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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-326 / 88-1245

189

DONALD R. HARGRAVE,

Appellee,

vs.

ERWIN LEHRMAN and VIOLET LEHRMAN,

Appellants.

Appeal from the Iowa District Court for Cedar County, Margaret Stevenson Briles, Judge.

The appellants appeal from a district court judgment awarding Hargrave $31,500 plus interest based on a breach of the parties' December 1980 promissory note. **AFFIRMED.**

Jack C. Paige and David A. Elderkin of Elderkin, Pirnie, Von Lackum & Elderkin, Cedar Rapids, for defendants-appellants.

William L. Meardon of Meardon, Sueppel, Downer & Hayes, Iowa City, for plaintiff-appellee.

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

OXBERGER, C.J.

The Lehrmans appeal from a district court judgment awarding Hargrave $31,500 plus interest based on a breach of the parties' December 1980 promissory note. The Lehrmans contend that they were accommodation parties on the note with Hargrave and were not personally liable on the note. We affirm the decision of the district court.

In 1974 the Lehrmans sold a farm to the Billicks on contract. The Billicks borrowed money from the Union Bank to finance their farm operations. The Billicks later began to experience financial difficulties and several meetings occurred between Hargrave, the Bank, the Lehrmans and the Billicks.

Eventually, the parties agreed that the Billicks would satisfy the Bank's judgment against them by increasing their indebtedness to the Lehrmans on the 1974 contract by $85,000. The Lehrmans would then advance $50,000 of this increased amount to the Bank and Hargrave agreed to loan the Lehrmans the additional $35,000.

In December 1980, the parties executed the necessary documents to evidence their agreement.

Billick failed to make payments on his real estate contract with the Lehrmans. The Lehrmans served notice of forfeiture of the real estate contract in late 1985. In October 1986, Hargrave demanded payment from the Lehrmans on the $35,000 promissory note executed in December 1980.

The Lehrmans refused, claiming that they were merely accommodation parties and not liable to Hargrave and that Hargraves' sole security on the note was the real estate contract between Billick and the Lehrmans.

Hargrave filed suit in 1987 claiming recovery based on: (1) the December 1980 promissory note; (2) a theory of agency; and (3) a constructive trust over the real estate. The district court awarded Hargrave recovery based on the December note and the Lehrmans appeal.

Our review of this matter is limited to errors at law. Iowa R. App. P. 4. The fact findings of the trial court have the effect of a special verdict and are considered binding if supported by substantial evidence. State Sav. Bank v. Allis-Chalmers Corp., 431 N.W.2d 383, 385 (Iowa App. 1988); Midway Bank and Trust v. Moses, 375 N.W.2d 292, 293 (Iowa App. 1985).

"Substantial evidence has been defined as evidence that 'a reasonable mind would accept as adequate to reach a conclusion.'" Allis-Chalmers Corp., 431 N.W.2d at 385 (quoting Briggs v. Board of Directors, 282 N.W.2d 740, 743 (Iowa 1979)). The possibility of drawing two inconsistent conclusions from the evidence does not prevent a trial court's finding from being supported by substantial evidence. Allis-Chalmers Corp., 431 N.W.2d at 385.

First, the Lehrmans contend that the district court erred in not finding them to be accommodation parties for

Hargrave. The Lehrmans claim that they are not personally liable to Hargrave because Hargrave's sole security on the note was the real estate contract between Billick and the Lehrmans.

Iowa Code section 554.3415(1) provides that "[a]n accommodation party is one who signs the instrument in any capacity for the purpose of lending that party's name to another party to it." "An accommodation party is not liable to the party accommodated . . ." Iowa Code § 554.3415(5). A party is not an accommodation party if they receive value or direct benefit from the instrument. Pioneer Ins. Co. v. Gelt, 558 F.2d 1303, 1310-11 (8th Cir. 1977); Riceville Bank v. Armstrong, 741 S.W.2d 331, 333 (Tenn. App. 1987); 1 J. White & R. Summers, Uniform Commercial Code § 13-14, 660-61 (3d ed. 1988).

As noted, a trial court's finding of fact is equivalent to a special verdict. It is binding on us if supported by substantial evidence, and it is so supported if it may be reasonably inferred from the evidence. Allis-Chalmers Corp., 431 N.W.2d at 385. "When evaluating the sufficiency of evidence, we will 'view it in the light most favorable to sustaining the trial court's judgment, whether or not it is contradicted.'" Id.

The Lehrmans contend the December 16, 1980 Memorandum Agreement clearly indicates that the promissory note signed on December 5, 1980 was not intended to be evidence of

indebtedness from the Lehrmans to Hargrave but rather was an accommodation to Hargrave to allow him to tack on to the security of the 1974 real estate contract. The memorandum agreement states:

> WHEREAS [Hargrave] . . . agreed to lend . . . [Billick] ($35,000.00), but desired to lend the money through . . . [Lehrmans] as a conduit and/or Agent for said loan to . . . [Billick]. That to support this agency relationship, . . . [Hargrave] issued a ($35,000.00) check to . . . [Lehrmans] and . . . [Lehrmans] issued a note to . . .[Hargrave] in the face amount of ($35,000.00) but in actual effect this is intended to be a loan from . . . [Hargrave] to . . . [Billick] and is so acknowledged by all parties hereto. That the sole purpose of this loan passing through . . . [Lehrmans] is to secure the debt.

We believe substantial evidence exists from which the trial court could reasonably conclude that Lehrmans were not accommodation parties. The district court found no persuasive evidence to support the position of the Lehrmans. The district court concluded that the memorandum agreement satisfied the Lehrmans' attorneys' "income tax concerns . . . and nothing more." It further stated:

> One of the agreements drawn and executed in connection with the transaction was actually executed by the . . . [Lehrmans] and the Billicks on December 4, 1980. This agreement added the full $85,000 as the amount owed on the principal of the land contract. This agreement provided that the principal payments being made after March 1, 1982, would be first applied to the new capital advance of $85,000, until that was paid in full, and then the remaining unpaid principal due on the contract, in the amount of $134,00, would be paid as per the terms of the contract, with the entire balance due and payable on March 1, 1986.

We find that the addendum to the contract and Loan Agreement which adds $85,000.00 to the balance owing from Billick to Lehrmans, and increases the interest rate from 8% to 11%, provides a basis for the district court to reasonably conclude that the Lehrmans received value for the $35,000.00 promissory note held by Hargrave. Consequently, the district court held the Lehrmans were not accommodation parties to the transaction. Under these circumstances we cannot say that the district court's judgment was not supported by substantial evidence and we will not disturb its holding.

Accordingly, we believe substantial evidence exists from which the trial court could reasonably inferred from the evidence that the Lehrmans were not accommodation parties and were personally liable on the promissory note. We affirm the decision of the district court.

AFFIRMED.