

IN THE COURT OF APPEALS OF IOWA

No. 8-628 / 97-1958
Filed December 28, 1998

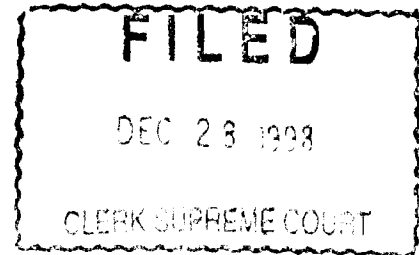
RICHARD C. McDONNELL,
Appellant,

vs.

JOHN A. BROWNER,
Defendant,

and

CAVITY COMPANY, L.C., and KAIZEN COMPANY OF AMERICA,
Appellees.



Appeal from the Iowa District Court for Scott County, Patrick J. Madden,
Judge.

Richard McDonnell appeals from the district court's ruling on cross-motions
for summary judgment. **AFFIRMED.**

Joseph H. Lavery of the Pastnak Law Firm, P.C., Davenport, for appellant.

Michael P. Byrne of Lane & Waterman, Davenport, for appellees.

Heard by Sackett, C.J., and Huitink, Streit, Vogel and Mahan, JJ.

VOGEL, J.

Richard McDonnell appeals from the district court's ruling on cross-motions for summary judgment. We find that McDonnell failed to put forth specific facts to show there was a genuine issue for trial and therefore affirm.

Background facts. In March of 1995, John Browner entered into a real estate contract with Kaizen Company of America, L.C. (Kaizen), who later assigned its rights to Cavity Company, L.C. (Cavity). Browner soon defaulted on the contract and was served with a notice of forfeiture. McDonnell loaned Browner \$18,500 to cure his default. McDonnell claims he requested that the money be held in escrow until he was able to come to an agreement with Cavity and Kaizen to acquire an interest in the real estate. However, before any such agreement was made, \$17,500 of the money was applied to cure Browner's default. Browner failed to cure a second default, and a forcible entry and detainer judgment was filed in July of 1997.

McDonnell eventually filed an action asserting claims of unjust enrichment against Browner, Cavity and Kaizen. McDonnell sought restitution from Browner and an equitable lien on the real estate. McDonnell, Cavity and Kaizen filed motions for summary judgment. The district court granted in part and denied part McDonnell's motion for summary judgment against Browner; denied McDonnell's motion for summary judgment against Cavity and Kaizen; and granted Cavity and Kaizen's motion for summary judgment against McDonnell. McDonnell appeals

from the court's ruling on his motion against Cavity and Kaizen and their cross-motion.

Scope of review. We review a summary judgment ruling for error. *Anderson v. Miller*, 559 N.W.2d 29, 31 (Iowa 1997). We examine the record before the district court to decide whether a genuine issue of material fact exists and whether the court correctly applied the law. *See Id.*; Iowa R. Civ. P. 237(c). In doing so, we view the facts in the light most favorable to the party opposing the motion for summary judgment. *Anderson*, 559 N.W.2d at 31.

To determine whether a genuine issue of material fact exists, the court must examine the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits. Iowa R. Civ. P. 237(e). The burden is on the moving party to show the absence of a material fact issue, and the resisting party is accorded all possible inferences reasonably deducible from the evidence. *See Red Giant Oil Co. v. Lawlor*, 528 N.W.2d 524, 528 (Iowa 1995). However, when a motion for summary judgment is made and supported as provided in the rule, an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him. Iowa R. Civ. P. 237(e); *Bitner v. Ottumwa Community School Dist.*, 549 N.W.2d 295, 299 (Iowa 1996).

McDonnell asserts that there are genuine issues of material fact as to whether a contractual relationship ever existed between himself and Cavity and Kaizen and, if so, whether they breached a duty of reasonable care or fair dealing. McDonnell further claims there remain “specters” of genuine issues of material fact regarding his unjust enrichment claims. To support these arguments, McDonnell offers a series of letters exchanged after the money he loaned Browner was applied to cure the default. These letters were not attached to McDonnell’s motion for summary judgment or resistance; however, McDonnell asserts that they were discussed at the summary judgment hearing. The district court’s statement filed pursuant to Iowa Rule of Appellate Procedure 10(c) indicates that they were not a part of the summary judgment record; they are therefore not part of this appeal.

The only letter made part of the summary judgment proceeding was from Browner’s attorney to Cavity and Kaizen’s attorney. This letter, dated March 31, 1997, accompanied the check to cure the first default and referred only to the amount required under the forfeiture notice. No restrictions were placed on the check which would indicate any attendant contract negotiations. McDonnell’s claims of unjust enrichment must fail as his loan to Browner was properly used to cure the existing default.

Reviewing all materials that were a part of the summary judgment record, we agree with the district court’s determination that McDonnell failed to show a genuine

issue of material fact in dispute as to whether he had an agreement with Cavity and Kaizen. The record only supports a loan agreement between McDonnell and Browner. For Browner's failure to repay the loan, McDonnell was granted judgment against Browner. That was the only proper recourse available to McDonnell based on the record of this case.

Having considered all arguments properly before us on appeal, we hereby affirm the district court's summary judgment rulings.

AFFIRMED.