FILED
MAR 0 9 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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CITIZENS STATE BANK,

Plaintiff-Appellee,

vs.

THATCHER IMPLEMENT CO. and WILBUR THATCHER,

Defendants-Appellants.

Filed March 9, 1988

THATCHER IMPLEMENT CO., WILBUR THATCHER, and MARY THATCHER,

Cross-Claimants/ Appellants,

vs.

CITIZENS STATE BANK, JOHN E. BREWER, and DALE HEIMANN,

Cross-Claim Defendants/Appellees.

7-552
87-327

Appeal from the Iowa District Court for Wayne County (No. 20245), Darrell Goodhue, Judge.

Defendants-cross-claimants appeal from a district court decision granting plaintiff-cross-claim defendants' motion requesting enforcement of a settlement agreement. **AFFIRMED.**

James Q. Blomgren, Oskaloosa, for the appellants.

Neil J. Fruit II, Kevin M. Reynolds, and Robert L. Fanter of Whitfield, Musgrave, Selvy, Kelly & Eddy, Des Moines, and L. W. Rosebrook and William

DONIELSON, J.

Defendants-cross-claimants appeal from a district court decision granting plaintiff-cross-claim defendants' motion requesting enforcement of settlement agreement. We affirm.

This litigation involves a farm implement dealership and its lender. The lender initially brought a collection action against the operators of the dealership (Thatchers). The Thatchers then counterclaimed against the bank and two employees, alleging several intentional torts.

In December 1984 the parties entered into pretrial settlement negotiations. These negotiations produced a settlement proposal, but the parties disagree sharply on whether a final settlement agreement was reached.

After these settlement negotiations, the district court entered a series of summary judgments resolving the case, but these judgments were reversed by the court of appeals in June 1986. The case was remanded for retrial. At this juncture, the bank and its employees filed a motion requesting enforcement of the alleged December 1984 settlement. The district court found that a settlement had been reached in December 1984 and granted the motion for an order enforcing that settlement. The Thatchers have appealed from the district court's order.

The Thatchers contend the district court erred by finding that a settlement agreement had been reached. They also contend their former attorney's comments appearing to agree to a settlement were not authorized and were not binding on them.

Because this action was filed as a law action, our scope of review is for the correction of errors at law. Iowa R. App. P. 4. Findings of fact in jury-waived cases shall have the effect of a special verdict. Id. These findings of

J Noth of Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee, Des Moines, for the appellees

Heard by Oxberger, C J , and Donielson and Habhab, JJ

fact are binding upon us if supported by substantial evidence. Iowa R. App. P. 14(f)(1).

The evidence discloses that on December 11, 1984, the bank's attorneys and Thatchers' attorneys met to settle the case. An offer was made to the Thatchers; their attorney, Richard Clogg, wrote down the terms of the offer. Thatchers were allowed forty-eight hours to accept the offer. In the later afternoon of December 13, Wilbur Thatcher went to Attorney Clogg's office where the two men had a conversation. Clogg testified that Thatcher directed him to accept the settlement; Wilbur Thatcher's testimony is directly to the contrary, that he went to his attorney to tell him the offer was unacceptable. Attorney Clogg then immediately notified the bank's attorney of the settlement acceptance. He also notified the district court by letter dated December 26, 1984, that the case had been settled, in order to obtain a continuance, as the matter was subject to dismissal under Iowa Rule of Civil Procedure 215.1. The pretrial set for December 28, 1984, was not held. On February 11, 1985, Attorney Clogg sent the bank's attorney a letter confirming the settlement agreement. On February 19, 1985, Wilbur Thatcher notified Attorney Clogg that he wanted to renegotiate the terms of the settlement. Thatchers' attorneys then withdrew as counsel.

We find that the foregoing facts constitute substantial evidence in the record to support the district court's judgment that enforcement of the settlement agreement was proper. The district court was in the position to judge the credibility of the witnesses. We find no merit in Thatchers' argument that the agreement was not enforceable because it wasn't in writing. The oral agreement to settle the case was enforceable. See Dillon v. City of Davenport, 366 N.W.2d 918, 925 (Iowa 1985). Because we find that Thatcher communicated acceptance

of the settlement offer to his attorney, we also find his attorney had authority to settle the case

The Thatchers also contend the bank and its employees are barred by the doctrine of laches and estoppel from seeking to enforce the alleged settlement at this late date We summarily reject these arguments There was no unreasonable delay in the bank's assertion of its claim The elements to establish equitable estoppel have not been met Furthermore, these remedies apply to actions in equity

For the foregoing reasons, we affirm the district court's ruling sustaining the bank's motion to enforce the settlement agreement of December 13, 1984, and the judgment entry filed in connection therewith

AFFIRMED