IN THE COURT OF APPEALS OF IOWA

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DEUTSCHE CREDIT CORPORATION,)
A Delaware Corporation,)

Plaintiff-Appellee,)

vs.)

RICHARD L. HARDEN,)

Defendant-Appellant.

7-581
86-1267

Appeal from the Iowa District Court for Wayne County (No 20915), M. J. Streit, Judge.

Defendant appeals from the trial court's order granting Deutsch Credit's motion for summary judgment for the immediate possession of a round hay baler. **AFFIRMED.**

Richard L. Harden, pro se, for defendant-appellant.

Richard M. Lajeunesse and George A. Wilson III of Dreher, Wilson, Simpson, Jensen & Adams, P.D., Des Moines, for plaintiff-appellee.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

PER CURIAM

This controversy began on October 10, 1980, when the defendant-appellant and McGahney Implement Co. entered into a Retail Installment Contract and Security Agreement for one Hesston Model 550 Round Baler. McGahney later assigned its interest to plaintiff, then doing business as First Credit Corporation.

In May 1983, the defendant signed a refinancing agreement. The refinancing agreement provided that the security in the baler would continue.

On November 26, 1983, defendant filed a chapter 11 bankruptcy petition. That petition was dismissed in March of 1985. On July 26, 1985, defendant filed a chapter 7 bankruptcy petition. In each of his bankruptcy petitions, the defendant listed the plaintiff as a secured creditor.

On November 21, 1985, defendant's discharge order in chapter 7 was issued. The trustee received an order to abandon the baler on February 10, 1986, for the value of the lien of the plaintiff exceeded the value of the baler.

Plaintiff then brought action to replevin the baler. Defendant meanwhile attempted to amend his bankruptcy schedule so as to claim the baler as exempt property. The bankruptcy court declined to permit the amendment, finding in essence that the motion to amend was not filed in good faith. Thereafter, defendant and plaintiff filed separate motions for summary judgment, and defendant, after answer, filed a motion to dismiss.

The trial court sustained plaintiff's motion for summary judgment and awarded plaintiff judgment against the defendant for the immediate possession of the baler, along with judgment for attorney fees in the amount of $600 and costs. Defendant appeals. We affirm.

The defendant assigns as grounds for reversal eleven separate propositions. Since a number of the assignments of error concern the same subject matter, we will combine some for our consideration. We turn first to the question of summary judgment.

I.

The standard to be met in a motion for summary judgment is set out in Iowa Rule of Civil Procedure 237, which provides in pertinent part:

> (c) Motion and proceedings thereon. The motion shall be filed at least ten days before the time fixed for the hearing. The adverse party prior to the day of hearing may file opposing affidavits. The judgment sought shall be rendered forthwith 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. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

Iowa R. Civ. P. 237(c).

We find that the plaintiff has met the above two-pronged test. Because there is no genuine issue as to any material fact, we must determine if the moving party, plaintiff, is entitled to judgment as a matter of law. We hold in the affirmative for the reasons set forth below.

In determining there is no genuine issue as to any material fact, the record is clear that the defendant signed a Retail Installment Contract and Security Agreement for the Hesston Model Baler in question, that he has failed to make the payments as called for therein, and that he is in default. An examination of the installment contract reveals that it has an acceleration provision in the event of default and a remedy for the secured party to proceed against the collateral when default occurs. The defendant does not challenge by appropriate affidavit or otherwise any of these facts. Nor does the defendant challenge the validity of the installment contract.

Rather, the defendant by his first assignment claims the trial court erred "in interferring in a bankruptcy matter concerning exempt property," and in his tenth and eleventh assignment he claims as follows:

> X. DID THE TRIAL COURT ERR IN ALLOWING UNDUE HARRASSMENT AGAINST BANKRUPTS AND SHOULD THEY BE ALLOWED SANCTIONS AND DAMAGES BECAUSE OF IT?
>
> XI. DID THE TRIAL COURT ERR IN NOT PROTECTING DEFENDANT'S BANKRUPTCY RIGHTS UNDER IOWA LAW AND BY NOT INTERCEDING ON DEFENDANT'S BEHALF THEREIN AS WELL AS IN FEDERAL BANKRUPTCY COURT BY NOT QUESTIONING THE FEDERAL BANKRUPTCY COURT'S VIOLATION OF IOWA LAW WHICH IT REQUIRES IOWA DEBTORS TO GO BY AND WHICH THE FEDERAL BANKRUPTCY COURT ADHERES TO IN DECIDING IOWAN'S EXEMPTIONS--DOESN'T THIS STATE HAVE ANYTHING TO SAY ABOUT THAT?

We find no merit in either of these assertions. Article I, Section 8 of the United States Constitution provides in part that "[c]ongress shall have power to . . . establish . . . uniform laws on the subject of Bankruptcies throughout the United States." U. S. Con. art. I, § 8, cl. 4. Pursuant to Article I, Section 8, Congress enacted the Bankruptcy Code embodied in Title 11 of the United States Code.

The bankruptcy court has "[e]xclusive jurisdiction over the debtor and its property . . . ." In re Chicago, Milwaukee, St. Paul & P. R.R., 738 F.2d 209, 211 (7th Cir. 1984). It has been further held that "[t]his jurisdiction is broad and plenary and cannot be infringed upon by the proceedings in another court." Id.

The defendant, by filing his petition in bankruptcy, invoked the jurisdiction of that tribunal. The trial court, and properly so, did not proceed with the replevin action until after the bankruptcy court abandoned the property in question and advised plaintiff that it could pursue its remedies in the state court. It was only then that the trial court determined the plaintiff was entitled to the immediate possession of the baler.

We believe, under the circumstances here, that the trial court acted properly when it did not intercede in the bankruptcy proceeding. Because of federal constitutional and statutory limitations, we also conclude that we are without authority to intercede in the manner suggested by the defendant.

II.

The defendant claims in his second assignment that the trial court erred in its ruling on his rule 66 (special appearance) motion. We find no error in that ruling. Trial courts have some discretionary latitude in the extending time requirement set forth in rule 85. We will not disturb such rulings unless there has been an abuse of that discretion. We find no abuse here.

III.

The defendant next claims that the plaintiff, as a foreign corporation, is not entitled to utilize our court system since it does not have section 496A.120 authority to transact business within this state. That section of our Code provides in part:

> No foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this state, until such corporation shall have obtained a certificate of authority. Iowa Code § 496A.120 (1987).

However, section 496A.120 must be read in conjunction with section 496A.103(2). We so held in Budget Premium Co. v. Motor Ways, Inc., 400 N.W.2d 60, 62 (Iowa App. 1986), where we determined that section 496A.120 was qualified by 496A.103(2).

Here the plaintiff is attempting to enforce its rights to secured property. Section 496A.103(2) specifically provides that a foreign corporation is not considered "to be transacting business in this state . . . *by reason of* carrying on in this state *any one or more* of the following activities: (h) Securing or collecting debts due it or enforcing any rights in property securing the same." We find no merit in this claim of the defendant.

IV.

The defendant claims under his Division IV, VI, VII, and VIII additional errors. We find no merit in any of these assertions. The plaintiff's action is not frivolous. The trial court's ruling on plaintiff's motion for summary judgment and our opinion affirming that ruling is dispositive of that contention.

The defendant complains that he did not receive a copy of the letter written by plaintiff's counsel to the trial judge requesting permission to appear telephonically for a scheduled hearing. Yet, the defendant set forth a copy of that letter in his appendix with proof of service at the bottom. The defendant claims he received that copy from the clerk of court. We have no reason to doubt his statement. If such is the case, we concur with his position that plaintiff's counsel should have copied the letter to him. However, even assuming plaintiff's counsel failed to do so, we do not find such omission to be cause for reversal.

Nor do we find that the trial court erred in permitting plaintiff's counsel to appear telephonically. Rule 117(f) vests in the courts the authority to submit motions by telephone conference. We appreciate the defendant's concern over plaintiff's telephone conversation with the judge, but the judge properly reported that conversation to the defendant at the hearing on the motion for summary judgment. The substance of the conversation was that plaintiff's counsel was going to stand on his motion for summary judgment. The defendant was afforded the opportunity to argue the merits of his cause. The ex parte conversation is not of sufficient dimension to require reversal.

Turning next to defendant's assertion that the trial judge acted in an advisory capacity, we have examined the record in its entirety and find no evidence whatsoever to substantiate this assertion, nor does the defendant point to anything in the record that reveals the judge acted in the manner complained of by defendant. On the contrary, our review leads us to the conclusion that the trial judge went to extraordinary lengths to protect the right of the defendant who appeared pro se. The trial judge went so far as to permit the defendant to argue matters that were not necessarily germane to the issue at hand. We find that the trial judge acted well within the bounds of judicial ethics.

We concur with the appellant's analysis of the law relating to summary judgments. However, we do not agree with the manner in which he seeks to apply that law. Our review of defendant's motion for summary judgment and motion to dismiss brings us to the conclusion that the trial court acted properly in dismissing or denying the same. We add, as it relates to the defendant's motion to dismiss, that it was filed after he had answered.

V.

This leaves us with defendant's V and IX assignments of error. As explained in our previous division, the bankruptcy court, at the request of the defendant, took jurisdiction when his petition for bankruptcy was filed. The defendant listed the baler as secured property. The trustee later abandoned the baler. The defendant attempted to amend his bankruptcy schedules so as to have the baler set aside as exempt property. The bankruptcy judge declined to permit the amendment. Under the circumstances here, we do not have the authority to review the bankruptcy judge's ruling.

We also note that the defendant did bring a certiorari action against the bankruptcy judge in the federal district court in which he attempted, along with other items of relief, to have the baler set aside as exempt property. That action was dismissed by a federal judge. Thus, the only record we have is that the baler was not classified as exempt property under the bankruptcy court's ruling. As previously stated, we are without authority to intervene in the bankruptcy proceeding to compel the bankruptcy court to take the action requested by the defendant.

VI.

Nor do we find that the trial court erred in assessing attorney fees. The written security agreement, signed by the defendant, provides for reasonable attorney fees in the event of default. Iowa Code section 625.22 directs the court to allow reasonable attorney fees when judgment is recovered upon a written contract. The trial court acted in accordance with the Iowa law. The attorney fees were incurred after the property was abandoned. We affirm as to this issue.

AFFIRMED.