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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

NATIONAL BUSINESS SERVICES, INC.,)
Plaintiff-Appellee,) Filed April 21, 1981
vs.)
HARKER FARMS, INC., and) 0-339
PAUL H. MEARS,) 2-64820
Defendant-Appellant.)

Appeal from Greene District Court - Paul E. Hellwege, Judge.

Defendant Mears appeals from trial court judgment holding that the plaintiff is entitled to a finder's fee on a loan eventually made to a corporation controlled by Mears and his family. REVERSED AND REMANDED.

Fred L. Dorr of Wasker, Sullivan & Ward, Des Moines, for defendant-appellant.

M. Wayne Oltrogge, Clear Lake, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

DONIELSON, J.

Plaintiff National Business Services is in the business of contacting potential lenders on behalf of potential borrowers in an effort to obtain loans for the latter. Plaintiff's services were engaged by defendant Paul Mears, from whom plaintiff now seeks to recover a finder's fee (Harker Farms Incorporated is a nominal defendant in this action). Plaintiff contends, essentially, that the loan eventually made to a corporation controlled by defendant and his relatives was a result of plaintiff's efforts in contacting the lender on defendant's behalf. The trial court ruled in plaintiff's favor; having carefully considered all the relevant evidence, we reverse.

Our scope of review is limited to correction of errors at law. Iowa R. App. P. 4. Although we are not bound by the trial court's determinations of law, Warder & Lee Elevator, Inc. v. Britten, 274 N.W.2d 339, 340 (Iowa 1979), the trial court's findings of fact are binding on this court if supported by substantial evidence. Knauss v. Kemin Industries, Inc., 267 N.W.2d 56, 57 (Iowa 1978); Carson v. Mulnix, 263 N.W.2d 701, 705 (Iowa 1978); Iowa R. App. P. 14(f)(1). In determining whether the evidence is substantial, we construe it in the light most favorable to sustaining the trial court's judgment, and we will not weigh the evidence or pass on the credibility of witnesses. Carson, 263 N.W.2d at 705. We need only consider the evidence favorable to the judgment below, whether or not it is contradicted. Manson State Bank v. Tripp, 248 N.W.2d 105, 107 (Iowa 1976); Grefe v. Ross, 231 N.W.2d 863, 865 (Iowa 1975). A finding of fact is supported by substantial evidence if the finding reasonably may be inferred from the evidence. Grefe, 231 N.W.2d at 865.

I.

In April of 1977, following discussions among members of the Mears family about the need for additional farm operating funds, defendant's brother-in-law contacted the Phoenix Mutual Life Insurance Company regarding a possible farm loan for defendant's mother using her 510 acres of land as collateral. Since the family farm was not incorporated, however, he was informed that Phoenix Mutual could not consider the loan application. In the meantime, defendant's mother was negotiating with local federal land bank authorities in an attempt to avoid refinancing her land. These negotiations on her part continued through early August of 1977.

On July 15, 1977, defendant signed an agreement with plaintiff National Business Services whereby plaintiff agreed to attempt to find a lender willing to accept

defendant's application for an agricultural loan for which defendant's 80 acres were offered as collateral. The loan was to be in the amount of $130,000 and defendant was to pay a 3% "finder's fee" to the plaintiff if in fact defendant accepted a loan procured by the plaintiff's efforts. As provided by the agreement, defendant paid one third of this fee, or $1300, on the date the agreement was entered into. At the suggestion of the plaintiff, defendant formed a farm corporation known as Mears Land Company; the name of this corporation was then listed as the loan applicant on loan applications prepared by the plaintiff on defendant's behalf.

Plaintiff contacted two prospective lenders in an attempt to find a loan for the defendant. The first was an application for a $120,000 loan using defendant's 80 acres of land as security; this application was rejected. The second was an application to Phoenix Mutual Life Insurance Company for a loan of the same amount with the same collateral. This application was received on August 9, 1977 by Bill Kimberley, a representative of Phoenix Mutual; it was also rejected, although defendant was not informed of the rejection on that date.

On August 12, 1977, after being informed by defendant's mother that her negotiations with federal land bank officials had proven unsuccessful, defendant's brother-in-law again contacted Phoenix Mutual about the possibility of a loan for defendant's mother. He was directed to contact Bill Kimberley of Phoenix Mutual, which he did, and the two agreed to meet on August 15 with defendant's brother-in-law, mother, and the defendant himself to further discuss the proposed loan to defendant's mother. At that meeting, Kimberley first informed the defendant that Phoenix Mutual would be unable to accept his loan application; the discussion then turned to the question of the advisability of a $500,000 loan to defendant's mother with her 510 acres of farmland serving as collateral. The family farm was inspected by Kimberley on August 25, at which time he determined that the 510 acres would not be adequate security for a $500,000 loan; defendant's 80 acres were then added to the proposed loan package and the loan was subsequently approved in the name of Mears Land Company because Phoenix Mutual could only finance corporate farm operations. Shortly thereafter, defendant and his mother formed a corporation named Harker Farms Incorporated and this corporation was substituted for Mears Land Company as the loan recipient. According to counsel for defendant's mother, who testified that they had no knowledge of plaintiff National Business Services or of defendant's relationship with

that organization at the time they formed the new corporation for defendant's mother, Harker Farms was substituted as the loan recipient in an attempt to avoid certain undesirable tax consequences.

On September 16, 1977, plaintiff National Business Services received a letter from Phoenix Mutual stating that the National Business Services loan application made on defendant's behalf had been rejected. National Business Services subsequently brought this action against defendant Mears to recover the remaining 2% of the finder's fee on the $500,000 loan made by Phoenix Mutual to Harker Farms. Following the trial court's judgment for the plaintiff, which was based on a finding that the plaintiff was the procuring cause of the $500,000 loan to the corporation controlled by defendant and his family, defendant Mears then brought this appeal.

II.

Generally speaking, a finder is an intermediary who finds, introduces, and brings together parties interested in a business opportunity, but who leaves the ultimate negotiation and consummation of the resulting transaction to the parties themselves. Annot., 24 A.L.R.3d 1160, 1164 (1969).

There appears to be no Iowa case law on the issue of entitlement to finder's fees. However, in discussing the distinction between brokers and finders, other jurisdictions have held that, unless the contract specifies otherwise, a finder is entitled to recover a fee on a transaction only if it can be shown that the finder was the procuring cause of the transaction. Pass v. Industrial Asphalt of California, Inc., 239 Cal. App. 2d 776, 781, 49 Cal. Rptr. 190, 194 (Ct. App. 1966); Modern Tackle Co. v. Bradley Industries, Inc., 11 Ill. App. 3d 502, 507, 297 N.E.2d 688, 693 (App. Ct. 1973); Amerofina, Inc. v. U.S. Industries, Inc., 232 Pa. Super. Ct. 394, 402, 335 A.2d 448, 453 (Super. Ct. 1975). See also Annot., 24 A.L.R.3d 1160, 1165, 1179-82 (1969). In other words, it is not enough that the finder has merely introduced the two parties to each other; there must be shown, in addition, a causal connection between the activities of the finder and the resultant transaction. Amerofina, 232 Pa. Super. Ct. at 402, 335 A.2d at 453. Moreover, the causal connection must involve more than mere "but for" causation; the finder must show that introducing the parties to each other originated a series of events that resulted, without break in their continuity, in a consummated transaction. Id. See also Consolidated Oil & Gas, Inc. v. Roberts, 162 Colo. 149, 158, 425 P.2d 282, 286 (1967); Simon v. Electrospace Corp., 28 N.Y.2d 136, 142, 269 N.E.2d 21, 24, 320 N.Y.S.2d 225,

229-30 (Ct. App. 1971).

We do not find that such a showing has been made in the instant case. Instead, the record adequately establishes that defendant's brother-in-law was in contact with Phoenix Mutual prior to, and independently of, the unsuccessful loan proposal submitted to Phoenix Mutual by plaintiff National Business Services on the defendant's behalf. Moreover, it appears that the procuring cause of the $500,000 loan was the defendant's brother-in-law rather than the plaintiff. The trial court reached the opposite conclusion largely because of its impression that Phoenix Mutual turned down defendant's loan proposal only when Bill Kimberley realized that there was the possibility of receiving significantly more collateral on a bigger loan to the Mears family. This conclusion is not supported by the record, however; there is instead every indication that the defendant's loan application was treated separately from the loan application made by defendant's brother-in-law on behalf of defendant's mother. Bill Kimberley testified that, although the defendant was not informed that his loan application had been rejected until the meeting on August 15, Phoenix Mutual decided to reject defendant's application as soon as the application materials were received from plaintiff National Business Services on August 9. This fact is not surprising when one remembers that another prospective lender had also summarily rejected the loan proposal made by plaintiff National Business Services on defendant's behalf because the amount of collateral offered was insufficient for the amount of loan money requested. Therefore, the record indicates that Kimberley rejected defendant's loan application before he was even aware that the defendant's mother wanted to arrange a larger loan with 510 acres as collateral. Because the record reveals that the two loan applications were treated separately by Phoenix Mutual, that the loan proposal made by plaintiff National Business Services on behalf of the defendant was rejected, and that the plaintiff was not involved in procuring the $500,000 loan, we hold that the plaintiff is not entitled to a finder's fee from the defendant. We reverse and remand for a judgment consistent with our holding.

REVERSED AND REMANDED.

OXBERGER, C.J. (dissenting)

I dissent.

The evidence presents a question to be decided by the fact-finder. I would not disturb that finding and would affirm the trial court.