

IN THE COURT OF APPEALS OF IOWA

No. 2-352 / 91-1670

FILED

OCT 27 1992

CLERK SUPREME COURT

HARVEY HAYNES,

Plaintiff-Appellant,

vs.

FIRST NATIONAL BANK OF MUSCATINE,

Defendant-Appellee.

Appeal from the Iowa District Court for Muscatine County, Jack L. Burns, Judge.

Harvey Haynes appeals from a district court ruling granting the bank's motion for summary judgment based on Harvey's lack of standing to pursue his claim. **AFFIRMED.**

Peter C. Riley of Tom Riley Law Firm, P.C., Cedar Rapids, for appellant.

Patrick J. Madden and Robert L. Lande of Stanley, Rehling, Lande & Van Der Kamp, Muscatine, for appellee.

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

PER CURIAM

In this appeal from an order granting the defendant summary judgment, the sole issue is whether the trial court correctly determined plaintiff had no standing to bring a claim against defendant.

Plaintiff-appellant Harvey Haynes owned fifty percent of the stock in a corporation, Muscatine Oil Company. Muscatine Oil borrowed money from defendant-appellee, First National Bank of Muscatine. In January 1986 C.G.C. Stores owed Muscatine Oil over \$200,000 for fuel purchased. Muscatine Oil owed Apollo Oil \$200,000 for the same fuel. Plaintiff contends C.G.C. Stores got a Small Business Administration loan through defendant bank and from the loan issued a check to Muscatine Oil for \$200,000 and delivered the check to defendant bank. Defendant bank applied the money to the debt Muscatine Oil owed them. At the time the \$200,000 note was applied to the debt, Muscatine Oil owed defendant bank over one million dollars, and this debt was guaranteed by plaintiff. Plaintiff claims paying First National Bank on a debt he had guaranteed was contrary to an agreement between C.G.C. Stores, the Small Business Administration and him, and that the \$200,000 was to be paid to Apollo Oil. When Apollo Oil was not paid, it filed an Involuntary Petition for the bankruptcy of Muscatine Oil and Muscatine Oil filed a chapter 7 bankruptcy.

Plaintiff contends in his brief that the judgment against him by Apollo Oil was because he had guaranteed Muscatine Oil Company's account with Apollo Oil. However, as defendant has pointed out, there is no evidence in the record defendant had guaranteed the Apollo Oil debt.

Apollo Oil sued defendant, among others, and obtained a judgment against defendant for \$200,116.

When considering a motion for summary judgment, we consider the entire record, including the pleadings, to determine if any genuine issue of material fact is generated. See Adam v. Mt. Pleasant Bank & Trust Co., 355 N.W.2d 868, 872 (Iowa 1984). We consider the evidence in the light most favorable to the resisting party, in this case, the plaintiff. See Liska v. First Nat'l Bank of Sioux City, 310 N.W.2d 531, 534 (Iowa App. 1981).

For a shareholder to have standing to bring an action for injuries sustained because of wrongs done to the corporation by third parties, he or she must show that he or she either suffered a direct injury or there is a special duty owed to the shareholder by a third party. See Cunningham v. Kartridg Pak Co., 332 N.W.2d 881, 885 (Iowa 1983). Plaintiff has failed to assert facts to support a claim under either theory.

AFFIRMED.