FILED
JUN 28 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE BANK AND TRUST,	)	
Plaintiff-Appellee,	)	Filed June 28, 1983
vs.	)	
EUGENE SORENSEN and **KATE M. SORENSEN,**	)	3-11 2-68407
Defendants-Appellants.	)	

Appeal from Shelby District Court - Paul H. Sulhoff, Judge.

Defendants appeal from the trial court's order directing a verdict in plaintiff's favor on defendants' counterclaim in this action to recover a checking account overdraft. AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR NEW TRIAL.

Bennett Cullison, Jr. of Cullison & Cullison, Harlan, for defendants-appellants.

John D. Sens of Stuart, Tinley, Peters, Thorn, Smits & Sens, Council Bluffs, and Donald P. Baird of Baird & Baird, Council Bluffs, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, and Schlegel, JJ. Hayden, J., takes no part.

DONIELSON, J.

Defendants appeal from the trial court's order directing a verdict in plaintiff's favor on defendants' counterclaim in this action to recover a checking account overdraft. Defendants claim that there were factual issues that should have been submitted to the jury regarding their assertions that plaintiff was estopped from terminating their line of credit and that plaintiff's actions in selling certain livestock (in which plaintiff held a security interest) were commercially unreasonable. We affirm in part, reverse in part, and remand for a new trial.

In determining the propriety of a motion for directed verdict, we view the evidence in the light most favorable to the party against whom the motion was made; in this case, defendants. Iowa R. App. P. 14(f)(2).

Plaintiff bank sued defendants, a farm couple, seeking to recover an alleged overdraft of some $6,000 in a checking account. The defendants responded by filing a counterclaim seeking $101,771 in compensatory damages and $100,000 in punitive damages because of actions taken by the bank while terminating a line of credit to the defendants in January of 1979. The counterclaim alleged that during its attempts to liquidate the defendants' debts, the bank, on June 25, 1979, had seized and sold 268 of defendants' hogs to a slaughterhouse for $26,876 when the hogs were actually worth over $130,000 as breeding stock.

The trial court directed a verdict in the bank's favor on the bank's claim and also on the defendants' counterclaim. Defendants do not challenge the verdict on plaintiff's claim; their appeal is limited to the judgment on their counterclaim. They contend the bank's sale of breeding stock hogs to a slaughterhouse was not commercially reasonable, and they contend the bank was estopped from repossessing the hogs by its prior conduct indicating it would permit the defendants several months to liquidate their debt.

I.

We agree that a directed verdict in plaintiff's favor on defendants' counterclaim was inappropriate in this case. Considering first the estoppel argument, we note the elements of promissory estoppel listed in Merrifield v. Troutner, 269 N.W.2d 136, 137 (Iowa 1978): (1) a clear and definite oral agreement; (2) proof that the party claiming estoppel acted to his detriment in reliance on that agreement, and (3) a finding that the equities entitle that party to relief. That same case defines equitable estoppel in these terms: ". . . (1) a false representation or concealment of material facts; (2) lack of knowledge of true facts on part of actor; (3) intention that it be acted upon; and (4) reliance thereon by the party to whom made, to his prejudice and injury." Id. This doctrine of equitable estoppel was further explained in the following language:

> Equitable estoppel or estoppel by misrepresentation is the effect of the voluntary conduct of a person whereby he is precluded, both at law and in equity, from asserting rights against another person relying on such conduct; and it arises where a person, by his acts, representations, or admissions, or even by his silence when it is his duty to speak, intentionally or through culpable negligence induces another to believe that certain facts exist, and the other person rightfully relies and acts on such belief, and will be prejudiced if the former is permitted to deny the existence of such facts.

Laverty v. Hawkeye Security Ins. Co., 258 Iowa 717, 726, 140 N.W.2d 83, 88-89 (1966)(citations omitted). In that case, the court held that the record supported a finding that there was an implied contract established by custom for the automatic renewal of plaintiff's automobile insurance policy.

With these principles in mind and viewing the evidence in this case in the light most favorable to defendants, we conclude that the record at least raises a factual issue on estoppel which should have been decided by the jury. On January 26, 1979, plaintiff terminated defendants' line of credit. This was done because defendants had sold 947 head of cattle in which plaintiff had a security

interest without applying the proceeds of that sale to their notes held by plaintiff. At that point, defendants had been doing all of their banking business with plaintiff for more than twenty years. Their total indebtedness to plaintiff bank in January, 1979, was approximately $366,000. It is undisputed that defendants had many times before sold off livestock or other goods, without complaint by plaintiff, in which plaintiff had a security interest without directly applying those proceeds to the exact notes involved which were held by plaintiff. Until this 1979 incident, plaintiff had never refused defendants credit or any extension or renewal of their old notes. We certainly do not intimate that these considerations require a conclusion that plaintiff was estopped from terminating defendants' credit and seizing and selling their hogs. We instead believe only that the evidence raises a factual issue on estoppel which should have been submitted to the jury. The trial court erred in directing a verdict for plaintiff on this issue.

II.

We also agree with defendants that the trial court erred in directing a verdict for plaintiff on defendants' claim that plaintiff's seizure and sale of their 268 hogs in June of 1979 was done in a commercially unreasonable manner. Iowa Code § 554.9507(2) refers to the situation where a secured party disposes of a debtor's collateral in order to satisfy the debt:

> The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. (emphasis added)

Plaintiff sold the hogs in Omaha on the slaughter market for $26,876. However, the record contains evidence that at least some of the 268 hogs were breeding

stock and not for slaughter. Defendants testified that their value as breeding animals was higher than the price they actually brought in Omaha. These circumstances raise factual questions as to whether these breeding animals were sold "in the usual manner in any recognized market" or "in conformity with reasonable commercial practices among dealers in the type of property sold"; i.e. breeding stock. Again, we do not decide the merits of defendants' claim that plaintiff's sale was not commercially reasonable. We hold only that the record evidence is sufficient on this issue to warrant its submission to the jury.

The directed verdict on plaintiff's original petition is affirmed. The directed verdict in plaintiff's favor on defendants' counterclaim is reversed and that cause is remanded for a new trial in conformity with this opinion.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.