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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-34 / 89-575

RICHARD CHARLES GORSCH and **BETTY GORSCH**,

Appellants,

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vs.

CITIZENS BANK AND TRUST COMPANY, N.A., BELLE PLAINE, IOWA,

Appellee.

Appeal from the Iowa District Court for Poweshiek County, Dan F. Morrison, Judge.

The plaintiffs appeal from a judgment of the district court granting the defendant Bank's motion for summary judgment on the basis that plaintiff had signed a full and complete release as to all claims against the Bank regarding the sale of plaintiffs' farmland. **AFFIRMED.**

John P. Roehrick of Roehrick, Hulting & Moisan, Des Moines, for appellants.

Roger W. Stone of Simmons, Perrine, Albright & Ellwood, Cedar Rapids, for appellees.

Considered by Oxberger, C.J., and Schlegel and Sackett, JJ.

OXBERGER, C.J.

The plaintiffs, Richard Gorsch and Betty Gorsch, appeal from a judgment of the district court granting the defendant's, Citizens Bank and Trust Company, motion for summary judgment on the basis that plaintiff had signed a full and complete release as to all claims against the Bank regarding the sale of plaintiffs' farmland. We affirm the decision of the district court in all respects.

Richard and Betty Gorsch have farmed in Poweshiek County for many years. Since 1951 the Gorschs have utilized the financial services of the Citizens Bank and Trust Company. Due to the slumping Iowa farm economy, by the beginning of 1986 the Gorschs were heavily into debt with the Bank. The Bank advised the Gorschs they would have to start disposing of their farmland. The Bank held a first mortgage on the farmland.

On December 31, 1986, the Gorschs accepted two offers to buy the farm, such offers solicited by the Bank as the Gorschs' agent. One sale for ninety-one acres at a price of $52,000, was sold to a Jack Wilkinson. The other sale was for fifty acres to a Roger Formanek at a price of $29,000. The Gorschs visited their attorney, Gary Anderson, two days after the sale of the farm. The Gorschs informed him they were unhappy with the prices received, they believed the Bank could have gotten greater prices for the farmland, and the Bank had allegedly promised they could retain some of the land.

On March 30, 1987, the sale was consummated with both sides present and being represented by their respective attorneys. At that meeting an agreement was negotiated by the Gorschs' attorney John Thompson, Anderson's partner, and the Bank's attorneys. Both parties signed a general release, providing that all claims of both parties had been satisfied. In consideration for the agreement, the Bank agreed to pay many items, including federal and state tax liability, legal fees, abstracting, recording and transfer taxes, and to forgive $7,000 of the Gorschs' debt.

On February 12, 1988, the Gorschs filed the present lawsuit alleging: (1) a breach of duty by the Bank as agent in the sale of the farm, (2) a breach of fiduciary relationship; and (3) a breach of good faith and fair dealing. The Bank argued the parties had entered into a release and, therefore, the Gorschs were barred from bringing suit. At depositions Mr. Gorsch admitted that after numerous meetings with attorneys, a final settlement was reached on March 30, 1987. Attorney Thompson testified the Gorschs had an opportunity to fully read the release, and signed it in the presence of the attorneys. Thompson also testified it was his understanding the release pertained to the tax consequences of the sale. The Bank officer, Henry Wehrman, believed the release covered all aspects and it was to be a full and complete release.

In August 1988 the Bank filed a motion for summary judgment, which was denied. The Bank filed an interlocutory appeal, to the supreme court, which was denied by Justice Larson on December 16, 1988. On February 24, 1989, the Bank again filed a renewed motion for summary judgment alleging that the release barred the action. The district court granted the motion on April 6, 1989. The Gorschs have appealed.

Our review is on errors assigned. Iowa R. App. P. 4. In ascertaining whether summary judgment (Iowa R. Civ. P. 237) is appropriate, we apply the following standards:

> In reviewing the grant or denial of a summary judgment motion, we view the underlying facts contained in the pleadings and the inferences to be drawn therefrom in the light most favorable to the party opposing the motion, and give to such party the benefit of any doubt as to the propriety of granting summary judgment. Our task on appeal is to determine only whether a genuine issue of material fact exists and whether the law was correctly applied, and to reverse the grant of summary judgment if it appears from the record there is an unresolved issue of material fact.

D.R.R. v. English Enterprises, CATV, 356 N.W.2d 580, 583 (Iowa App. 1984).

The Gorschs argue the claims which formed the basis of their cause of action were unknown to the parties when they entered the settlement agreement, warranting this court's reversal of the districts ruling. We disagree.

The Iowa Supreme Court recently adopted the federal standard for summary judgment as set out in Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 244, 106 S. Ct. 2505, 2508, 91 L. Ed. 2d 202, 209 (1986). See Behr v. Meredith Corp., 414 N.W.2d 339, 341 (Iowa 1987). In Anderson, the United States Supreme Court held the standard for summary judgment is the same as upon directed verdict. 477 U.S. at 251, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214. As the court in Anderson stated, when a movant for summary judgment satisfies the initial burden of production by showing there is no genuine issue of fact, the burden shifts to the party opposing the motion for summary judgment, who then must set forth specific facts showing there is a genuine issue for trial. Anderson, 477 U.S. at 250, 106 S. Ct. at 2516, 91 L. Ed. 2d at 213. In the case before us, Gorsch failed to sustain this burden.

The district court stated:

> The plaintiffs' [the Gorschs'] current claims arise out of the loans they received and the management of the farm business. The . . . [plaintiff's] allegations are a related matter to the farm loans and within the contemplation of the agreement, therefore they are covered by the settlement and barred.
>
> Plaintiffs entered into the settlement agreement after consultation with counsel. The language of the agreement is clear and explicit. The agreement was intended to lay to rest all claims and controversies. The plaintiffs cannot avoid the agreement they voluntarily entered into and are bound to follow.
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> . . . .
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> The plaintiffs liken this suit to an "unknown injury" and argue that since the injury was not in contemplation at the . . . execution of the agreement, the agreement cannot be enforced as to this action. . . .

> The settlement agreement clearly states that it is a full and complete settlement of any claim the plaintiffs may have against the defendant of its officers. The language indicates that all potential claims are to be extinguished by the agreement. The banks' attorney and representatives state that they intended to settle all matters related to the indebtedness and the farm management. There is no mutual mistake, shared by both sides as to the nature and extent of the agreement, therefore, there are no grounds under the "unknown injury" doctrine to set the agreement aside or exempt the plaintiffs' current suit from consideration by the settlement agreement.

The district court concluded:

> The court finds that the plaintiffs entered into the settlement agreement voluntarily and after discussion with their lawyers. The settlement agreement explicitly provides that the plaintiffs waive all claims that they may have against the defendant. There was good consideration provided for the plaintiffs in the agreement, therefore the agreement is valid and binding on the plaintiffs.
>
> The settlement provides a full and complete settlement of any claim the plaintiffs may have had against the defendant. The defendant has shown that there is no genuine issue of material fact in controversy and that it is entitled to a judgment as a matter of law.

We agree with the analysis and conclusion of the district court

The Gorschs have failed to show a genuine issue of material fact exists. The law has been correctly applied. The district court was correct in sustaining the motion for summary judgment.

AFFIRMED.