FILED
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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

EXCHANGE STATE BANK OF ADAIR, An Iowa Corporation,

Plaintiff-Appellee/
Cross-Appellant,

vs.

BERT HANSON,

Defendant-Appellant/
Cross-Appellee,

VALBORG JO GUTHRIE, Executor of the Estate of Clarence Harold Westergard and Viola M. Westergard,

Defendant.

Filed January 29, 1986

5-492
84-1237

Appeal from the Iowa District Court for Pocahontas County - Newt Draheim, Judge.

Defendant guarantor appeals from an adverse judgment in an action brought by defendant bank to collect a deficiency judgment. **REVERSED AND REMANDED.**

Michael R. Murphy of Carney, Hudson, Williams & Green, Des Moines, Iowa, for defendant-appellant Hanson.

Terry Rutherford, Atlantic, Iowa, for plaintiff-appellee.

Heard by Donielson, P.J., Schlegel, and Hayden, JJ.

HAYDEN, J. 84

In 1974, the Exchange State Bank of Adair made a loan to A.D.R. Industries, with some of the individual officers and shareholders serving as guarantors of the loan.

A.D.R. later suffered financial difficulties and was able to repay only a small portion of the debt. After various collection efforts spanning several years, including an attempt to take control of A.D.R.'s accounts receivable, the Exchange State Bank filed the present action against two of the guarantors. The jury returned a verdict in the bank's favor and one of the guarantor's, Bert Hanson, has appealed from the resulting judgment. Hanson contends that 1) evidence was insufficient to support a finding that the bank notified the guarantors concerning the "disposition" of the accounts receivable, 2) a finding of commercial reasonableness was not supported by the record, and 3) the trial court's instruction concerning commercial reasonableness was inadequate. We reverse and remand.

Pursuant to Iowa Code section 554.9504(3), the creditor intending to dispose of collateral is obligated to send its debtors ". . . reasonable notification of the time and place of any public sale or reasonable notification of a time after which any private sale or other intended disposition is to be made." (Emphasis added.) The creditor's obligation extends beyond merely notifying the owner of the collateral. All obligors who will be called upon to pay deficiencies are debtors within the meaning of Article 9 and are entitled to notice. See Stockdale, Inc. v. Baker, 364 N.W.2d 240, 243 (Iowa 1985). This has been held to include guarantors of the loan. See, e.g., First National Bank of Denver v. Cillessen, 662 P.2d 598, 600 (Colo. Ct. App. 1980); see also Annot., 5 A.L.R.4th 1291 (1981).

In the present case, the parties and the trial court treated the collection of accounts receivables as a "disposition" within the meaning of Iowa Code section 554.9504(3). No objection was made to this characterization at trial. Thus, the notification requirement in that provision must be satisfied. Such notice is viewed as a condition precedent to recovery of a deficiency judgment by the creditor. Stockdale, 364 N.W.2d at 243.

We have reviewed the record and find no evidence that the guarantor was notified of the bank's attempt to collect on the accounts receivables; nor does the bank cite to any evidence in this respect. While the bank made several attempts to secure current records of the collateral from the debtor, this in and of itself would not constitute reasonable notice of its intent to collect on the accounts receivables. Section 554.9504(3) imposes an affirmative duty of notification on the creditor. The debtor or guarantor is not required to infer the possibility of a sale or disposition from the surrounding circumstances.

The bank argues that it was not required to notify the guarantors about the disposition of the accounts receivable because the accounts were never in the bank's possession, due in part to the actions of the guarantors. We decline to reach the merits of this argument since it is being raised for the first time on appeal. See Beitz v. Horak, 271 N.W.2d 755, 759 (Iowa 1978).

Based on the record, we hold that there was insufficient evidence to engender a jury question on the issue of notice. The guarantor's motion for a directed verdict on this ground should have been granted. Accordingly, we reverse and remand for entry of judgment consistent with this opinion.

Because of our disposition on this issue, we find it unnecessary to address arguments concerning commercial reasonableness.

REVERSED AND REMANDED.