

IN THE COURT OF APPEALS OF IOWA

CITIZENS STATE BANK,)
Plaintiff,)
vs.)
TAYLOR ENTERPRISE, INC.,)
et al.,)
Defendants.)

FILED

FEB 23 1989

CLERK SUPREME COURT

85

PRODUCTION CREDIT ASSOCIATION)
f/k/a CLARINDA PRODUCTION)
CREDIT ASSOCIATION,)
Plaintiff-Appellee,)
vs.)
TAYLOR ENTERPRISE, INC.,)
LYLE K. TAYLOR, GEORGIA M.)
TAYLOR, WILLIAM TAYLOR and)
DEBRA JO TAYLOR,)
Defendants-Appellants.)

8-375
87-1500

Appeal from the Iowa District Court for Fremont County
(No. 21737), Glen M. McGee, Judge.

Defendants appeal a district court judgment granting
the Production Credit Association a decree of foreclosure
on defendants' property and rejecting the defendants'
affirmative defenses. **AFFIRMED.**

Jon Johnson of Leonard, Johnson & Graeser, P.C.,
Sidney, for defendants-appellants.

Jerrold L. Strasheim, Timothy V. Haight, and Carol
Knoepfler of Baird, Holm, McEachen, Pedersen, Hamann &
Strasheim, Omaha, Nebraska, for plaintiffs-appellees.

Heard by Oxberger, C.J., and Schlegel and Hayden, JJ.

OXBERGER, C.J.

87

Defendants-appellants Taylor Enterprise, Inc. (TEI), Lyle K. Taylor, Georgia M. Taylor, William Taylor, and Debra Jo Taylor appeal the district court judgment granting plaintiff-appellee Clarinda Production Credit Association (PCA) a decree of foreclosure. We affirm.

Appellants contend the district court should have found: (1) it lacked subject matter jurisdiction due to PCA's failure to comply with the Iowa's right to cure statute, Iowa Code section 654.2A (IRCS) and Iowa's mediation statute, Iowa Code section 654A (IMS), (2) PCA acted inequitably by refusing to continue advancing funds to appellants as required in a loan agreement, (3) PCA's foreclosure of appellant's property is barred on any of three affirmative defenses of fraud, equitable estoppel, and prevention, and (4) foreclosure of the mortgage as to Georgia, William, and Debra Jo Taylor was inappropriate as they were not signatories to the underlying debt.

Because this appeal is from a foreclosure judgment heard in equity, our review is de novo. Iowa Code § 654.1 (1987) and Iowa R. App. P. 4. Although we give weight to the trial court's findings of fact, we are not bound by such findings. Iowa R. App. P. 14(f)(7).

The facts of this case involve the debtor/creditor relationship of the family-owned corporation of TEI, PCA, and Citizens State Bank (CSB). Appellant Lyle Taylor was

responsible for all major business decisions of TEI and is an experienced businessman. PCA financed TEI's acquisition of farmland over a number of years such that TEI owned or was buying over 6,000 acres by 1980. TEI experienced serious cash flow problems in 1980-1983. Lyle testified he had numerous discussions with PCA and was aware PCA expected him to sell much of the farmland to decrease debt and interest payments before further financing would continue.

On September 9, 1983, Lyle obtained a \$2,000,000 loan from CSB which was immediately paid to PCA. CSB received a \$2,000,000 note requiring semiannual interest payments and a \$15,000 annual principal payment. The note was secured by a first mortgage on approximately 3,607 acres. PCA released its first mortgages on the property and CSB included release prices for certain parcels in its mortgage to facilitate the selling of the property later.

That same day PCA renewed its financing with TEI by signing and executing numerous documents. The document serving as a basis for appellants' breach of contract claims is a loan agreement. According to this agreement, Lyle and TEI were to execute a \$1,700,000 five-year budget note to PCA. This note was to be drawn on by TEI to make interest and principal payments, but not the final payment, on the CSB note. The agreement required TEI to reduce the balance owing on the budget note to five dollars by

September 28 of each year. A line of credit notes was to be executed annually to TEI for the budget note payments. A \$1,000,000 credit note due April 28, 1984, was signed September 9, 1983, as well as the loan agreement, the budget note, a mortgage, and security agreement.

Lyle and his wife Georgia left for Arizona soon after this meeting and did not make any effort to list real estate for sale until August 1984. PCA made various advances on the credit note and received some collateral payments. The credit note was not paid off when due in April, or when extended to May 1984. PCA rules allowed no further advances. PCA did make two advances totaling \$312,021.19 on the budget note. TEI made no payments on the budget note reducing its balance to five dollars on September 28, 1984. By October 1, 1984, PCA told Lyle it could no longer advance funds or execute further credit notes without additional information regarding both his and TEI's credit worthiness.

TEI failed to make the March 1985 payment on the CSB note. On May 20, 1985, CSB filed a foreclosure action against the appellants and a law action for breach of a loan agreement against PCA. On the same day appellants filed a law action alleging the same breach of a loan agreement against PCA. PCA answered, cross-claimed and counterclaimed in foreclosure against appellants and CSB. CSB got a foreclosure decree against appellants and settled with PCA. They are not a party to this appeal.

I.

Appellants first contend PCA's foreclosure action should have been dismissed for lack of subject matter jurisdiction when PCA failed to get a mediation release or send appellants a proper notice to cure default. Iowa Code § 654A.6 and § 654.2A (1987). These mediation and notice requirements became effective May 29, 1986. On July 15, 1986, PCA amended its cross-claim against appellants adding 1,800 acres covered by the mortgage attached to their original cross-claim. Appellant did not challenge PCA's motion to amend but entered a special appearance filed August 4, 1986, seeking dismissal due to PCA's failure to get a mediation release. The trial court denied dismissal stating the new statute requirements could not be applied retroactively. Appellants, on the day of trial, again requested dismissal based on PCA's failure to mediate and cited First National Bank in Lenox v. Heimke, 407 N.W.2d 344 (Iowa 1987), filed July 17, 1987, as authority for the proposition the mediation release was a procedural requirement which could be applied retroactively. PCA argued the mediation release requirement and Heimke did not apply on the grounds PCA had not "initiated" the foreclosure action but had to take such action as a compulsory counterclaim to the breach of contract actions filed against them. The court overruled the motion on the ground it was untimely due to a pretrial order setting July 8, 1987, as a deadline for filing all dispositive motions.

The facts of this case reveal PCA sought and received a mediation release after the court entered a foreclosure judgment but prior to execution of that judgment. In their briefs, appellants have made no arguments regarding invalidity of the release. Appellants' contention the need for a mediation release requires dismissal is now moot and need not be addressed. See First Nat. Bank in Lenox v. Heimke, 407 N.W.2d 344, 346 (Iowa 1987); First Nat. Bank of Storm Lake v. Turin, 431 N.W.2d 185, 188 (Iowa App. 1988).

We further conclude appellants failed to preserve error as to the notice to cure requirements as they did not raise any defense concerning this statute in pleadings, motions, pretrial briefs, or at trial. We find such notice requirements, like the mediation requirements passed at the time, are procedural in nature and are not a subject matter jurisdictional issue which can be raised at any time. Shill v. Careage Corp., 353 N.W.2d 416, 420 (Iowa 1984); Pierce v. Pierce, 281 N.W.2d 879, 881-82 (Iowa 1980).

II.

Appellants next argue the trial court erred in concluding they had not proved their affirmative defenses of fraud, equitable estoppel, and prevention or that they were, as a matter of law, barred by their own inequitable conduct in asserting these defenses.

The basis of appellants' affirmative defenses is PCA failed to: (1) continue advancing TEI funds as required by the loan agreement or in accordance with representations made by PCA employee, Brian Buch, and (2) pay the budget note down or make the March 1985 CSB note payment thereby preventing TEI's performance of the agreements and notes.

Having reviewed the record, we can only affirm the conclusions reached by the trial court. The loan agreement, budget note, and line of credit note, as well as Lyle's past dealings with PCA made it unreasonable for Lyle to interpret the loan agreement as PCA's unconditional promise to provide five years of financing to TEI.

The September 9, 1983 documents contain specific language indicating PCA was not obligating itself to make future advances or loans and that such loans would be approved or denied upon determination of the credit worthiness of the borrower. Lyle himself testified he was fully aware of PCA rules and regulations requiring an annual review of a borrower's credit worthiness and that Brian Buch could not okay advancements without approval by the head office. The documents did not legally bind PCA to make advancements to TEI necessary for the payments on the budget note or the CSB note unconditionally. Lyle, as TEI's president, knew he was expected to sell significant portions of real estate holdings as a part of the refinancing. He did not do this. The credit note and

budget note were in default. We agree with the trial court in concluding appellants failed to prove the affirmative defenses.

The trial court determined TEI's lack of money to prevent these defaults was a result of Lyle's own behavior including extensive futures trading, speculation, making insider "loans" and transfers, personal accumulation of assets, and diverting of collateral and governmental entitlements in which PCA had a security interest. The trial court further ruled such behavior barred appellants' assertion of the defenses under the "clean hands doctrine." This doctrine stands for the principal that a party may be denied relief in equity based on his inequitable, unfair, dishonest, fraudulent, or deceitful conduct. Ellwood v. Mid-States Commodities, Inc., 404 N.W.2d 174, 184 (Iowa 1987). Appellants contend this doctrine should not have been applied to them as it was PCA seeking the equitable foreclosure action and it was PCA who had to have the "clean hands." The same argument was made in Garrison v. Fetters, 383 N.W.2d 550 (Iowa 1986), in which a landlord brought a forcible entry and detainer action and the tenants contended the landlord had "unclean hands." The court stated, "the tenants, who knowingly participated in these conveyances, lack clean hands themselves and are not in a position to complain about the landlady's standing in equity." Id at 553. The "clean

hands" doctrine was correctly applied to appellants' behavior which was in no way justified by PCA's failure to continue advancing funds.

III.

Appellants' final argument is the foreclosure decree should not have been entered against Georgia M. Taylor, William Taylor, and Debra Jo Taylor, as they were not signatories to the debt underlying the foreclosed mortgage. Appellants do not deny their signatures were on the foreclosed mortgage. Such argument was not properly preserved at trial and need not be addressed. See Salter v. Freight Sales Co., 357 N.W.2d 38, 43 (Iowa App. 1984).

The trial court's judgment is affirmed in all respects.

AFFIRMED.