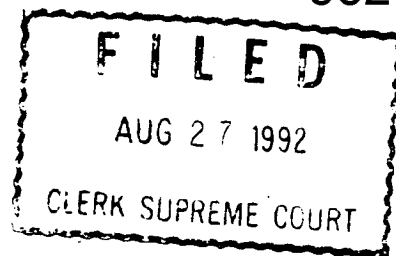


IN THE COURT OF APPEALS OF IOWA

No. 2-268 / 90-296



SIGNAL CAPITAL CORPORATION,
A Delaware Corporation,

Plaintiff-Appellee,

vs.

ROSEWAY, INC., An Iowa Corporation,

Defendant,

and

DORIS M. ROSENBERGER and
DAVID C. ROSENBERGER,
Defendants-Appellants,

and

DOUBLE-D INC.,
Defendant.

Appeal from the Iowa District Court for Polk County,
Jack D. Levin, Judge.

The Rosenbergers appeal from an adverse summary judgment in this contract action arising out of their guaranty of a lease agreement for trucking equipment.

AFFIRMED.

George T. Qualley of Qualley & Associates, Sioux City,
for appellants.

Peter S. Cannon of Connolly, O'Malley, Lillis, Hansen & Olson, Des Moines, for appellee.

Considered by Donielson, P.J., and Sackett and Habhab, JJ.

PER CURIAM

The question is whether the trial court properly granted a summary judgment in favor of plaintiff-appellee Signal Capital Corporation and against defendants-appellants Doris M. Rosenberger and David C. Rosenberger on a suit seeking to enforce personal guarantees appellants gave on agreements plaintiff and defendant Double-D, Inc., made for the lease of trucking equipment. Defendants contend summary judgment should not have been granted. We affirm the summary judgment.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 237(c); see Farm Bureau Mut. Ins. Co. v. Milne, 424 N.W.2d 422, 423 (Iowa 1988). The moving party has the burden to show the nonexistence of a material fact, Milne, 424 N.W.2d at 423, and evidence must be viewed in the light most favorable to the resisting party, see Thorp Credit, Inc. v. Gott, 387 N.W.2d 342, 343 (Iowa 1986). A party may elect to stand on the record as made by his opponent but he must then succeed, if he succeeds at all, not on the strength of his own case, for he has made none, but on the weakness of his adversary's. McCarney v. Des Moines Register and Tribune Co., 239 N.W.2d 152, 154 (Iowa 1976).

The parties filed a stipulation of facts early in the proceedings which, in applicable part, provided:

Plaintiff owned specified vehicles and equipment. Defendants entered into eight leases where they agreed to take possession of the property and comply with the terms of the leases, that required defendants to make monthly rent payments to plaintiff. Defendants have not made any rent payments on seven of the leases since November of 1988 and on one lease since January of 1990. Defendant's failure to make the rent payments entitled plaintiff to immediate possession of the property. Plaintiff did not waive rights against defendants and defendants did not waive right against plaintiff.

After the stipulation was filed, the trial court ordered defendants to return the property to plaintiff.

Plaintiff next filed a motion for summary judgment contending no genuine issue of material fact existed concerning the liability of Doris and David as individual guarantors and they are liable under the written lease and guarantees.

The defendants resisted contending (1) plaintiff did not factually support its claim, (2) defendants were not provided consideration for their signature, and (3) plaintiff should first proceed against the defendant corporations.

The trial court sustained plaintiff's motion for summary judgment. Plaintiff then on September 27, 1989, asked for a summary judgment of \$1,352,431.63. Attached to plaintiff's motion was the affidavit of plaintiff's accounting manager stating the amount claimed was the

amount he computed to be due. The trial court, on January 23, 1990, entered a supplemental judgment entry entering judgment against defendants David and Doris Rosenberger for \$1,352,431.63. The judgment found no material dispute existed as to the amount due.

Appeal was taken. Defendants raise two issue on appeal. Plaintiff contends the issues defendants raise were not raised at the trial court level. Matters not raised in the trial court, including constitutional questions, cannot be effectively asserted for the first time on appeal. State v. Lyon, 223 N.W.2d 193, 194 (Iowa 1974).

Defendants have not directed us to where in the record these issues were raised in the trial court. Each division of an argument shall state how the issue was preserved for review, with references to the places in the record where the issue was raised and decided. Iowa R. App. P. 14(a)(5).

Defendants claim the issues were raised in a supplemental brief. The supplemental brief is not in the appendix. Defendants did not show the supplemental brief in the "Relevant Docket Entries" included in the appendix, although we did find it in the trial court file. We have considered the supplemental brief despite defendants' failure to properly reference. However, the issues raised in the brief were not raised until after summary judgment

establishing the defendants' liability had been sustained.

Error was not preserved.

AFFIRMED.