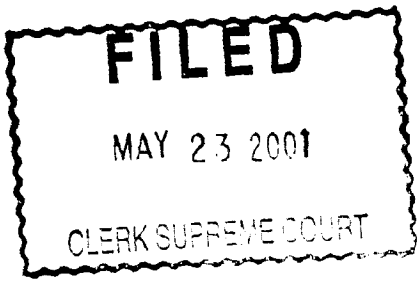
IN THE COURT OF APPEALS OF IOWA

No. 0-696 / 99-0874
Filed May 23, 2001



BENNETT QUAMME, on His Own Behalf and on Behalf of All Others Similarly Situated,
Plaintiff-Appellant,

vs.

ADVANCE TRADING, INC., an Illinois Corporation, HARRY LEWIS WOODS, FRANK H. BEURSKENS WILLIAM F. CRAWFORD, KERMIT W. STUMBO, and ROBERT BECKER, A/K/A/ ADVANCE TRADING INC., A/K/A ADVANCED MARKETING SERVICES,
Defendants-Appellees.

Appeal from the Iowa District Court for Winnebago County, Jon Stuart Scoles, Judge.

The plaintiff appeals a district court ruling denying his application for class certification. Plaintiff argues the district court abused its discretion: (1) by deciding the merits of his fraudulent omission claim when ruling on the issue of class certification; (2) in concluding that individual issues predominated over common ones; and (3) in denying his motion for class certification. **AFFIRMED.**

Nicholas P. Iavarone and Christopher L. Gallinari of Bellows and Bellows, Chicago, Illinois, and Scott G. Buchanan and Michael E. Gabor of Buchanan, Bibler, Buchanan & Gabor, Algona, for appellant.

Timothy J. Carey and Brigitte T. Nuss Kocheny of Chapman & Cutler, Chicago, Illinois, and Philip L. Garland, Garner, for appellees Advance Trading Inc., Harry Lewis Woods, Frank H. Beurskins, William F. Crawford, and Kermit W. Stambo.

No appearance for appellee Robert Becker.

Heard by Vogel, P.J., and Mahan and Miller, JJ.

MILLER, J.

Bennett Quamme appeals the district court ruling denying his application for class certification. Quamme argues the district court abused its discretion by: (1) improperly deciding the merits of his fraudulent omission claim in ruling on the motion for class certification; (2) concluding that individual issues predominate over common ones with respect to his fraudulent omission claim; and (3) finding the standards for class certification had not been met and thus denying the motion for class certification. We affirm.

I. BACKGROUND FACTS

Advance Trading, Inc. (ATI), an Illinois corporation, engages in the business of providing agricultural marketing advice to farmers. In February 1989 ATI established a branch office in Clear Lake, Iowa and Robert Becker became the branch manager in 1990. There is some dispute in the record as to whether Becker was an independent contractor or an employee of ATI. Regardless of his employment status, it appears undisputed that Becker was acting as an agent for ATI, at least until December 1, 1993.

On December 1, 1993 ATI notified the Commodity Futures Trading Commission it was closing its Clear Lake office and terminating Becker as an associated person. Becker continued to do business and allegedly did not notify any of the farmers of the change. For some time he continued to use ATI letterhead. At some point he began conducting business under the name Advanced Marketing Services. However, his redesigned company letterhead was very similar to the one that had been used by ATI.

Until December 1, 1993 Becker and other market advisors working in the Clear Lake office, including Thomas Larson, Doug Prohaska, and Ben Peters, solicited farmers to enter into various marketing agreements with ATI. Some producers entered into "Co-Management" agreements under which the producers received marketing advice from ATI but retained the final authority to make any and all marketing decisions. Others entered into "Act II" agreements under which the farmer gave ATI full discretion to market a specified number of bushels of grain. Pursuant to either type of agreement the market advisor would place positions on the Chicago Board of Trade on behalf of the farmer. Initially those trades were placed through the producers' individual accounts with ATI. At some point, however, the system changed so that all of the trades were placed through an account with the Farmers Cooperative Elevator in Woden, Iowa.

Quamme had conducted business with ATI since 1993. As a result of trades placed on Quamme's behalf, Farmers Cooperative Elevator brought an action against Quamme for a money judgment. Quamme filed a lawsuit against ATI, its individual officers and directors, and Becker claiming breach of fiduciary duty and fraudulent misrepresentation. He sought certification of the lawsuit as a class action. ATI filed a motion to dismiss. The district court denied class certification, finding that the establishment of ATI's liability and thus the ability of each farmer to recover would depend upon each individual farmer's contract as well as the particular representations made to each. Quamme filed an application for interlocutory appeal. The supreme court entered an order finding the appeal could be taken as a matter of right.

Quamme argues the district court abused its discretion by improperly considering the merits of his fraudulent omission claim in ruling on the motion for class certification. He further asserts the court erred in ruling that individual issues predominate over common ones with respect to his fraudulent omission claim. Finally, Quamme contends the district court abused its discretion in not granting the motion for class certification because the standards for a class action have been met in this case. He asserts joinder of all potential class members is impractical, he would fairly and adequately protect the interests of the class, and a class action should be permitted for the fair and efficient adjudication of the controversy.

II. STANDARD OF REVIEW

Our review of a trial court's ruling concerning class certification is limited and we will reverse an order granting or denying certification only if the district court's decision constitutes an abuse of discretion. *Martin v. Amana Refrigeration, Inc.*, 435 N.W.2d 364, 367 (Iowa 1989); *Vignaroli v. Blue Cross of Iowa*, 360 N.W.2d 741, 743 (Iowa 1985). We will find an abuse of discretion only if the record shows the district court's decision was based on clearly untenable or unreasonable grounds. *Stone v. Pirelli Armstrong Tire Corp.*, 497 N.W.2d 843, 845 (Iowa 1993). The district court enjoys broad discretion in the certification of class action lawsuits. *Id.* "Whether or not we agree with the decision arrived at by the trial court is not the issue. The issue is one of abuse of discretion." *Martin*, 435 N.W.2d at 369.

III. MERITS

Under Iowa's uniform class action rules a court may certify a class action if four basic requirements are met: (1) the class is so numerous or so constituted that joinder is impracticable; (2) a common issue of law or fact exists; (3) the action should be certified as a class action for fair and efficient adjudication of the controversy; and (4) the representative parties will protect the interest of the class fairly and adequately. Iowa Rs. Civ. P. 42.1, 42.2(b). The burden of establishing that a proposed class meets these prerequisites rests with the proponent. *City of Dubuque v. Iowa Trust*, 519 N.W.2d 786, 791 (Iowa 1994); *Stone*, 497 N.W.2d at 846. A failure of proof on any one of these prerequisites is fatal to class certification. *Stone*, 497 N.W.2d at 846.

The trial court here discussed and relied upon requirements one, two and three in ruling on Quamme's application for class certification. The court determined that the first requirement, concerning numerosity could be met and it is not an issue on appeal.[1] However, the court found Quamme failed to meet his burden on both the second and third requirements, commonality and fair and efficient adjudication of the controversy respectively. It is the trial court's findings concerning these two requirements that serve as the basis for Quamme's claims of abuse of discretion. We examine these two requirements in turn.

A. Commonality

In determining whether the commonality requirement had been met the trial court correctly noted that it is not necessary for the individual claims to be carbon copies of one another so long as there is a "common nucleus of operative

[1] Forty or more has been recognized as the range where numbers alone should suffice to show impracticality of joinder. *Martin v. Amana Refrigeration, Inc.*, 435 N.W.2d 364, 368 (Iowa 1989). Quamme has alleged that he believes more than 100 farmers would be included in the putative class.

facts." *City of Dubuque*, 519 N.W.2d at 792. In finding Quamme failed to meet the commonality requirement the trial court stated,

> While it is true that none of the farmers were notified regarding the change in status of the Clear Lake office, the court believes that the establishment of liability also depends upon other contracts between ATI agents and individual farmers. In this case, there were apparently four or five persons acting on behalf of ATI at one time or another, who then contacted more than 100 farmers. While the defendants' nondisclosure of certain material facts is an important factor in determining liability, the court does not believe that it is dispositive. Representations made by various ATI agents to individual farmers are also important.

We agree.

Quamme argues that regardless of what was initially said to each individual farmer to convince them to enroll in the program, or what specific program the farmer entered into, ATI had a legal duty to each of these farmers based on strict respondeat superior liability and thus ATI is liable for a fraudulent omission of Becker and the other ATI representatives in failing to inform them of the change in status of the Clear Lake office. Furthermore, Quamme contends that even assuming evidence concerning what had been said to individual farmers to convince them to enroll would raise issues as to whether or not some or all had relied on ATI's relationship and involvement, the trial court still abused its discretion because this inquiry would amount to a ruling on the merits of the fraudulent misrepresentation claims. We disagree.

The basis of Quamme's complaint and motion for class certification was that ATI possessed a fiduciary relationship with each farmer who enrolled in these programs and thus ATI, as a matter of law, owed each farmer a legal duty of full disclosure. Quamme asserts ATI breached this duty in failing to inform each of the members of the putative class that ATI had terminated Becker and

was closing the Clear Lake office. This failure is also the basis of Quamme's fraudulent omission claim, in that he alleged in his complaint that this omission was of material facts, that ATI knew of this omission, and that it knowingly and actively concealed this information from Quamme and the other farmers.

Because the circumstances giving rise to a fiduciary duty are so diverse, any claim that such relationship exists must be evaluated on the particular facts and circumstances of the individual case. *Kurth v. Van Horn*, 380 N.W.2d 693, 696 (Iowa 1986). In addition, one of the basic elements which must be proven in order to sustain a claim of failure to disclose material facts is that the party who failed to disclose had a legal duty to communicate the information to the other party. *Anderson v. Boeke*, 491 N.W.2d 182, 188 (Iowa Ct. App. 1992). The determination of whether a fiduciary duty exists must be based on the particular facts and circumstances of each individual case. *Id.*

Although generally a trial court is not to inquire into the merits of a case in deciding whether to certify a class action, it may require sufficient information to form a reasonable judgment in deciding whether to do so. *Martin*, 435 N.W.2d at 368; *Iowa Annual Conference of United Methodist Church v. Bringle*, 409 N.W.2d 471, 474 (Iowa 1987). As Quamme's assertion of commonality among the putative class members depends on his allegation that ATI owed each individual farmer a legal duty to disclose the facts, it was appropriate for the trial court to look to the basis of this alleged legal duty, and the extent of such duty, in order to determine whether issues of fact and law existed that were not common to the class and thus form a reasonable judgment in deciding whether to certify the class. This is precisely what the trial court did in finding that the establishment of

ATI's liability as to individual farmers will depend in part on the contacts with and representations made to those individual farmers.

We believe the trial court was correct in stating that the alleged nondisclosure of material facts is clearly an important factor in establishing liability, but it is not dispositive because, as set forth above, there must first be a legal duty to disclose. *See Anderson*, 491 N.W.2d at 188. We conclude this was an appropriate inquiry by the trial court in order to make a reasonable determination whether to certify the class. The trial court did not abuse its discretion and improperly rule on the merits of the case by making this inquiry.

The determination of whether there was a fiduciary or other legal duty on the part of ATI to disclose the disputed information to each individual farmer is a threshold question to the determination of the liability of ATI and the extent thereof. This determination is fact intensive by its nature and must be made on a case-by-case basis based on the particular facts and circumstances of each relationship. *See Kurth,* 380 N.W.2d at 696. There is evidence in the record that the farmers entered into a variety of marketing agreements with different contracting parties who had varying rights and responsibilities. As set forth above, there were at least the two different agreements, the "Act II" and the "Co-management" agreements, the first of which gave complete discretion to ATI as to marketing decisions while under the latter the farmer retained the final decision.[2] There were also some agreements in the record that do not appear to

[2] The mere existence of a broker-customer or investment advisor-customer relationship does not create a fiduciary duty unless the customer entrusts the broker/advisor to select and manage his investments. *Carr v. CIGNA Securities, Inc.*, 95 F.3d 544, 547 (7th Cir. 1996).

list ATI as a party to the agreement at all, but instead gave certain elevators the discretion to market the farmers' grain.

Furthermore, there were at least four different people soliciting business from, and making various oral representations to, these farmers at different times. Our supreme court has recognized the difficulty involved in trying a class action suit based on individual, oral representations. *Vignaroli*, 360 N.W.2d at 744. In *Vignaroli* the court found that the gist of the claim relied on *written terms* in the defendant's employment manual and thus the plaintiffs' claims did focus on common questions of whether the terms of the employment manual were violated. *Id.* at 744-45. This is not the case here. There is no common written document which all of the members of the putative class can point to from which the alleged legal duty arose.

The breach of duty in failing to disclose material facts to the individual farmers which Quamme asserts as the basis for the commonality of the class involves at least two written contracts that contain different rights and responsibilities, and the evidence shows that oral contracts may be involved as well. Potentially differing representations led to the contracts. At least four, and perhaps six, different people were involved in securing the contracts. Some contracts identified ATI as the entity that would provide marketing advice. Others identified Farmers Coop Elevator of Woden as the entity that would do so. We conclude the district court did not abuse its discretion in determining there were not sufficient questions of law or fact common to the class to certify a class action.

B. Fair and Efficient Adjudication of the Controversy

The district court also found Quamme failed to meet the requirement for class certification under Iowa Rule of Civil Procedure 42.2(b)(2), that a class action permit the fair and efficient adjudication of the controversy. The court stated,

> The impact of individual representations made to farmers also affects the second element found in Rule 42.2(b). That is, a class action involving more than 100 farmers and various agents for ATI would, in the court's opinion, not promote fair and efficient adjudication of the controversy. Rather, the court believes that the entitlement of an individual farmer to recover must rely on the facts peculiar to that individual.

Iowa Rule of Civil Procedure 42.3(a) contains a lengthy list of criteria to be considered in determining whether a class action should be permitted for the fair and efficient adjudication of the controversy.

> Basically, the criteria to be considered have two broad considerations: achieving judicial economy by encouraging class litigation while preserving, as much as possible, the rights of litigants--both those presently in court and those who are only potential litigants. *No weight is required by the rule to be assigned by the trial court to any criteria listed, further evidencing an intent to grant considerable discretion to the trial court.*

Vignaroli, 360 N.W.2d at 744 (emphasis added).

One of the thirteen criteria listed in this rule which the trial court can consider in making this determination, and which the court here expressly mentioned and in large part relied upon, is "whether common questions of law or fact predominate over any questions affecting only individual members." Iowa R.

Civ. P. 42.3(a)(5). We read the trial court's statement that the "entitlement of an individual farmer to recover must rely on the facts peculiar to that individual" to mean it determined the questions affecting the individual members of the putative class here predominated over any common questions of law or fact.

Based on everything discussed above regarding the various agents, representations, contracts, rights and responsibilities under the contracts, issues concerning individual farmers' knowledge of relevant facts, and questions concerning whether and how alleged non-disclosure of material facts affected individual farmers, we conclude the trial court did not abuse its discretion in determining Quamme failed to demonstrate a class action would permit the fair and efficient adjudication of the controversy. As set forth in detail above, we believe the ability of each individual farmer to recover necessarily depends on the facts and circumstances peculiar to that particular farmer. *See Kurth*, 380 N.W.2d at 693; *Anderson*, 491 N.W.2d at 188. Trial as a class action would involve only limited amounts of evidence, and perhaps no evidence, relevant to all class members. It would involve large amounts of evidence relevant only to individual plaintiffs.

IV. CONCLUSION

We conclude the trial court did not abuse its discretion in determining Quamme failed to meet the prerequisites for class certification under Iowa Rule of Civil Procedure 42.2(b). Furthermore, we do not believe the district court improperly considered the merits of Quamme's claims in ruling on the motion for class certification. The court did not abuse its discretion in considering the facts

and circumstances surrounding the underlying contracts and representations to individual farmers as this information was necessary in order to form a reasonable judgment in deciding whether to certify the class. Therefore, the district court's denial of Quamme's application for class certification will be affirmed.

AFFIRMED.