FILED
APR 24 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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| **POLK COUNTY BOARD OF SUPERVISORS, ex rel. DAN L. JOHNSTON, Polk County Attorney,** | ) | Filed April 24, 1984 300 |
| Plaintiff-Appellee, | ) | |
| vs. | ) | |
| **A & T INVESTMENT COMPANY, INC.,** | ) | 4-97 / 83-706 |
| Defendant-Appellant. | ) | |

Appeal from the Iowa District Court for Polk County - Luther T. Glanton, Judge.

Defendant appeals from the trial court's refusal to vacate a consent decree entered into between plaintiff county and the defendant's receiver. AFFIRMED.

Robert A. Nading II, Ankeny, Iowa, and Thomas N. Martin, Iowa City, Iowa, for defendant-appellant.

Dan L. Johnston, Polk County Attorney, and Thomas M. Werner, Assistant County Attorney, for plaintiff-appellee.

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

Defendant appeals from the trial court's refusal to vacate a consent decree entered into between plaintiff county and the defendant's receiver. We affirm.

Appellant, A & T Investment Company, asserts that the trial court erred in denying its petition to vacate the consent decree when the evidence showed that the receiver appointed to represent A & T obtained approval of the decree through extrinsic fraud. We do not agree.

A receiver acts for the court, as its creature or officer, and has no powers save those conferred upon him by its orders, or reasonably to be implied therefrom. State Central Savings Bank of Keokuk v. Fanning Ball-Bearing Chain Co., 118 Iowa 698, 702-03, 92 N.W. 712, 713 (Iowa 1902). To determine whether a receiver has acted within his scope of authority, these tests are to be applied: (1) Was the act under investigation within the authority conferred by an order of court? (2) If so, was it performed with reference to the preservation of the estate, as a man of ordinary sagacity and prudence would have performed it under like circumstances? and (3) If without authority, was it beneficial to the estate? Id. at 703, 92 N.W. at 714. We find the receiver has met these requirements.

In applying the law to these particular facts the record indicates that on January 25, 1982, the receiver sent a letter to appellant's attorneys with the proposed consent decree enclosed. At that time he alerted the attorneys to the fact that he was going to ask the court for authority to enter the decree on January 29, 1982. The receiver suggested in the letter that the attorneys discuss the decree with their clients to discover any objections they might have. Apparently receiving no objections, on January 29, 1982, the court ordered that the receiver be authorized to execute the consent decree. Such was subsequently entered, signed by the court, and filed on February 19, 1982. We find this to be proper authority from the court within the meaning of Fanning. Therefore, the first requirement of Fanning has been met.

Next, we consider whether the act was performed with reference to the preservation of the estate. The evidence indicates that appellant's mobile home park's electrical wiring system was in substantial violation of the Polk County Building Code Ordinance. The evidence indicated that such violations were hazardous to the tenants as well as to the park in general. In an effort to cure these violations and bring appellant's park into compliance with the ordinance, the receiver proposed the consent decree.

We find it to be unquestionable that such an attempt was clearly performed with reference to the preservation of appellant's corporation. As such, the second prong of the Fanning test has been satisfied and we find the receiver to have acted within his scope of authority.

Appellant, however, complains that the receiver practiced a constructive fraud upon his corporation because neither he nor his attorney was aware of the content or effect of the decree. We find this not to be the case.

There is nothing in the record to convince us that appellant's attorney either did not receive the letter dated January 25, 1982, notifying him of the decree, or that his attorney was not fully aware of the entry of the decree; and the record is inadequate to determine whether or not the information once received was ever imparted to appellant. Even assuming, though, that appellant never received the information, the rule is that generally, a person is held to know what his attorney knows or should communicate to him, and the fact that the attorney has not actually communicated his knowledge to the client is immaterial. 7A C.J.S. Attorney and Client § 182 (1980); Perpetual Savings & Loan Association v. Van Atten, 211 Iowa 435, 438, 233 N.W. 746, 747 (1930).

When a party claims fraud, it is that party's burden to clearly show such fraud. See Copic v. Copic, 325 N.W.2d 766, 768 (Iowa Ct. App. 1982). Our de novo review of the record convinces us that A & T has not carried that burden. Therefore we find no grounds exist under Iowa Rule of Civil Procedure 252 by

which the trial court could vacate the consent decree.

Appellant also contends that even if the act was authorized by the court, it was not beneficial to A & T's estate because the modifications proposed would result in the loss of air conditioning to the tenants' homes. There was no evidence in the record to support appellant's claim. As such, we find it meritless.

For the foregoing reasons, we affirm the ruling of the district court.

AFFIRMED.