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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

CHESTER DINSDALE AND CAROLE DINSDALE,	)	
Plaintiffs-Appellants,	)	127
vs.	)	8-270
UNION STATE BANK OF MONONA, IOWA,	)	87-831
Defendant-Appellee.	)	

Appeal from the Iowa District Court for Clayton County (No. C2561), James L. Beeghly, Judge.

Plaintiffs appeal from a district court judgment directing a verdict for the defendant on plaintiffs' breach of an oral contract claim. **AFFIRMED.**

Peter C. Riley of the Tom Riley Law Firm, P.C., Cedar Rapids, for plaintiffs-appellants.

Les V. Reddick and Richard K. Whitty of O'Connor & Thomas, P.C., Dubuque, for defendant-appellee.

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

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OXBERGER, C.J.

This is an appeal from a district court judgment directing a verdict for the defendant on plaintiffs' breach of an oral contract claim and entering a judgment for defendant for approximately $295,000 on delinquent promissory notes. The district court directed the verdict on three grounds: 1) that the statute of limitations had run on plaintiffs' claim; 2) that there was insufficient evidence concerning the specifics of an oral contract; and 3) that there was insufficient evidence to prove that a breach occurred. Plaintiff also claims that the district court erred in excluding evidence that the Bank's loan officer was convicted of embezzlement. Our review is for the correction of errors at law. The trial court's findings of fact are binding upon this court if supported by substantial evidence. We affirm.

In 1978, the Dinsdales contacted a Mr. Houg of the Union State Bank concerning construction of a dude ranch on the Dinsdales' property. The Bank agreed to finance the building of the guest lodge. Once the lodge was completed or near completion, the Bank agreed to work with the Dinsdales in preparing a Small Business Administration loan application. The Bank then agreed to submit this application to its board of directors. None of these agreements were written.

From 1978 until early 1980, the Bank made several loans to the Dinsdales. The last loan was made in late January

or early February 1980. The Bank made no further loans. Plaintiffs further claim that their application for a SBA loan was never submitted to the Bank's directors. The SBA loan was never approved.

On April 12, 1985, plaintiffs filed suit against the Bank alleging that the Bank had breached an oral contract or implied contract to loan them money for the guest lodge and to submit a SBA loan application. The Bank answered and counterclaimed seeking payment for past due notes.

I. DIRECTED VERDICT

The trial court granted the defendant's motion for directed verdict on three grounds: 1) that the statute of limitations had run; 2) that there was insufficient evidence of specific terms to prove that an oral agreement existed; and 3) that there was insufficient evidence to prove that breach occurred. In determining whether a jury question was engendered when a party seeks a directed verdict, we apply the same principles as the trial court: namely, we view the evidence in the light most favorable to the nonmoving party, regardless of whether such evidence is contradicted, to determine if reasonable minds could differ, the issue is for the jury. Harvey v. Palmer College of Chiropractic, 363 N.W.2d 443, 444 (Iowa App. 1984) (citing Meeker v. City of Clinton, 259 N.W.2d 822, 828 (Iowa 1977)).

Plaintiff Dinsdale first asserts that the trial court erred in directing a verdict on the ground that the statute of limitations had run. Iowa Code section 614.1(4) provides that the statute of limitations for actions founded upon unwritten contracts is five years. Iowa Code § 614.1(4) (1985).

On April 12, 1985, the Dinsdales filed their petition. There is no dispute that the last loan received by the Dinsdales was on January 25, 1980. Dinsdale admitted that he was in need of construction funds and would have expected to obtain additional funds from the Bank in February and March of 1980. Mr. Dinsdale's borrowing history with the Bank for this construction project was as follows: four loans in July 1979, six loans in September 1979, two loans in October 1979, six loans in November 1979, one loan in December 1979, and one loan in January 1980. It would appear that with such a consistent borrowing record and with Mr. Dinsdale testifying to the need for more funds in February and March of 1980, that breach occurred prior to April 12, 1980. Even Mr. Dinsdale testified that in his opinion the Bank had breached its agreement in early 1980. Upon our review of this issue in a light most favorable to the plaintiff, we find that a breach, if any, occurred prior to April 12, 1980. Thus, plaintiffs' claim is barred by the statute of limitations.

Second, plaintiffs assert that there was sufficient evidence to prove that breach occurred. Mr. Dinsdale testified that the agreement was that the Bank would provide construction financing for the lodge to the point of completion or near completion. At the time of the alleged breach the lodge was 80-90% complete. Further, Mr. Dinsdale testified that the Bank did not breach this portion of the agreement as stated above. Therefore, we find that reasonable minds could not differ as to this issue.

A second portion of the agreement provided that once the construction was complete or near complete the Bank would assist the Dinsdales in the completion of a Small Business Administration Application and submit such application to the Bank's Board of Directors. However, the Bank did not promise that such application would be approved. Therefore, we find no breach. And if there is breach in failure to submit the application, we find no damage.

Finally, plaintiffs assert that there was sufficient evidence to find that a contract existed. The trial court found that the plaintiffs failed to establish an oral agreement with definite terms and conditions. In the absence of definite terms and conditions a contract will not be found to exist. Alpen v. Chapman, 179 N.W.2d 585, 589 (Iowa 1970); Davis v. Davis, 261 Iowa 992, 1001, 156

N.W.2d 870, 876 (1968). The record reveals uncertainty as to terms of the contract. There was no future agreement as to what terms loans would be made, the amount that loans would be in, whether there was a ceiling on the amount of loans, whether or what anticipated behavior on the part of either party would be considered a breach. There was no agreement as to default or remedies. There was no specific principal amount, no specified interest rate, and no specific terms concerning the duration of the loans. We find, even viewing the evidence in a light most favorable to the plaintiff, that there was an absence of definite terms and condition such that a contract could not be found to exist.

II. MOTION IN LIMINE

Mr. Houg was the loan officer at Union State Bank who made the agreement with the Dinsdales. The trial court granted the defendant's motion in limine to exclude evidence as being more prejudicial than probative. The admissibility of evidence is a matter for the exercise of the trial court's discretion. State v. Chadwick, 328 N.W.2d 913, 917 (Iowa 1983); State v. Clark, 325 N.W.2d 381, 384 (Iowa 1982).

The plaintiffs sought to use the evidence for impeachment purposes under Iowa Rule of Evidence 609. By the time of trial, Mr. Houg was no longer a party to the suit. Further, the defendant Bank did not dispute either

the existence or terms of the alleged agreement. Accordingly, we find substantial evidence to support the trial court's exclusion of such evidence.

AFFIRMED.