IN THE COURT OF APPEALS OF IOWA

No. 1-332 / 00-0370
Filed December 12, 2001

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CLERK SUPREME COURT

HAUAN FARMS, INC.
and NORM HAUAN,
Plaintiffs-Appellants,

vs.

NORTHLAND COOPERATIVE and RON PYLE,
Defendants-Appellees.

Appeal from the Iowa District Court for Winnebago County, John S. Mackey, Judge.

The plaintiffs appeal from a district court ruling granting defendant Pyle's motion in limine and dismissing their claims of promissory estoppel and breach of fiduciary duty. **REVERSED AND REMANDED.**

Michael G. Byrne of Winston & Byrne, P.C., Mason City, for appellants.

H.P. Folkers of Folkers and Keen, Mason City, for appellee-Northland Cooperative.

Douglas A. Haag of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, L.L.P., Des Moines, for appellee-Pyle.

Heard by Sackett, C.J., and Miller and Hecht, JJ.

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MILLER, J.

Hauan Farms, Inc. and Norm Hauan appeal from a district court ruling granting defendant's motions in limine and dismissing their claims of promissory estoppel and breach of fiduciary duty. We reverse and remand.

I. BACKGROUND FACTS

On Saturday, January 15, 1994 Norman Hauan (Hauan) met with Ron Pyle (Pyle) at a local restaurant to discuss grain prices and corn and beans he had stored at Northland Cooperative (Northland) where Pyle was the general manager. Hauan was leaving on a trip to Mexico the next day and would be gone for more than a week. Hauan alleges he directed Pyle to sell all Hauan's corn and beans that were stored at the elevator on the next open market day, January 17, 1994. Pyle asserts the meeting resulted only in an agreement that he would "watch the market" for Hauan during his absence.

When Hauan returned from Mexico approximately a week later the grain had not been sold. By that point the market had fallen. Hauan determined he would hold the grain until the price went up. Hauan eventually sold the grain in March for less than he would have received had it been sold on January 17.

Hauan and his farm corporation, Hauan Farms, Inc.,[1] filed a petition at law against Pyle and Northland claiming breach of contract and breach of fiduciary duty. Pyle and Northland filed motions for summary judgment. In ruling on the motions for summary judgment the trial court noted that Northland had asserted in its motion the applicability as a defense of the statute of frauds contained in Iowa Code section 554.2201 (1993) and Hauan had asserted promissory

[1] Hereinafter referred to collectively as Hauan.

estoppel as a bar to that defense.[2] The trial court held that Hauan's breach of contract claim was barred by section 554.2201 but Hauan still had available a claim of promissory estoppel. It also held that as all parties acknowledged Pyle was acting solely and exclusively as Northland's agent and employee in his mid-January 1994 dealings with Hauan, Pyle was "not personally liable as to the promissory estoppel claim." The trial court granted partial summary judgment. It dismissed Hauan's claim of breach of oral contract as to both defendants. It dismissed Hauan's "promissory estoppel claim" as to Pyle, and denied summary judgment on that claim as to Northland.[3] It denied both defendants' requests for summary judgment on Hauan's breach of fiduciary duty claim. These rulings are not at issue on appeal.

Pyle later filed a motion in limine seeking to exclude any testimony or other evidence in support of Hauan's claim of an oral contact, other than evidence adduced by way of the defendant's testimony or pleadings. Northland joined the motion. The court continued a scheduled jury trial and ordered an evidentiary hearing to

> allow plaintiffs the opportunity to present any evidence to substantiate its claim that the doctrine of promissory estoppel should be applied or any evidence in support of an exception to the UCC statute of frauds under 554.2201(3)(b) exists before a jury is summoned to hear such evidence.

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[2] Although the pleadings appear to contain no reference to either the statute of frauds or promissory estoppel, the parties and trial court have treated both as being at issue in the case and we will accordingly do the same.

[3] We believe the intent and effect of the trial court's holdings and the related part of the trial court's grant of partial summary judgment to be that Hauan's breach of oral contract claim is barred by the section 554.2201 statute of frauds unless Hauan proves promissory estoppel as a bar to that defense, and that Pyle is not subject to liability on Hauan's breach of contract claim.

The court held a lengthy evidentiary hearing on the motion in limine. In its ruling it stated it had advised counsel it would need to review all the depositions in the case, and the reported summary judgment hearing, in order to determine whether promissory estoppel or another exception to the statute of frauds applied. It concluded the motion in limine "should be granted in its entirety." It held that promissory estoppel could not apply because Hauan had failed to demonstrate a clear and definite oral agreement had been reached between Hauan and Pyle on January 15, and because Hauan had not taken advantage of an opportunity to sell his grain on a date when the market price exceeded the January 17 price. The court also ruled that because Hauan's claim of fiduciary duty was grounded on Pyle's alleged failure to sell the grain in accordance with the alleged oral agreement, and because promissory estoppel could not apply, Hauan would not be able to prove the subject matter of his claims of breach of fiduciary duty. It dismissed the breach of fiduciary duty claims also.

Hauan appeals contending the district court erred in: (1) concluding he was barred by the statute of frauds from submitting oral testimony to prove his claims; (2) considering deposition testimony on the court's own initiative; (3) treating the motion in limine as a renewed motion for summary judgment and dismissing the case; and (4) denying him the right to a jury trial by addressing and deciding the merits of his promissory estoppel claim. Pyle asserts error has not been preserved with regard to any promissory estoppel claim against him.

III. MERITS

As acknowledged by Hauan's counsel in the hearing on the motion in limine and found by the trial court in its ruling, Hauan's claim of breach of

fiduciary duty, as well as his claim that promissory estoppel bars the statute of frauds defense, is grounded on a claim that Pyle failed to sell Hauan's grain in accordance with their alleged oral agreement. In ruling on the motion the trial court stated that the "plaintiffs have failed to meet their burden of proof . . . to substantiate their claim of promissory estoppel to defeat the defense of the statute of frauds." The court dismissed Hauan's claims because it found he had failed to prove promissory estoppel in the hearing on the motion in limine and concluded evidence of promissory estoppel would therefore be inadmissible, the statute of frauds would therefore prevent proof of the oral contract to sell the grain, and because both the "promissory estoppel claim" and the breach of fiduciary duty claim were based on that alleged oral contract both must fail.

The function of a motion in limine is not to secure a ruling on the admissibility of evidence. *Twyford v. Weber*, 220 N.W.2d 919, 922-23 (Iowa 1974). Rather, its primary purpose is to preclude reference to potentially prejudicial evidence prior to the trial court's definitive ruling on admissibility at an appropriate time. *Ray v. Paul*, 563 N.W.2d 635, 638 (Iowa Ct. App. 1997). What occasionally happens, however, is that counsel, the trial court, or both treat a motion in limine as a motion concerning admissibility and the trial court addresses and rules on the ultimate issue of admissibility. *See, e.g., State v. Edgerly*, 571 N.W.2d 25, 29 (Iowa Ct. App. 1997). It appears that is in part what happened in this case, the trial court ruling that evidence of promissory estoppel would be inadmissible.

Our scope of review in a law action is for correction of errors at law. Iowa R. App. P. 4. Hauan and Northland both assert that is our scope of review of the

trial court's ruling concerning promissory estoppel as a bar to the statute of frauds defense. We agree. *See, e.g., Pollman v. Belle Plaine Livestock Auction, Inc.*, 567 N.W.2d 405, 407 (Iowa 1997) (holding that review of a trial court's decision regarding admissibility of evidence concerning the part performance exception to the Iowa Code section 622.32 statute of frauds is for correction of errors of law). Our conclusion that this is the appropriate scope of review is buttressed by the fact the trial court's summary dismissal of Hauan's claims went beyond converting the motion in limine to one concerning the admissibility of evidence and granted summary judgment. The grant of summary judgment is also reviewed for correction of errors of law. *See Van Essen v. McCormick Enterprises Co.*, 599 N.W.2d 716, 718 (Iowa 1999) (holding review of a grant of summary judgment is for correction for errors at law).

A relatively recent case identifies the elements of promissory estoppel as:

> (1) a clear and definite promise;
> (2) the promise was made with the promissor's clear understanding that the promissee was seeking an assurance upon which the promissee could rely and without which he would not act;
> (3) the promissee acted to his substantial detriment in reasonable reliance on the promise; and
> (4) injustice can be avoided only by enforcement of the promise.

Schoff v. Combined Ins. Co. of America, 604 N.W.2d 43, 49 (Iowa 1999).

As noted above, the trial court effectively treated the defendants' motions in limine as motions for summary judgment and ordered dismissal of Hauan's claims. In ordering a hearing to "allow plaintiffs the opportunity to present any evidence to substantiate its claim that the doctrine of promissory estoppel should be applied" the trial court cited *Jungman v. St. Regis Paper Co.*, 682 F.2d 195,

197 (8th Cir. 1982). *Jungman* involved the statute of frauds in Iowa Code section 622.32. In *Jungman* the jury found a vendee had breached an oral contract for the purchase of real estate, and the district court granted the vendee's motion for judgment notwithstanding the verdict on the ground the statute of frauds applied because the plaintiff vendor had failed to establish the elements of promissory estoppel. The court of appeals affirmed the grant of judgment notwithstanding the verdict. However, in *Jungman* the parties had reserved for decision by the court the question of the applicability of the statute of frauds. In this case the parties did not in any manner agree that the trial court would resolve fact issues necessary to decide the statute of frauds defense, the promissory estoppel bar to that defense, or both. *Jungman*, thus stands as no support for the trial court in this case assuming the role of fact finder regarding promissory estoppel and finding that defendants had not met their burden to prove promissory estoppel.

In ordering dismissal of Hauan's claims the trial court found Hauan had failed to meet its burden of proof as to the first and fourth elements of promissory estoppel, (1) a clear and definite promise, and (4) that injustice can be avoided only by enforcement of the promise. However, if the defendants' motions in limine are to be treated as motions for summary judgment as the trial court did, the burden was not on Hauan to prove facts necessary to support promissory estoppel, but instead was on defendants to show that there was no genuine issue of material fact as to one or more elements of promissory estoppel. Iowa R. Civ. P. 237(c). For the following reasons we conclude the defendants did not meet a burden to show there is no genuine issue of material fact concerning the two elements in question.

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As to the first element, Norm Hauan testified that on January 15, 1994 he directed Ron Pyle to sell all of Hauan's grain stored at the elevator on the following Monday, January 17, Pyle responded that was okay, and Pyle agreed to take care of the sale in Hauan's absence. Hauan also testified that although he did not remember Pyle expressly stating he would sell the grain, he had directed Pyle to do so. Pyle testified that when a producer such as Hauan directs that stored grain be sold it is Pyle's responsibility as general manager of the elevator to complete such a sale. This testimony constitutes substantial evidence supporting the first element of promissory estoppel.

In determining Hauan had failed to prove the fourth element of promissory estoppel the trial court found Mr. Hauan had acknowledged that prices exceeded the January 17 level on February 11 but had decided to "wait it out." The trial court concluded that "plaintiffs had the opportunity to sell their *grain* at prices equal to or exceeding that which they would have received on January 17, 1994." (emphasis added). It then further concluded that under such circumstances enforcement of the alleged oral agreement was not necessary to prevent injustice because the plaintiffs bore sole responsibility for gambling on a higher market price.

On cross-examination of Mr. Hauan a question asserted as fact that the price of *corn* on February 11 and February 14 had exceeded the price on January 17, and asked why he had not sold his *corn* on one of the February dates. Mr. Hauan's answer was to the effect that after January 17 he believed they "start[ed] over with a new ballgame" and he then thought he would "wait it out and see what happens" until he had to sell in early March. He was then

asked whether he had acknowledged that the price had actually recovered and exceeded the January 17 prices while he was in control of marketing after returning from Mexico, and he responded in the affirmative. Later in cross-examination, however, he denied that he could have sold his *grain* at a higher price, and denied that he could have "got [his] money back in the weeks following." He testified further on cross-examination he was not aware that in February the price of *corn* exceeded the price at the close of the market on January 14.

For two reasons we conclude the defendants have not shown the absence of a genuine issue of material fact as to the fourth element of promissory estoppel. First, although a portion of Mr. Hauan's testimony taken in isolation can be seen as acknowledging that a higher price for *corn* was available in February, other parts of his testimony are to the opposite effect. Therefore, when the evidence is considered as a whole it does not establish as uncontested fact that a higher price was available to him after January 17. Second, although it is clear Hauan had both *corn* and *beans* stored at the elevator and claims losses on both, the testimony relied on by the defendants and the trial court goes only to the price of *corn*, and not *beans* as well. Therefore, the evidence does not establish as uncontested fact that Hauan had the opportunity to sell the *grain* at prices equal to or exceeding the January 17 price.

In an earlier case our supreme court made several statements concerning the use of a motion in limine. Those statements appear particularly appropriate in this case.

> The motion in limine is a useful tool, but care must be exercised to avoid indiscriminate application of it lest parties be

> prevented from even trying to prove their contentions. That a plaintiff may have a thin case or a defendant a tenuous defense is ordinarily insufficient justification for prohibiting such party from trying to establish the contention. Nor should a party ordinarily be required to try a case or defense twice – once outside the jury's presence to satisfy the trial court of its sufficiency and then again before the jury. Moreover, the motion in limine is not ordinarily employed to choke off an entire claim or defense . . . . Rather, it is usually used to prohibit mention of some specific matter, such as an inflammatory piece of evidence, until the admissibility of that matter has been shown out of the hearing of the jury.

Lewis v. Buena Vista Mut. Ins. Ass'n, 183 N.W.2d 198, 200-01 (Iowa 1971) (citations omitted).

Under the existing record oral testimony was admissible to prove promissory estoppel as a bar to the statute of frauds defense. *See e.g., Meylor v. Brown*, 281 N.W.2d 632, 635-36 (Iowa 1979) (reversing grant of summary judgment where fact issues existed as to whether the elements of promissory estoppel were present and barred the defense of the Iowa Code section 554.2201 statute of frauds). We conclude the trial court erred in determining the statute of frauds barred oral testimony to prove promissory estoppel and in itself addressing and deciding the merits of promissory estoppel. We accordingly reverse and remand for further proceedings consistent with this opinion.

As noted above, Pyle asserts error has not been preserved with respect to any promissory estoppel claim against him. In the context of this case promissory estoppel is not a separate claim or theory for recovery, but rather, if proved, is a bar to a statute of frauds defense. We have earlier in this opinion described the trial court's holdings and ruling on the defendants' motions for summary judgment and in footnotes three through five we have indicated our understanding of the intent and effect of that ruling. Under that ruling, which is

not challenged on appeal, Pyle is not subject to personal liability on Hauan's breach of contract claim but the breach of fiduciary duty claim proceeded as against Pyle as well as Northland. We have concluded the trial court erred in dismissing Hauan's claims that survived the motion for summary judgment. We therefore further conclude that Hauan's breach of contract claim proceeds as against Northland, but not Pyle, and Hauan's breach of fiduciary duty claim proceeds against both defendants. We express no opinion as to the merits of any one or more of those claims in the event of further summary disposition proceedings or trial.

IV. DISPOSITION

We reverse the trial court's dismissal of those plaintiffs' claims that remained after the trial court's ruling on the defendants' motions for summary judgment and remand for further proceedings.

REVERSED AND REMANDED.