IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

No. 1-540 / 00-1502
Filed November 16, 2001

COMMERCIAL FEDERAL BANK,
Appellee,

vs.

JAMES A. HAGEN and JANE R. HAGEN, Husband and Wife,
Appellants.

Appeal from the Iowa District Court for Worth County, James M. Drew, Judge.

Defendants appeal a district court order entering judgment in favor of the plaintiff and against them and foreclosing the mortgage in the plaintiff's mortgage foreclosure action. **AFFIRMED.**

David M. Nelsen of Nelsen Law Office, Mason City, for appellants.

Thomas H. Burke and August B. Landis of Whitfield & Eddy, Des Moines, for appellee.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

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VOGEL, J.

Defendants appeal the decision of the district court which entered judgment for the Bank and foreclosed the mortgage on their homestead. They claim: (1) there is no evidence to allow the Bank to be given a judgment against their homestead, and (2) the Bank is not entitled to have a personal judgment entered against them. We affirm.

James and Jane Hagen, husband and wife, were farmers in Worth County. In 1996, they began banking with Liberty Bank and Trust, now Commercial Federal Bank (Bank). Their loan officer, Randall Finer, was also a social friend. In 1996 and 1997, the Hagens obtained operating loans for their farming operation from the Bank. In 1996, the Hagens had given the Bank a continuing security interest in their farm equipment and products.

On February 28, 1998, the Hagens borrowed $200,000 from the Bank for 1998 farm operating expenses. The security for this loan was the 1996 security agreement. On March 3, 1998, the Hagens signed a promissory note for an additional $325,000. This note was used to pay off previous loans and consolidate the Hagens' debt. At the same time the note was signed, the Hagens signed an open-end real estate mortgage encumbering their homestead.

On March 1, 1999, James borrowed $50,000 from the Bank for 1999 farm operating expenses. Although Jane did not sign that particular note, she had signed a continuing guaranty of all of James's debts in March of 1998. In April of 1999, the Hagens decided not to put in any crops that year and were soon unable to make payments on their various obligations with the bank.

On May 18, 1999, the Bank sent the Hagens a Notice of Default and Notice of Right to Cure. Mediation was scheduled but the Hagens failed to appear. By a replevin action, the Bank obtained possession of some of the Hagens' farm equipment and sold it at an auction, applying the proceeds to their debt.

On July 13, 1999, the Bank filed a petition to foreclose its mortgage on the Hagens' homestead. The Bank sought judgments in rem and in personam. The Hagens raised affirmative defenses, claiming there had been no waiver of the homestead property exemption, the contract was unconscionable, and the Bank's claims were barred by estoppel. They claimed they did not know they had signed a mortgage, and had no intention of giving the Bank a mortgage on their homestead. They claimed Finer had surreptiously obtained their signatures by "hiding" the mortgage document among other papers they signed that day. In contrast, Finer testified he explained the mortgage to the Hagens, and they voluntarily signed it.

The district court found the Hagens were not credible. The court noted the word "mortgage" appeared many times on the document, including near the signature line. The trial court determined the promissory notes were in default in the amount of $517,366.24 plus interest, however the mortgage secured debt only up to $100,000. The court also entered a personal judgment against the Hagens for the unpaid amount of their debt to the Bank. The Hagens appealed.

I. Scope of Review

Mortgage foreclosure proceedings are equitable in nature. Iowa Code § 654.1 (1999). Our scope of review in this equity action is de novo. Iowa R. App. P. 4. Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7).

II. Judgment Against Homestead

The Hagens contend the district court should not have entered a judgment against their homestead. They claim Finer made false representations to them, which induced them to sign all the papers presented to them, including the mortgage. They state no one told them the Bank wanted a mortgage on their home. The Hagens assert Finer is not credible because he stated he did not have any memory of specific conversations concerning the mortgage.

The general rule is that an agreement in writing speaks for itself and in the absence of fraud or mistake, ignorance of the contents will not serve to negate or avoid its contents. *Advance Elevator Co., Inc. v. Four State Supply Co., Inc.*, 572 N.W.2d 186, 188 (Iowa Ct. App. 1997). A party's failure to read a contract before signing it does not invalidate the contract. *Huber v. Hovey,* 501 N.W.2d 53, 55 (Iowa 1993). We have stated:

> It is also the settled rule of law that if a party to a contract is able to read, has the opportunity to do so, and fails to read the contract, he cannot thereafter be heard to say that he was ignorant of its terms and conditions, for the purpose of relieving himself from its obligation.

Gouge v. McNamara, 586 N.W.2d 710, 713 (Iowa Ct. App. 1998) (quoting *Preston v. Howell,* 219 Iowa 230, 236, 257 N.W. 415, 418 (1934)).

A person is bound by a document signed, but not read, unless the signing party was dissuaded from reading it by some trick or artifice practiced by the opposite party. *Id.* Here, the Hagens claim Finer did not show them the documents, and did not tell them there was a mortgage in the packet of documents, but simply pointed where to sign.

The district court found the Hagens' argument was not persuasive. The document was clearly entitled "OPEN-END REAL ESTATE MORTGAGE" and included on the front page the legal description as well as the local address of the Hagens' homestead. The instrument encumbered the property described in a paragraph entitled "MORTGAGE." The Hagens claim the document was hidden under other papers, obstructing their sight and precluding them from reading the actual contents of the document. However, for the Hagens to initial each page of the double-sided mortgage, the document needed to be physically turned over several times until the final signatures were made on the last page. Their argument failed to persuade the district court of any fraudulent behavior by the bank and we also are unpersuaded.

Both Hagens signed the mortgage, just below this statement: "By signing below, Mortgagor agrees to the terms and covenants in this Mortgage and in any attachments. Mortgagor also acknowledges receipt of a copy of this Mortgage on the date stated above on Page 1." Below the acknowledgment was a separate paragraph, containing the homestead exemption waiver which read:

> (In the following statement "I" means the Mortgagor.) I understand that homestead property is in many cases protected from the claims of creditors and exempt from judicial sale; and that by signing this contract, I voluntarily give up my rights to this protection for this property with respect to claims based upon this contract.

The Hagens signed directly below this waiver. The district court. found and we agree the Hagens are bound by the mortgage which they signed, which secured debt up to $100,000. The court therefore properly found the bank had a valid first mortgage lien against the Hagen's homestead.

III. Judgment Against the Hagens

The Hagens contend the Bank was not entitled to a personal judgment against them. They assert the Bank did not give reasonable notice as required by Iowa Code section 554.9504(3), which is part of Article 9 of the Uniform Commercial Code in Iowa. We do not consider this issue preserved for our review. It was not raised below and the district court did not rule on it. We do not address issues raised for the first time on appeal. *See Wesley Retirement Servs., Inc. v. Hansen Lind Meyer, Inc.*, 594 N.W.2d 22, 29 (Iowa 1999).

In addition, section 554.9104(j) provides that Article 9 does not apply to "the creation or transfer of an interest in or lien on real estate. . . ." Thus, the reasonable notice requirement does not apply in this mortgage foreclosure proceeding.

We affirm the decision of the district court which entered a decree of foreclosure on the mortgage the bank held on the Hagens' homestead and affirm the judgment against the Hagens.

AFFIRMED.

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