IN THE COURT OF APPEALS OF IOWA

FILED
AUG 26 1987
CLERK SUPREME COURT

225

NATIONAL BANK & TRUST CO.,	)	
Plaintiff-Appellee,	)	
vs.	)	
JOHN W. SNOOK,	)	
Defendant-Appellant.	)	
BILLY J. SNOOK,	)	
Defendant,	)	
AMY SNOOK, FRANCIS K. SNOOK, BEVERLY J. SNOOK,	)	Filed August 26, 1987
Defendants-Appellants,	)	
S. & N. FARMS, ROBERT WAMPLER, TERRESSA WAMPLER, CORYDON VETERINARY CLINIC, FARM BUREAU MUTUAL INSURANCE COMPANY, and FARM SERVICE CO., HUMESTON,	)	7-66 86-439
Defendants.	)	

Appeal from the Iowa District Court for Wayne County (Eq. No. 20599), Arthur E. Gamble, Judge.

Four defendants in a foreclosure action appeal from an adverse judgment upon their counterclaim for fraud in the inducement. **AFFIRMED.**

Melodee Hanes of Scalise, Scism, Sandre & Uhl, Des Moines, for defendants-appellants.

Stephen Meyer of Chariton, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson and Hayden, JJ.

OXBERGER, C.J.

In this action, four defendants in a foreclosure action appeal an adverse judgment upon their counterclaim for fraud in the inducement. They assert: (1) that the evidence was sufficient to establish the existence of both a confidential relationship and misrepresentation; (2) that the evidence was insufficient to support a finding that the grain elevator business run by one of three farm partners was a partnership rather than an individual enterprise; and (3) that the doctrine of unclean hands should not have been applied. We affirm.

Initially, we note that our scope of review in this equitable proceeding is de novo. Iowa R. App. P. 4; Baird v. Lovell, 344 N.W.2d 574, 575 (Iowa App. 1983). Nevertheless, we give weight to the trial court's finding of fact, particularly when these findings involve a determination of the credibility of witnesses. Iowa R. App. P. 14(f)(7); Robinson v. Loyd, 252 Iowa 1086, 1090, 109 N.W.2d 619, 621 (1961).

Briefly, the facts are as follows. In the mid-1950's the Snook brothers, John, Francis, and Billy, began farming together in a partnership informally known as Snook Brothers. They chose National Bank & Trust to be their agricultural lender. Throughout the years, all three brothers signed various notes and mortgages on behalf of the partnership. As part of this working relationship, it became a standard procedure for the bank to hold checks for the Snooks. The Snooks would then execute a note to cover the overdrafts.

In mid-1976, Billy became interested in the grain elevator business. The other brothers were hesitant about entering the venture but acquiesced. Using a $5,000.00 debt owed to them by the elevator, Billy made a down payment on the purchase price. The other brothers gave their portion to Billy to apply towards the down payment. The brothers also maintained that the farm partnership ended at the same time, when Billy gave a quit claim to John. The trial court found

this deed to be a sham, and that the partnership had not been dissolved. The elevator soon experienced financial difficulty. In December of 1977, the elevator had overdrafts of approximately $80,500.00. The bank held these checks as was part of its standard practice with the Snooks. John and Francis were told of the overdrafts and asked to sign a note to cover them. The Snooks allege that they were told the checks had been returned and would be returned again if not covered. They also allege that they relied upon a bank employee's legal statement that they would be liable to Billy's creditors since everyone regarded them as partners. They did not raise any objections and signed the note. The Snooks claim they did not know the bank had actually held the checks until they were examining documents in preparation for the foreclosure proceedings.

The appellant's first contention is that a confidential relationship existed between the bank's William Carter and themselves. They argue that because of this relationship, Carter had a duty to disclose the bank's holding of the checks; and, coupled with Carter's statements, they were fraudulently induced into signing the note.

A confidential relationship does not arise out of every bank-borrower relationship. Manson State Bank v. Tripp, 248 N.W.2d 105, 108 (Iowa 1976); see also Kurth v. Van Horn, 380 N.W.2d 693, 698 (Iowa 1986). The existence of the relationship depends upon the facts of each case. Id. The trial court ruled the appellants had not met their burden of proof in showing a confidential relationship and we agree. Although the Snooks had been banking at National Bank & Trust for a number of years, the relationship was an equal one. They had an established course of business dealing with the bank. There is no evidence they were dominated or influenced in any way by Carter. Carter did not tell them what business decisions to make. Merely asking a banker for advice will not create a confidential relationship. It cannot be said the Snooks regarded Carter as a business consultant.

We conclude the evidence was insufficient to support a finding of a confidential relationship.

When a confidential relationship exists, the superior party has "a duty to disclose all material facts of which he is aware, or at least favorable to his own position and adverse to the other." First National Bank in Lenox v. Brown, 181 N.W.2d 178, 182 (Iowa 1970). Where such a relationship does not exist, "mere silence on the part of one party, in an arm's length transaction, as to material facts discoverable by the other does not serve to create actionable fraud." Id. Also, "one having knowledge of the true facts cannot have relief for fraud or misrepresentation." Id. at 183.

A review of the record leads us to conclude that no fraud occurred in this case. The Snooks knew it was a standard practice for the bank to hold overdrafts in order for the Snooks to later cover them. The transaction was not an unusual one in the course of their business dealings. They knew, despite any potential liability the bank may have, Billy would still be ultimately liable for the checks. They also knew the overdrafts could cause Billy to lose his grain dealer's license. Contrary to what the appellants claim, we find they would have signed the note in any event, regardless of whatever statements Carter may or may not have made. Based on the above, we are not convinced the appellants proved their case.

Because we find no fraud occurred in this case, it is unnecessary for us to reach appellants' second and third issues.

AFFIRMED.