

IN THE COURT OF APPEALS OF IOWA

No. 2-177 / 91-1227

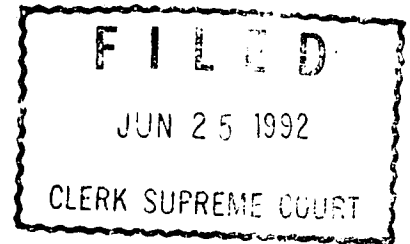
J. D. WEBB, DAVIS WEBB, CYNTHIA WEBB VOSTER;
and J. D. WEBB, INC.,

Appellants,

vs.

FIRST INTERSTATE BANK OF ESTHERVILLE,

Appellee.



1076

Appeal from the Iowa District Court for Emmet County,
James L. McDonald, Judge.

The Webbs seek to recover damages alleging First Interstate Bank breached an oral contract to lend the Webbs 100% of the net appraised value of their commercial building for use by the Webbs' farm implement dealership.

AFFIRMED.

Peter C. Riley of Tom Riley Law Firm, P.C., Cedar Rapids, and John D. Martens of Sanderson, Ridout & Martens, Estherville, for appellants.

W. Don Brittin, Jr. and Hayward L. Draper of Nyemaster, Goode, McLaughlin, Voigts, West, Hansel & O'Brien, P.C., Des Moines, for appellee.

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

DONIELSON, J.

J. D. Webb, Inc. operated a John Deere implement dealership in Estherville, Iowa, from 1967 to 1986. The company was owned by the Webbs. At its peak in 1979, the company had annual profits, after taxes, of approximately \$300,000.

John Deere provided the floor plan financing for the new and used John Deere farm machinery and equipment in the company's inventory. First Interstate provided short-term financing for the operating needs of the company including such things as payments owed to John Deere on inventory. By 1984 the company lost \$572,789 and was having serious cash flow problems.

In August 1984 there were two company promissory notes coming due which approximated \$60,000. These notes had to be renewed or paid. Joe Simmens, First Interstate's loan officer, indicated that if J. D. Webb would put up his commercial building as collateral, the \$60,000 notes could be renewed. Because the value of the commercial building was greater than \$60,000, Simmens suggested to Webb that Webb get an appraisal on the building, and First Interstate would loan Webb additional funds on a longer term basis with the building as collateral. Webb expressed an interest in this idea, and First Interstate retained an appraiser who valued the building at \$320,000 with the Webbs' net equity being \$275,000.

J. D. Webb assumed First Interstate would loan 100 percent of the net appraised value of the building because Simmens did not say anything about the percentage. Webb made this known to Simmens on September 12, 1984, when Webb went to the Bank to sign the note and discovered the note was for \$136,000, rather than the net appraised value of the building, \$275,000. Nevertheless, on September 13, 1984, Webb and his wife signed the \$136,000 promissory note secured by the commercial building.

Webbs' company continued to suffer financial problems during the remainder of 1984 and 1985. In January of 1986, the company notified John Deere it was terminating its dealership and it closed its doors in the spring of 1986.

The Webbs brought this lawsuit claiming First Interstate's failure to loan J. D. Webb 100 percent of the net appraised value of the building constituted a breach of contract and fiduciary duty and a negligent misrepresentation which created a cash shortfall causing the business to fail.

First Interstate moved for summary judgment. The district court found nothing in the record to substantiate or justify J. D. Webb's assumption regarding the percentage of the loan. Nothing appeared to be settled concerning the interest rate, the maturity date of the loan, the method of payment, and any other special provision that might be agreed upon by the parties. Thus, the agreement as alleged by the Webbs could not be enforced due to the indefinite

and uncertain nature of its terms. For that reason the district court held First Interstate was entitled to summary judgment on the Webbs' breach of contract claim. The court also held First Interstate was entitled to summary judgment on the Webbs' breach of fiduciary duty and negligent misrepresentation claims.

The Webbs appeal, maintaining there is a genuine issue of material fact regarding the existence of an oral contract. We affirm.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 237(c); see Farm Bureau Mut. Ins. Co. v. Milne, 424 N.W.2d 422, 423 (Iowa 1988). The moving party has the burden to show the nonexistence of a material fact, Milne, 424 N.W.2d at 423, and the evidence must be viewed in the light most favorable to the resisting party, Thorp Credit, Inc. v. Gott, 387 N.W.2d 342, 343 (Iowa 1986). The procedure is functionally akin to a directed verdict, and every legitimate inference that reasonably can be deduced from the evidence should be afforded the resisting party. Id.; Sherwood v. Nissen, 179 N.W.2d 336, 339 (Iowa 1970). A fact issue is generated if reasonable minds can differ on how the issue should be resolved, but if the conflict in the record consists only of the legal consequences flowing

from undisputed facts, entry of summary judgment is proper. Gott, 387 N.W.2d at 343; Milne, 424 N.W.2d at 423. If the motion is properly supported, however, the resisting party "must set forth specific facts showing that there is a genuine issue for trial." Iowa R. Civ. P. 237(e).

Upon review of the record, we find First Interstate's motion for summary judgment properly supported. The Webbs' response failed to adequately establish the existence of a genuine issue of material fact. Accordingly, we uphold the summary judgment granted by the district court.

The costs of this appeal are taxed to the appellants.

AFFIRMED.