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DEVELOPMENT AGREEMENTS - IOWA

5th and Walnut Parking LLC v. City of Des Moines

Supreme Court of Iowa - June 12, 2026 - N.W.3d - 2026 WL 1700947

After lender bank for parking garage portion of real estate development project, on land which city sold to developers for garage, residential tower, and theater, brought foreclosure action due to city-issued notices that developers were in default, developers filed cross-complaint against city, alleging breach of contract, tortious interference with contract, indemnity, declaratory relief, interference with economic advantage, and injunctive relief, and city, which had purchased garage from receiver, filed counterclaims for fraud in the inducement, breach of contract, fraudulent or negligent misrepresentation, and unjust enrichment.

The District Court found city breached development agreement, found city tortiously interfered with developers' construction loan agreement, awarded developers $4,353,677 in damages, ruled developers' other claims were moot or unproven, granted judgment in developers' favor on city's breach of contract counterclaims, and granted summary judgment to developers on city's unjust enrichment and loan repayment counterclaims. City appealed, and developers cross-appealed.

The Supreme Court held that:

- Evidence was sufficient to support finding that city, rather than developers, breached development agreement;
- Notice of default did not constitute intentional and improper interference with developer's lending agreement;
- Development agreement did not limit breach of contract damages to special fund consisting of revenue from tax-increment financing;
- Evidence was sufficient to support award of benefit of the bargain damages of $4,353, 677;
- Claim for lost profits expected to earn from owning and operating parking garage was too speculative to support any damages award;
- Evidence was insufficient to support developers' claim to a tax gross-up; and
- Developers failed to establish they were entitled to damages from city in the form of attorney's fees incurred in defense of the foreclosure

Evidence was sufficient to support finding that city, rather than developers, breached development agreement between the parties for construction of parking garage, residential tower, and theater, although developers missed original deadline to begin construction of tower and theater; the parties' course of performance demonstrated that a notice of default and opportunity to cure was required before the developers could be found in breach, as city had repeatedly reassured developers it was "NOT" issuing notice of default and city manager testified that developers were entitled to an opportunity to cure after a missed deadline, and developers invoked force majeure clause due to COVID-19 pandemic before city issued any notice of default, which had stopped the clock on the deadline to cure.

City manager's action in issuing notice of developer's default on contract with city for development of parking garage, tower, and theater did not constitute intentional and improper interference with

developer's lending agreement with their bank; any interference with the bank contract was merely incidental to the city's breach of contract in issuing the notice of default during COVID-19 pandemic, city did not act with the intent to appropriate the developers' contractual advantage or for the sole purpose of harming the developers' lending agreement, and city acted to protect its own interests, not to maliciously interfere with the lending agreement.

Development agreement between city and developers of parking garage, tower, and theater project, which stated that "The obligations of City under this Agreement shall not constitute a general obligation of the City," did not limit breach of contract damages to special fund consisting of revenue from tax-increment financing; provision only applied to "The advances to be paid by the City" and did not mention damages or breach, and another provision stated that, in an action "wherein damages are sought for breach of this Agreement, City shall have the same rights and liabilities as a private non-governmental party."

Evidence in developers' breach of contract action against city was sufficient to support award of benefit of the bargain damages of $4,353, 677; there was evidence that developers, who had acquired land from city with plans to build a parking garage, tower, and theater, were within approximately four months of completing the garage when their lender bank filed a foreclosure action in response to the city's notice of default, which was a breach of the contract by the city, that breach and resulting foreclosure by the bank prevented the developers from completing the garage and thereby earning a development fee and related savings over the stipulated price, and the foreclosure also triggered higher default interest costs.

Developers' claim for damages for jump ramp insurance claim on parking garage, which city purchased from receiver after developers' lender bank filed petition to foreclose due to city's pursuit of default in breach of its development contracts with developers for construction of garage, residential tower, and theater, was too speculative to support any award of damages to developers for city's breach of contract absent any showing by developers that they would have been successful in obtaining an insurance payout or other settlement from the design firm.

Developers' claim for lost profits they expected to earn from owning and operating parking garage, which city acquired at receiver's sale following foreclosure initiated by developers' lender bank after city's breach of development agreement caused lender to foreclose, was too speculative to support any award of lost profit damages in breach of contract action against city; developers assumed that the garage would have a useful life of 100 years, their revenue projections relied on the existence of an integrated hotel and residential tower and a theater, as well as a stream of revenue from parking for a farmers market, and developers never established that the numbers provided were in any way related to past operational income of similarly situated parking garages.

Developers, who had completed parking garage pursuant to development agreements with city but had not constructed contemplated tower and theater, could not recover reliance damages from city, which breached the agreements, in the form of expenses already incurred for the tower and theater; developers were not out of pocket for those expenses, which included money spent on architectural drawings and other pre-development expenses, as those expenses were paid entirely by a construction loan which city paid off when it purchased the garage from developers' lender bank, such that city in effect paid for the tower and theater expenses once it paid off the construction loan, developers were allowed to retain title to the tower and theater parcels without paying the city for them, and developers also retained ownership of the architectural drawings for the tower and theater.

Evidence in developers' action against city for breach of contract to build parking garage, tower, and theater was insufficient to support developers' claim to a tax gross-up on the breach of contract

damages they received; while developers argued that, had the contract been fulfilled, they would have received real estate instead of money, and the real estate would have been taxed differently from the lump sum payment that they received as damages, the LLC which was to receive the damages award could choose to be taxed either as a corporation or as a partnership, and that election would change who was taxed (either the members or the LLC) and how they would be taxed (as a pass-through, if a partnership, or as an entity, if a corporation), and the developers failed to offer into evidence any tax returns for the individuals or entities.

Developers of mixed-use project, who filed cross-claim against city for breach of contract as part of lending bank's action to foreclose on parking garage, failed to establish they were entitled to damages from city, which breached development agreement, in the form of attorney's fees incurred in defense of the foreclosure claim, which was caused by city's breach and issuance of notices of default; development agreement did not provide attorney fees for the prevailing party, and developers did not submit a fee affidavit or itemized billing statement that properly segregated their fees incurred exclusively on litigating the foreclosure claim, but rather began litigating their claims against the city immediately upon being served with the foreclosure petition.

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