

FILED

DEC 27 1979

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

THE SECURITY TRUST & SAVINGS)
BANK OF SHENANDOAH, IOWA,)

Plaintiff-Appellee,)

Filed December 27, 1979

vs.)

ROBAN DEVELOPMENT CORPORATION,)
a corporation; JOHN R. REA, JR.,)
and JUDITH ANN REA, Husband and)
Wife; LEE MILLION CONSTRUCTION)
COMPANY, JAMES LEE MILLION,)
Owner,)

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2-62836

Defendants-Appellants.)

Appeal from Page District Court - Harold L. Martin, Judge.

Defendants appeal from grant of summary judgment for plaintiff in suit to collect amount due on a promissory note and to foreclose accompanying mortgage. - Reversed and remanded.

Richard G. Davidson, of Davidson & Hemphill, Clarinda, for defendants-appellants.

Robert A. Hutchinson, Fred Lindberg & John V. Donnolly, of Swift, Brown & Winick, Des Moines, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendants appeal from a grant of summary judgment in favor of plaintiff in plaintiff's suit to collect the amount due on a promissory note and to foreclose on the accompanying mortgage, and in favor of plaintiff on defendants' counterclaims for damages for emotional and physical distress, damages to defendants' credit rating and business reputation, and punitive damages. We reverse and remand for further proceedings.

Plaintiff asserts that defendants failed to pay the amount due on the promissory note on the date specified on the face of the note. Defendants admit the failure to pay the amount due as specified in the note. However, they did pay the amount of interest due, pursuant to an oral agreement allegedly executed prior to the signing of the note and the mortgage, which defendants contend provided for renewal of the promissory note on an annual basis if the annual interest was paid at the specified time. Plaintiff asserted the general Statute of Frauds, section 622.32(4), The Code 1977, as a bar to the introduction of evidence regarding the oral contract. Defendants contended that evidence of the oral agreement should have been admitted to establish their defense based on the doctrine of promissory estoppel. The trial court ruled that the Statute of Frauds, section 622.32(4), The Code 1977, prevented the introduction of evidence of the oral contract and that the doctrine of promissory estoppel would not operate to prevent the application of the Statute of Frauds. On the basis of that ruling, the trial court granted plaintiff's motion for summary judgment both on plaintiff's claims and on defendants' counterclaims.

In cases involving promissory notes, when a trial court is confronted with a motion for summary judgment, it must examine the entire record before it, including the pleadings, admissions, depositions, answers to interrogatories, and affidavits, if any, to determine whether evidentiary facts are presented that, if decided in favor of the party against whom the motion is made, would amount to a good defense of the claim. Schulte v. Mauer, 219 N.W.2d 496, 500 (Iowa 1974) (quoting Davis v. Comito, 204 N.W.2d 607, 611-12 (Iowa 1973)). The moving party has the burden of showing the absence of any genuine issue of material fact. Schulte, 219 N.W.2d at 500; Davis, 204 N.W.2d at 612. Those matters properly before the court must be viewed in the light most favorable to the party against whom the motion was made. Id. A motion for summary judgment should not be sustained if the record discloses any allegations asserting evidentiary

facts that if found to be true, would constitute a good defense to the claim. Id. With these principles in mind, we address the propriety of the trial court's grant of summary judgment in this case.

It has long been recognized in Iowa that promissory estoppel is a means of defeating the general Statute of Frauds. Warder & Lee Elevator, Inc. v. Britten, 274 N.W.2d 339, 342 (Iowa 1979). The Statute of Frauds may not bar oral proof of a promise that is the basis for an estoppel argument. Johnson v. Pattison, 185 N.W.2d 790, 795 (Iowa 1971) (quoting Miller v. Lawlor, 245 Iowa 1144, 1154, 66 N.W.2d 267, 273 (1954)). The oral contract, if held enforceable under the doctrine of promissory estoppel, would be a good defense to plaintiff's claim against defendants. Since the oral agreement is itself an essential element of the doctrine of promissory estoppel, Warder & Lee Elevator, Inc., 274 N.W.2d at 342, and since defendants' allegations of the oral agreement appear in the record, we think defendants have asserted an evidentiary fact that if found to be true would constitute a good defense to plaintiff's claim. The above-cited cases support the proposition that the Statute of Frauds may not bar evidence of an oral agreement that is the basis for a promissory estoppel argument. Consequently, we conclude that the trial court erred in granting plaintiff's motion for summary judgment. Since this error is sufficient to justify reversal, we do not address defendants' other contentions of error.

Since the trial court determined that the oral agreement was the basis for defendants' counterclaims as well as for plaintiff's claims, the granting of summary judgment on both was error. We reverse the grant of summary judgment in favor of plaintiff on both plaintiff's claims and defendants' counterclaims and remand for further proceedings, including but not limited to the taking of evidence to determine whether defendants' promissory estoppel claim is meritorious.

REVERSED AND REMANDED.