IN THE COURT OF APPEALS OF IOWA

No. 0-506 / 90-34

LELAND EGANHOUSE and **EVELYN EGANHOUSE,**

Plaintiffs-Appellants,

vs.

BALDWIN SAVINGS BANK,

Defendant-Appellee.

Appeal from the Iowa District Court for Jackson County, James E. Kelley, Judge.

Eganhouses appeal a district court order granting the Bank's motion for summary judgment and dismissing the Eganhouses' petition as being precluded by the Eganhouses' bankruptcy. **AFFIRMED.**

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

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

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

SACKETT, J.

Plaintiffs-appellants Leland Eganhouse and Evelyn Eganhouse sued defendant-appellee Baldwin Savings Bank under a theory of lenders liability. The sole issue in this appeal is whether the trial court properly sustained defendant's motion for summary judgment alleging plaintiffs' claim was barred by claim preclusion. We affirm the trial court.

Plaintiffs are farmers who had a long-term relationship with defendant bank. Plaintiffs deposited monies with defendant and borrowed money from defendant. In the summer of 1984, plaintiffs claim defendant, without notice, refused to loan them sufficient monies to service their real estate mortgages. Defendant also told plaintiffs it might call all notes plaintiffs had due and notify plaintiffs' suppliers, customers, and buyers that two-party checks would be required.

On December 10, 1984, plaintiffs filed a bankruptcy petition. Defendant was a principal creditor in the bankruptcy with a claim in excess of a quarter of a million dollars. Plaintiffs never disclosed or listed in the bankruptcy schedules this lender's liability claim. Defendant filed a claim and participated in the bankruptcy as creditors.

On December 12, 1986, the bankruptcy court approved a plan that was the result of an agreement between plaintiffs and defendant. Defendant voted for the plan. On March 9, 1987, plaintiffs filed this action against the defendant for damages due to the defendant's refusal to lend them money and defendant's breach of a contract to lend. Plaintiffs also contended defendants interfered with their present and prospective contracts. The defendant filed a motion for summary judgment asking for dismissal of plaintiffs' claim. The trial court sustained the motion. Plaintiffs appeal contending the trial court erred in granting summary judgment. We affirm.

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 237(c); see Farm Bureau Mut. Ins. Co. v. Miline, 242 N.W.2d 422, 423 (Iowa 1988). The moving party has the burden to show the nonexistence of a material fact, Miline, 242 N.W.2d at 423, and the evidence must be viewed in the light most favorable to the resisting party. Thorp Credit, Inc. v. Gott, 387 N.W.2d 342, 343 (Iowa 1986). Every legitimate inference that reasonably can be deduced from the evidence should be afforded the resisting party. Id.; Sherwood v. Nissan, 179 N.W.2d 336, 339 (Iowa 1970).

Plaintiffs contend the trial court erred in finding, as a matter of law, their claim was precluded and in finding there were no disputed material facts. Plaintiffs advance the sole question is whether their action against defendant had accrued on December 12, 1986. Plaintiffs admit if it had, the trial court's ruling is correct.

Plaintiffs contend their cause of action did not accrue until they could show their livelihood was injured and contracts they held with other parties could not be performed. The question is whether, under state law, the cause of action had accrued when plaintiffs' bankruptcy was commenced. See Matter of Roach, 824 F.2d 1370, 1374 (3rd Cir. 1987); Wilson v. Bill Barry Enters., 822 F.2d 859, 861 (9th Cir. 1987); Butner v. United States, 440 U.S. 48, 55, 99 S. Ct. 914, 918, 59 L. Ed. 2d 136, 141 (1979); Collins v. Federal Land Bank of Omaha, 421 N.W.2d 136, 138 (Iowa 1988).

Under Iowa law there must be an actual loss to the interest of another before a cause of action accrues. Collins, 421 N.W.2d at 139; Wolfswinkel v. Gesink, 180 N.W.2d 452, 456 (Iowa 1970); Chrischilles v. Griswold, 260 Iowa 453, 459, 150 N.W.2d 94, 98-99 (1967). However, while a loss must have occurred, it is not necessary that the final or ultimate damages be known to a plaintiff for his or her cause of action to accrue, only that some damage had occurred that would have entitled the victim to maintain a cause of action. See Continental Grain Co. v. Tegles Constr. Co., Inc., 480 F.2d 793, 797 (8th Cir. 1973); Chrischilles, 260 Iowa at 463; 150 N.W.2d at 100 (1967).

Plaintiffs admit they were forced to file bankruptcy in 1984 due to the actions of the defendant. Though plaintiffs contended defendant had promised to make them further loans, it was apparent to plaintiffs the defendant had no intention of loaning them any more money. Leland Eganhouse testified "it was perfectly obvious" the Bank was not going to fulfill its promise of lending him money as promised in August 1984.

Plaintiffs place considerable reliance on Collins, 421 N.W.2d 136, where the court determined a legal malpractice claim belonged to the bankrupt debtors where the economic consequences of the claim would not have impacted the debtor until after the bankruptcy was filed. Collins, 421 N.W.2d at 139. Collins is distinguishable from this case. Here, damages on the lender liability claim clearly had accrued prior to filing the bankruptcy. Because some if not all elements of damages were known to plaintiffs, the discovery rule which was applied in Collins is not applicable. See LeBeau v. Demig, 446 N.W.2d 800, 803 (Iowa 1989). And the principle of Collins that no cause of action accrues until there is a loss is not applicable. See Collins, 421 N.W.2d at 139.

The only conclusion that can be reached from plaintiffs' facts is that their cause of action accrued before the bankruptcy. Having so decided, we need not determine whether plaintiffs were precluded from this suit because their claim was precluded by the bankruptcy court's approval of their agreement with defendant. The trial court is affirmed.

AFFIRMED.