FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

FARMER'S SAVINGS BANK OF KALONA, IOWA,	)	
Plaintiff-Appellant,	)	
vs.	)	
NORTHWEST BY-PRODUCT, INC. a/k/a and d/b/a DARLING CO., INC. AND DARLING DELAWARE COMPANY, INC.,	)	Filed April 30, 1985
Defendants-Appellees,	)	
and	)	
NORTHWEST BY-PRODUCTS, INC. ET AL,	)	5-83 84-402
Petitioners-Appellees,	)	
vs.	)	
FARMER'S SAVINGS BANK OF KALONA, IOWA,	)	
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Washington County - Harlan W. Bainter, Judge.

Plaintiff bank appeals from the order sustaining motion to vacate judgment in an action arising out of breach of a lease. AFFIRMED.

John T. Nolan and Marc B. Moen of Rate, Nolan, Bohanan, Moer & Lucas, Iowa City, for appellant.

Patrick M. Roby and Douglas R. Oelschlager of Shuttleworth & Ingersoll, P.C., Cedar Rapids, for appellees.

Considered by Donielson, P.J., and Snell and Sackett, JJ.

SNELL, J.

This case stems from a claim for breach of lease which began in September, 1979. Mark Havlik, an attorney from Tama, represented the defendant in the case, Darling Delaware Company (the Company), an Illinois corporation. Havlik inspected the property and advised the Company that he did not believe they were obligated on the claim. There was no further contact until March 12, 1980, when John Nolan, attorney for Farmers Savings Bank of Kalona, filed an action against the company seeking $65,000.00 in compensatory damages. Havlik answered on behalf of Darling and forwarded copies of interrogatories on to the company.

On April 28, 1980, Havlik received authority to settle the case for $5,000.00. In July, 1980, Havlik extended the offer of $5,000.00 to settle to John Nolan and received no response.

On July 8, 1981, Nolan finally responded to the request demanding $100,000.00 in settlement. Havlik contacted the company for the last time and they agreed the request was unreasonable.

On May 22, 1982, the Bank filed supplemental interrogatories. Havlik drafted responses himself, never contacting the Company to inform it of the existence of the interrogatories. Nolan, acting as the Bank's attorney, filed motions to compel discovery and spoke with Havlik on several occasions during the summer of 1982. Havlik never relayed these contacts on to Darling. In March, 1983, the court granted Nolan's motion for discovery sanctions. Havlik prepared no resistance to the motion and did not inform officials at the Company of the fact that an order granting the motion for discovery sanctions had been entered along with an adjudication of disability against Darling.

A jury trial on the question of damages was set for June 7, 1983. Havlik did not inform the Company of the pending trial and made no preparation for trial. He did not attempt to find witnesses or to have a representative of the Company present. On the day of the trial, Havlik told the judge that he was not prepared to

go to trial and that he needed a continuance. Havlik informed the judge that he had not properly represented his client and asked that he be allowed to file a motion to set aside the order for sanctions and vacate the judgment of liability with a professional statement attached admitting that the judgment of liability which had been entered against the Company resulted because he "simply and inexcusably ignored this matter."

The judge advised Havlik to try to settle the case. Havlik and Nolan proceeded to discuss the matter. Nolan told Havlik that his client would settle for $250,000.00. Havlik said that he would discuss the matter with his client. Havlik then entered a room, closed the door, and purportedly contacted officials at the Company. In fact, he merely sat in the room for several minutes and never contacted his client. When he returned, he told Nolan that the Company would settle for $225,000.00. Nolan accepted and a judgment by agreement and a stipulated memorandum of settlement and order were drafted. Havlik insisted that a 90-day "grace" period for filing the judgment be a condition of the settlement.

On June 7, Nolan contacted Havlik and advised him that he wanted direct confirmation of the settlement from the Company. Havlik then contacted Darrell Steinberg, in-house counsel for the Company, and advised him that he would be receiving a call from Nolan. Havlik told Steinberg that there was a personal dispute between himself and Nolan, and that Nolan was questioning his authority to settle. No mention was made of the $225,000.00 settlement agreement which Havlik had signed.

A conference call was held between Nolan, Havlik, and Steinberg. Steinberg testified that his belief at that time was that the case had been dormant for about a year and that it was to be dismissed for failure to prosecute. All three men testified that during the conversation Steinberg affirmed that Havlik was the Company's attorney in Iowa and had authority to act for the Company. Steinberg

also stated that if a valid judgment were entered against Darling, the Company, being reputable, would pay it. No specific mention was made of the fact that a judgment had in fact been entered and after the call Havlik called Steinberg back to reaffirm that the purpose of Nolan's call was only to confirm Havlik's authority and that no judgment had been entered.

In September, officials of the Company learned of the $225,000.00 settlement and commenced this action to vacate the judgment and sanctions order. The trial court ruled that the judgment should be vacated on the ground that Havlik had abandoned his responsibility to represent his client and ordered the judgment and sanctions order vacated.

On appeal, the Bank argues that the evidence of actual or apparent authority is sufficient to bind the defendant to the settlement and that the evidence was sufficient to establish ratification of the settlement.

We accord the trial court considerable discretion in determining whether to grant relief when vacation of a judgment is sought, and we are more reluctant to find an abuse of discretion when relief has been denied. Mishler v. Stouwie, 301 N.W.2d 744, 747 (Iowa 1981).

There is a presumption under Iowa law that an attorney is acting with the authority of his client. Dragstra v. Northwestern State Bank of Orange City, 192 N.W.2d 786, 790 (Iowa 1971). However, this presumption can be overcome by clear and satisfactory proof that the attorney did not have such authority. Sloan v. Jepson, 217 Iowa 1082, 1084, 252 N.W. 535, 536 (Iowa 1934).

In Iowa, the case law clearly directs that a judgment must be vacated if an attorney consents to judgment without authority from the client to settle. Dagstra v. Northwestern State Bank of Orange City, 192 N.W.2d 786, 791 (Iowa 1971) (If allegations that attorney had no authority to settle are true, then judgment must be vacated). Ohlquest v. Farwell, 71 Iowa 231, 233, 32 N.W. 277, 279 (1887) ("It is undoubtedly true that an attorney cannot consent to a judgment

against his client or waive any cause of action or defense in the case; neither can he settle or compromise it without special authority"). See also, Kilmer v. Gallahar, 112 Iowa 583, 585, 84 N.W. 697, 698 (1900); Notham v. Vondeharr, 189 Iowa 43, 66, 175 N.W. 967, 975 (1920).

Appellant argues that the Company, as the principal, is still liable under the doctrine of apparent authority. It claims that the Company, as principal, recognized Havlik as their agent so that the appellant and its counsel could justifiably believe that Havlik had the authority to settle. In support of this claim, they rely on Bergstrom v. Sears, Roebuck & Co., 532 F. Supp. 923, 933 (D.C. Minn. 1982), and State v. Sellers, 258 N.W.2d 292 (Iowa 1977). We find both cases to be distinguishable.

In Bergstrom, the attorney had actual and express authority to settle and the party who sought to have the judgment vacated had maintained full and frequent communications with the other party. Bergstrom, 532 F. Supp. at 932-33. In this case, the attorney did not have authority to settle and the client was unaware that any settlement negotiations were being carried on.

Sellers involved a situation where the principal had been negligent in drafting ambiguous limitations of its power of attorney, in failing to instruct the agent-attorney of his limitations, and in failing to supervise the agent-attorney. While the court in Sellers recognized that there was some indication of fraud on the part of the agent and that fraud committed on the principal does not relieve it for acts done under the agent's apparent authority, the court emphasized that the principal had been negligent in failing to maintain proper supervision over the agent. Sellers, 258 N.W.2d at 298. There is no evidence in this case that the Company was negligent in controlling Havlik's actions.

Appellant also argues that the Company is bound because it ratified Havlik's settlement in the phone call made by Nolan to Steinberg. Appellant argues that Steinberg, as house counsel for the Company, ratified the agreement when he

stated that Havlik had full authority in Iowa and that Darling would honor any valid judgment it was required to pay.

In Joseph L. Wilmotte & Co. v. Rosenman Bros., 258 N.W.2d 317, 324 (Iowa 1977), the Iowa Supreme Court summarized the law of ratification:

> In Abodeely v. Cavras, 221 N.W.2d 494, 502 (Iowa 1974), this court used the definition of ratification expressed in Restatement, Second, Agency, and said that "the elements of ratification under the Restatement, Second, Agency, are: (1) the existence of a principal, section 87; (2) an act done as agent, section 85; (3) principal's knowledge of material facts, section 91; and (4) intent of the principal to ratify the agent's act which can be either expressed or implied, sections 93(1) and 94."

Under this definition, we cannot say that the Company ratified Havlik's actions. There is no showing that officials at the Company were aware of the material facts. In fact, it is patently clear that officials at the Company did not even know that the case was active. It is impossible to establish any intent to ratify when officials at the Company were unaware that settlement negotiations had been in progress and that Havlik had actually agreed to a settlement in this case.

It is clear the client cannot be bound by the actions of the attorney when the attorney lacked the authority to act. Because there is no showing that Havlik was acting with apparent authority or that Darling ratified the agreement, we find that the trial court properly granted the motion to vacate.

The findings of the trial court are affirmed.

AFFIRMED.