

IN THE COURT OF APPEALS OF IOWA

RICKIE WAGONER,	)	
Plaintiff-Appellant,	)	Filed September 23, 1980.
vs.	)	
HAROLD W. RODGERS,	)	0-210
Defendant-Appellee.	)	<u>64032</u>

Appeal from Page District Court - Keith E. Burgett, Judge.

Plaintiff buyer appeals the dismissal of his petition seeking actual and exemplary damages for an alleged fraud by defendant in a contract for sale of a housetrailer. -
AFFIRMED.

Richard G. Davidson, of Davidson & Hemphill, Clarinda, for plaintiff-appellant.

Milton L. Hanson, Avoca, for defendant-appellee.

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

Plaintiff, Rickie Wagoner, appeals dismissal of his petition seeking actual and exemplary damages for an alleged fraud by defendant, Harold Rodgers, in a contract for sale of a housetrailer. We affirm.

The parties entered an agreement for Rodgers to sell and Wagoner to buy a mobile home on December 7, 1977. Rodgers drafted the contract which in part read:

Beginning January 1, 1978, Rick Wagoner will make monthly payments in the amount of \$162.47 to Harold Rodgers, until the Nebraska Savings & Loan of Omaha, Nebr. is paid in full, total amount being approx. \$10,500.

Ten months later a payment book was sent to Wagoner which disclosed the entire scheduled loan balance to be \$15,597.12. Wagoner contacted Rodgers who offered to take back the mobile home and reimburse Wagoner for moneys spent in excess of the rental value. Wagoner filed a petition affirming the contract and seeking \$5,161.18 in actual damages and \$10,772.36 in exemplary damages as a result of fraudulent misrepresentation by Rodgers. Rodgers answered claiming the \$10,500 amount in the contract pertained to the outstanding principal only. The trial court found plaintiff had failed to carry the burden of proof that his reliance on the \$10,500 figure to include interest was well-founded. Further, the court was not convinced that any statements made by Rodgers were fraudulent. As mistake was not pleaded or proved, Wagoner's petition was thereupon dismissed.

Wagoner urges the trial court erred in requiring plaintiff to prove the elements of scienter and intent to deceive in this action. Wagoner's petition for damages claimed a breach of contract and/or fraudulent misrepresentation. In actions at law one must prove (1) representation, (2) falsity, (3) materiality, (4) scienter, (5) intent to deceive, (6) reliance, (7) resulting injury and damage. First National Bank in Lenox v. Brown, 181 N.W.2d 178, 181 (Iowa 1970). Wagoner did not seek rescission, nor did he allege mistake and seek reformation or other equitable relief. Such actions would have required less essential proof of fraud.¹ See Dobbs on Remedies § 91 (1973). The trial court did not err in requiring proof of the elements enumerated in First National Bank in this action for damages.

The trial court did not specify in its decision which elements had not been proved,

¹ The equity rules are relaxed to construct fraud from circumstances rather than fact and without a showing of scienter or pecuniary damage. First National Bank at 181.

but stated there was "a total absence of evidence" to support Wagoner's claim. Although not de novo, our review of the sufficiency of the evidence enables us to examine the record as to required elements. The burden of proof on Wagoner is to show a preponderance of clear and convincing evidence. Lockard v. Carson, 287 N.W.2d 871, 874 (Iowa 1980). We find the evidence did not support a finding of scienter as articulated recently in Mills County State Bank v. Fisher, 282 N.W.2d 712, 714 (Iowa 1979). In Mills County the court stated scienter could be proved by showing:

- (1) actual knowledge of the falsity of the representation;
- (2) that the statement was made as of the knowledge of the party or in such absolute unqualified and positive terms as to imply his personal knowledge of the fact, when in truth he had no knowledge whether the language was true or false; or (3) that the party's special situation or means of knowledge were such as to make it his duty to know as to the truth or falsity of the representation. Id.

Rodgers drafted the written agreement. The "approx. \$10,500" represented to him the loan outstanding and payable at the time; namely, the principal. Other evidence substantiates this principal balance figure. Rodgers stated what he knew to be true. Admittedly, he did not have knowledge of the conflicting interpretation Wagoner gave to that figure, but this fact does not constitute scienter. Wagoner's reliance on his own interpretation may not be justified by analogy to the standard iterated in Lockard v. Carson, 287 N.W.2d 871 (Iowa 1980), where the court held the recipient of fraudulent representation is required to "use his senses." If the falsity or, in the instant case, opposite meaning would be patent to him upon a cursory investigation, reliance on such is not justified. Id. at 878.

Having found insufficient evidence to support a fraud claim, we find Wagoner's other assertions on appeal have no bearing upon our determination; and we affirm the trial court's decision.

AFFIRMED.