moving party, reveal that (1) no genuine issue of material fact exists and (2) the moving party is entitled to judgment as a matter of law. *Jackson v. Graham*, 323 Ill. App. 3d 766, 778-79 (2001). An appellate court reviews summary judgment orders *de novo*. *Quality Lighting, Inc. v. Benjamin*, 227 Ill. App. 3d 880, 884 (1992). Further, the interpretation of a contract is a question of law. *Progressive Premier Insurance Co. of Illinois v. Kocher ex rel. Fleming*, 402 Ill. App. 3d 756, 759 (2010).

¶ 15 Open Door first argues that the trial court improperly granted summary judgment in favor of the Conference because the Conference materially breached the agreement prior to this

lawsuit being filed by wrongfully and unreasonably withholding approval for the purchase of the Ashland property. Open Door further argues that the Conference's decision to withhold approval for the purchase of the Ashland property was unreasonable because it should have known that the zoning restrictions would not have been enforced against Open Door in light of the RLUIPA, and offered expert testimony in support of that argument. We disagree.

¶ 16 "The cardinal rule of contract interpretation is to discern the parties' intent from the contract language. [Citation.] Where the contract language is unambiguous, it should be given its plain and ordinary meaning." *Buenz v. Frontline Transportation Co.*, 227 Ill. 2d 302, 308 (2008). The agreement signed by the parties clearly and unambiguously required that Open Door purchase "a new church facility" within two years of the escrow order being created following the sale of the Old Church Property. As such, we interpret the agreement as manifesting that it was the parties' intention that Open Door was to use the proceeds of the sale of the Old Church Property to purchase a substitute house of worship. The property that Open Door requested the Conference's approval to purchase, the Ashland property, was zoned as a mixed-use residential and commercial building, not a traditional church building. Thus, the Ashland property could not legally be used as a church due to its current zoning restrictions. Although Open Door *intended* to adopt the first floor of the Ashland property for use as a church, the current zoning restrictions prevented the property from being used as a church building and, in our view, was not suitable for use as a church since it remained by definition a mixed-use commercial property. Because Open Door failed to seek a zoning variance or to buy a substitute church building within two years of the escrow order being created, it failed to request approval to purchase a substitute church property within two years in accordance with the agreement and the manifested intent of the parties.

¶ 17 In its appellate brief, Open Door argues that the Conference materially breached the implied duty of good faith and fair dealing that is implied in every contract because the Conference's stated objection to the purchase of the Ashland property—that it was not zoned for use as a church—was baseless and made in bad faith in light of the undisputed facts summarized by Professor Miller, Open Door's expert in the matter. Open Door uses Professor Miller's testimony to argue that it was unreasonable for the Conference to withhold approval for the purchase of the Ashland property because the City of Chicago would not have interfered with the current zoning regulations, especially in light of the RLUIPA. In its reply brief, Open Door again argues that "the Conference's refusal to approve the purchase of 6000 South Ashland on zoning grounds was unreasonable because the Conference knew or should have known that there was no obstacle to operating a church at that address: the federal [RLUIPA] would preempt the application of the City's zoning ordinance to 6000 South Ashland." We note that the RLUIPA requires that municipal zoning not discriminate against church uses (42 U.S.C. §§ 2000cc(b)(1), (b)(2) (2000)) and not unreasonably limit religious assemblies within a jurisdiction. 42 U.S.C. § 2000cc(b)(3)(B) (2000); see also *City of Elgin v. All Nations Worship Center*, 369 Ill. App. 3d 664, 666 (2006).

¶ 18 While it is well established that the duty of good faith and fair dealing is implied in every contract, the purpose of the duty of good faith and fair dealing is to ensure that parties do not take advantage of each other in a way that could not have been contemplated at the time the contract was drafted or do anything that will destroy the other party's right to receive the benefit of the contract. *Gore v. Indiana Insurance Co.*, 376 Ill. App. 3d 282, 286 (2007). Since the agreement clearly states the parties' intention that the new property was to be purchased for use as a church for religious assembly, we find that the Conference did not breach its duty of good

faith and fair dealing when it withheld approval based on zoning restrictions that would have legally prohibited the property's use as a church. Moreover, there is nothing in the RLUIPA that is self executing or nullifies the effect of valid city zoning ordinances. Thus, anything that would prohibit the newly purchased property from being used as a church for religious assembly, including a zoning restriction, would have been foreseen as grounds for not approving a purchase pursuant to the terms of the agreement. In fact, such restrictions were acknowledged as being a basis for the Conference to withhold approval. In the letter from Open Door's attorney to the seller of the Ashland property, Open Door's attorney clearly acknowledges that the zoning restrictions would pose a problem in obtaining the Conference's approval for the purchase.

¶ 19 Further, by requesting permission to purchase a property that was not zoned for church use, but rather zoned for residential and commercial use, Open Door sought to change the terms of the agreement, which states that the sale proceeds were to be used "to purchase a new church facility." "Parties are entitled to enforce the terms of negotiated contracts to the letter without being mulcted for lack of good faith. [Citation.] Express covenants abrogate the operation of implied covenants so courts will not permit implied agreements to overrule or modify the express contract of the parties." *Resolution Trust Corp. v. Holtzman*, 248 Ill. App. 3d 105, 113 (1993). Thus, because the terms of the agreement clearly require that the sale proceeds be used "to purchase a new church facility" and that was not done here, we affirm the trial court's ruling.

¶ 20 Even if we assume that Open Door attempted to obtain a zoning change for the Ashland property so that the first floor could be used as a church and such a zoning change would have been granted, under the scenario proposed by Open Door, Open Door planned to get into the real estate business, a for-profit purpose, by renting out residential and office spaces for profit. Under our interpretation of the agreement, we do not believe that the parties contemplated that

the sale proceeds from the Old Church Property would be used to purchase apartments or offices that Open Door would rent out for a profit; rather, we interpret the agreement as allowing those sale proceeds to be used only for the purchase of a new place of worship. Therefore, we find as a matter of law that Open Door did not purchase or attempt to purchase a new property that could be used as a church for religious assembly as contemplated under the agreement within two years of the escrow order being created. As such, based upon the language of the agreement and the parties' intent to purchase a new church property, we agree with the trial court's finding that the Conference did not materially breach its duty of good faith and fair dealing by withholding its approval for the purchase of the Ashland property until the zoning issues were resolved.

¶ 21 Open Door also claims that the Conference materially breached the agreement by wrongfully expelling it from the Conference's organization. However, the claims at issue in this case arise out of an agreement that was created between the parties for the sole purpose of properly distributing funds in an escrow account pending a potential future purchase of church property. The agreement had nothing to do with Open Door's continued membership in the Conference's organization. As such, we cannot see how an implicit term of the agreement at issue here, which solely dealt with disbursement of escrow funds pending a future sale, could have anything to do with the Conference's ability to expel Open Door from its organization. Further, even if such a proposition could be inferred as implicitly arising out of the agreement, and even if Open Door was "wrongfully" expelled by the Conference, the expulsion did not occur until May 2009, well after the time by which Open Door was to purchase a new church property, making it irrelevant here.

¶ 22 In sum, we find that the Ashland property, which Open Door sought the Conference's approval to purchase, was not a church property as contemplated by the parties in the agreement

and no substitute church property was purchased within two years. Therefore, the Conference was entitled to summary judgment as a matter of law. Accordingly, under the terms of the agreement between the parties, the funds in the escrow account "shall be paid to the Conference to be used for church extension and rebuilding purposes."

¶ 23

CONCLUSION

¶ 24 For the reasons stated above, we affirm the trial court's order granting summary judgment in favor of the Conference and also order the Clerk of the Circuit Court of Cook County to release the escrow funds totaling \$339,688.00 to the Conference.

¶ 25 Affirmed.