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CONTRACTS - NORTH DAKOTA

City of Glen Ullin v. Schirado

Supreme Court of North Dakota - April 20, 2021 - N.W.2d - 2021 WL 1540423 - 2021 ND 72

Park district and city brought action against owners of land near park district's undeveloped lots, with streets and alleys under city's authority running adjacent to and between lots, seeking to enjoin property owners from placing fencing and allowing their horses to graze on lots.

After granting preliminary injunction, the District Court entered summary judgment in favor of park district and city, found property owners in contempt of court based on violation of default judgment in prior lawsuit, and awarded attorney fees and costs in the amount of $11,106.85. Property owners appealed, and the Supreme Court reversed and remanded. On remand, the District Court denied landowners' motion for trial and granted city's motion for summary judgment, granted permanent injunctive relief, and awarded attorney's fees. Landowners appealed.

The Supreme Court held that:

- City council's meeting minutes did not constitute a sufficient memorandum of the alleged grazing agreement to satisfy the statute of frauds;
- Doctrine of part performance did not apply; and
- Court adequately explained award of $5,460 in attorney's fees to park district.

City council's meeting minutes did not constitute a sufficient memorandum of alleged grazing agreement to satisfy the statute of frauds and allow landowners to use city property for grazing their horses in exchange for cleaning up streets and alleys; meeting minutes merely noted that landowners had asked if they could graze horses on "the Schultz land" on the city's extreme north side and that such grazing was permissible, and did not provide the terms of any agreement to allow landowners to use platted streets and alleys as pasture land if garbage was removed.

Doctrine of part performance did not apply to remove alleged agreement between landowners and city from the statute of frauds absent any evidence that such an agreement existed and that landowners' part performance was consistent only with that agreement; while landowners alleged that city had agreed to allow them to graze horses on city land in exchange for cleaning up city streets and alleys, they were unable to provide evidence of any such agreement other than their own allegations.

District court adequately explained award of $5,460 in attorney's fees to park district which obtained permanent injunction to prevent landowners from grazing horses on park land; court was presented with an invoice listing the time and amounts billed by counsel to the city and the park district since the commencement of the litigation, court explained that the park district was awarded recovery of attorney's fees from landowners for their contempt of the injunction, and the fee amount was half the invoice total because the city was not protected under the injunction.

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