FILED
OCT 24 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-311 / 88-719

**DEAN SMITH and JANE SMITH,**

Appellants/Cross-Appellees,

vs.

**CENTRAL IOWA PRODUCTION CREDIT ASSOCIATION and GAROLD J. DHONDT,**

Appellees/Cross-Appellants.

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Appeal from the Iowa District Court for Poweshiek County, Robert Bates, Judge.

Appellants appeal a district court order denying their motion for a new trial and appellees cross-appeal claiming the district court erred in not assessing Iowa Rule of Civil Procedure 80(a) sanctions against the appellants. **AFFIRMED IN PART; REVERSED IN PART; AND REMANDED FOR A NEW TRIAL.**

Peter C. Riley of the Tom Riley Law Firm, P.C., Cedar Rapids, for appellants.

Kevin M. Reynolds and Rodney P. Kubat of Whitfield, Musgrave & Eddy, Des Moines, for appellees.

Heard by Oxberger,C.J., and Donielson and Schlegel, JJ.

**SCHLEGEL, J.**

The Smiths appeal a district court order denying their motion for a new trial following a directed verdict against them on their breach of contract claim and a jury verdict against them on their fraudulent misrepresentation claim. The Central Iowa Production Credit Association (PCA) cross-appeals claiming that the district court erred in not assessing Iowa Rule of Civil Procedure 80(a) sanctions against the Smiths and their attorney. We affirm in part, reverse in part, and remand for a new trial.

The Smiths contend that the district court erred in: (1) preventing their counsel from asking prospective jurors during voir dire whether they were connected with any casualty insurance companies; and (2) granting the PCA's motion for a directed verdict concerning their breach of contract claim.

The Smiths began farming in 1968. In 1973, the Smiths began to deal with the PCA in order to obtain more money to expand their farming operation.

In 1982, the Smiths began dealing with Gary Dhondt, a loan officer with the PCA. Eventually, the PCA refused to continue financing the Smiths' farming operation. The Smiths were able to obtain alternative financing in 1983 but not in 1984.

The Smiths brought suit in 1985 claiming that the PCA, through its loan officer, had orally agreed in 1982 to

remain the Smiths' short-term lender if Dean Smith could restructure his financial situation through Farmer's Home Administration (FHA). Despite Smiths' restructuring through FHA, the PCA refused to continue financing the Smiths.

Prior to trial, the district court ruled that Smiths' attorney was unable to ask prospective jurors whether they had any connection with a casualty insurance company. The district court noted that the PCA did not have insurance. Following presentation of the evidence, the district court granted the PCA's motion for directed verdict concerning the breach of contract claim finding insufficient evidence of an oral contract. However, the district court did reject the PCA's motion for rule 80(a) sanctions. Both parties have appealed from these rulings.

Initially, we consider the proper scope of review. The essential character of a cause of action and the relief it seeks, as shown by the complaint, determine whether an action is at law or equity. Moseback v. Blythe, 282 N.W.2d 755, 758 (Iowa App. 1979). Where the primary right of the plaintiff arises from nonperformance of a contract, where the remedy is money, and where damages are full and certain, remedies are usually provided at law. Id. The present action involved a breach of contract and was tried at law. Our scope of review is on assigned error only. Iowa R. App. P. 4.

A court ruling on a motion for directed verdict must view the evidence in the light most favorable to the nonmoving party. Beitz v. Horak, 271 N.W.2d 755, 757; Iowa R. App. P. 14(f)(2). Movant is considered to have admitted the truth of all evidence offered by nonmovant and every favorable inference that may be deduced from it. B & B Asphalt Co. v. T.S. McShane Co., 242 N.W.2d 279, 284 (Iowa 1976). To overrule the motion, the court must find substantial evidence in support of each element of the nonmovant's claim. Beitz, 271 N.W.2d at 757. If reasonable minds could differ, an issue is for the jury. Harvey v. Palmer College of Chiropractic, 363 N.W.2d 443, 444 (Iowa App. 1984)

Appellant contends there was substantial evidence to submit the issue of breach of contract to the jury. There is evidence that PCA's representative agreed to remain as the short-term lender if the Smiths could obtain financing from FHA. The trial court found that the loan amount was not sufficiently definite and that the contract lacked consideration. However, as appellant points out, the record shows that agreements with the PCA were based on an open line of credit for the year. The amount of the loan is determined by the needs of the borrower. "Vagueness, indefiniteness, or uncertainty as to any of the essential terms of the agreement may prevent creation of an enforceable contract." Gildea v. Kapenis, 402 N.W.2d 457,

459 (Iowa App. 1987). "Such vagueness of expression, indefiniteness, or uncertainty are, however, matters of degree, and therefore each case must be decided on its own particular circumstances." Id. Considering the evidence in the light most favorable to the nonmovants (Smiths), the particular circumstances in this case show that PCA made a statement that could be construed as a promise. The circumstances also show that the Smiths relied on that promise and extended themselves even further into debt. The consideration arises from the certainty of payment that PCA would receive if FHA would give the Smiths financing. There was always a carry-over debt and PCA might not have been able to recover this money if it were not for their promise to continue as a short-term lender. Taking these facts and the inferences that they provide in the light most favorable to the appellant shows that the breach of contract issue should have been submitted to the jury. We remand to the trial court for a new trial on this issue.

Appellant next contends the trial court should have allowed him to ask the "insurance question" in voir dire. Latitude allowed counsel in the voir dire of prospective jurors rests largely in trial court's sound discretion. Wilson v. Ceretti, 210 N.W.2d 643, 644 (Iowa 1973). We interfere with the trial court's exercise of discretion only where abuse is clearly shown. State v. Menke, 227 N.W.2d 184, 187 (Iowa 1975). There was evidence in this

instance to suggest that knowledge of insurance connections among the jurors could help the plaintiff. There is also the traditional prejudice associated with the mere asking of the "insurance question." The trial judge properly weighed these conflicting interests and came to a reasonable conclusion. There is no evidence that the trial judge abused his discretion by not allowing appellant to ask the question.

Finally, the appellee cross appeals the denial of sanctions against the appellant's attorney. The appellee contends that Iowa Rule of Civil Procedure 80 requires sanctions when there is a violation. Appellee is correct that sanctions are required when there is a violation of rule 80. However, there is no such violation here. Appellee cites us to several allegedly false statements in the pleadings. He alleges that these misstatements are not supported in any way by the record. An examination of the record shows that the pleadings in this case were based on fact. The problems that appellee points out are mere variations in language that can be interpreted in several ways. It seems necessary to remind the appellee that deciding between these interpretations is what juries are for. Rule 80 uses words such as "improper," "harass," "unnecessary," and "needless." None of those adjectives apply to this case. However, they might apply to a counterclaim for sanctions which merely serves to divert

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the attention of this court from the real issues. The trial court was correct in denying sanctions. The costs of this appeal are to be assessed against the appellee.

**AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.**