FILED
OCT 20 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

140

LARRY J. SINCLAIR,	)	
Plaintiff-Appellant,	)	
vs.	)	
S & S EQUIPMENT & SUPPLY, LTD., JACK W. STAPLETON, and **DEBORAH J. STAPLETON,**	)	8-382 87-1645
Defendants-Appellees.	)	

Appeal from the Iowa District Court for Polk County (No. CL 65-38472), Ray Hanrahan, Judge.

Plaintiff appeals the district court ruling which granted defendant's motion for summary judgment in a suit which arose out of disagreements over the minority shareholders' buy out of plaintiff's shares in a closely-held corporation. **AFFIRMED.**

Joseph M. Galloway, Des Moines, for plaintiff-appellant.

Richard R. Chabot and David A. Bolte of Wasker, Sullivan & Ward, Des Moines, for defendants-appellees.

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

DONIELSON, P.J. 141

Plaintiff Larry J. Sinclair appeals the district court ruling which granted defendants' motion for summary judgment. This suit arose from disagreements over the minority shareholders' buy out of plaintiff's shares in a closely-held corporation. Sinclair contends the following claims should have been submitted to the jury: 1) breach of contract; 2) interference with a contractual relationship; 3) fraud; and 4) emotional distress.

Plaintiff Larry J. Sinclair and defendant Jack W. Stapleton were the sole shareholders in S & S Equipment & Supply, Ltd. Sinclair owned seventy-three shares and Stapleton owned seventy-two shares. Stapleton was the president and his wife, Deborah Stapleton, was the secretary-treasurer. Sinclair decided to withdraw from the corporation. On January 15, 1985, the parties entered into an agreement where Sinclair was to be paid $15,000 at that time and receive a promissory note for $30,000 due on April 30, 1985. The agreement also exonerated Sinclair from all liabilities of the corporation. All amounts due on January 15, 1985, were paid on time, but the promissory note, plus interest and attorney fees, was not paid until May 14, 1985. A mortgage on Sinclair's home was released on June 12, 1985. S & S assumed Sinclair's computer loan and this was not paid until April 25, 1986.

Sinclair filed this suit alleging breach of contract, intentional interference with a contractual relationship, fraud and deceit, and intentional infliction of emotional distress. He claims that prompt compliance with the terms of the agreement was lacking. The district court granted defendant's motion for summary judgment, finding that it was impossible to give effect to the due date of the note and the provision for release of liabilities. The court found that S & S was in a precarious financial condition at the pertinent time and the $30,000 was needed to refinance the corporation so Sinclair could be released from corporate debts. The district court found no evidence of fraud, deceit, or outrageous conduct.

A summary judgment is properly granted only when there is no issue as to any material fact and the moving party is entitled to judgment as a matter of law. Froning & Deppe, Inc. v. South Story Bank & Trust Co., 327 N.W.2d 214, 215 (Iowa 1982). On appeal, we must determine whether a genuine issue of material fact exists and whether the law was correctly applied. Id.

I. Plaintiff contends the breach of contract claim should have been submitted to the jury. He states that the Stapletons clearly breached the agreement because he was not paid $30,000 on April 30, 1985. He alleges that he sustained damages for lost time, lost profits, and lost wages in his new business because the agreement was not fulfilled in a timely fashion.

In the construction of written contracts, the cardinal principle is that the intent of the parties must control; and except in cases of ambiguity, this is determined by what the contract itself says. Iowa R. App. P. 14(f)(14). Construction of a contract is the process of determining its legal effect and is always a question of law for the court. Farm Bureau Mut. Ins. Co. v. Sandbulte, 302 N.W.2d 104, 107 (Iowa 1981). Interpretation is the process used to determine the meaning of the words used and this is also a matter of law for the court, unless it depends upon extrinsic evidence or a choice among reasonable inferences. Id. at 107-08.

The trial court determined that it was the intention of the parties at the time the contract was made that defendant S & S would refinance its obligations and perform its obligations under the contract when it obtained such refinancing, other provisions to the contrary notwithstanding.

The relevant documents are the agreement and the promissory note. The agreement provides in pertinent part:

> 9. Obligations. S & S shall refinance all of its obligations with Norwest Bank Des Moines, N.A. including its SBA loan and Line of Credit. Upon the completion of the refinancing Sinclair shall be individually discharged from any and all obligations of S & S including the $2,127.58 balance owed on the computer sold by Sinclair to S & S. The parties and their officers agree to cooperate and execute any documents necessary or appropriate to carry out the intent of this Agreement, which is to completely release Sinclair from all liabilities of S & S and for S & S to assume all Sinclair's contingent liabilities relating to S & S.

The $30,000 promissory note was payable April 30, 1985. Eleven percent per annum interest was due from January 31, 1985, until payment "upon completion of the refinancing of maker's SBA loan at Norwest Bank Des Moines, but in no event later than April 30, 1985."

The trial court said the purpose of the agreement was to divest Sinclair of any interest in the corporation, exonerate him from any and all liabilities of the corporation, and settle all accounts between them. The court found that it was impossible to give effect to the note due date and the language as to the obtaining of the releases on the one hand and the objectives of the parties and paragraph 9 on the other.

This conclusion is supported by the facts. Prior to April 30, 1985, the financial condition of S & S equipment became such that it was impossible to accomplish the remaining essential purposes of the agreement without jeopardizing the other. If the corporation's cash was used to pay the note, the refinancing by the Small Business Administration would be in jeopardy and Mr. Sinclair would not have been released from the corporation's liabilities as required by paragraph 9.

Plaintiff alleges breach of the agreement even though the principal, default interest, and all debts were paid in full two weeks after April 30, 1985.

In order for time to be of the essence, there must be an express provision within the agreement, Peter Kiewit Sons' Co. v. Iowa S. Utilities Co., 355 F. Supp. 376, 391 (S.D. Iowa 1973). No express provision was in this agreement. The standard, therefore, is that performance must occur within a reasonable time. Smith v. Fort Madison Community School Dist., 334 N.W.2d 701, 704 (Iowa 1983). The goal of the agreement was to completely release Sinclair of liability. For this there was no definite time given. Performance occurred within a reasonable time. Therefore, the court was correct in finding no breach.

When two provisions of a contract conflict, the court is to give "'harmonious interpretation' to the clauses in order to avoid rendering either one negatory." Johnson Controls Inc. v. City of Cedar Rapids, 713 F.2d 370, 374 (8th Cir. 1983). The April 30th deadline and the goal of releasing Sinclair from liability were in conflict. Therefore, the court was correct in allowing payment within a reasonable period of time, achieving the ultimate purpose of the contract.

Plaintiff also argues that the releases were not achieved as soon as anticipated. No time constraint was put on the releases. Even if there was a general time is of the essence provision, it would not automatically cover every promise in the contract or implied from it. See Lane v. Crescent Beach Lodge & Resort, Inc., 199 N.W.2d 78, 82

(Iowa 1972). The agreement states only that, "upon completion of the refinancing Sinclair shall be individually discharged from any and all obligations . . . ." Sinclair was released from liabilities within a reasonable period of time.

II. Plaintiff contends his claim for interference with a contractual relationship should be submitted to the jury. The trial court held that an officer or director of a corporation is not personally liable to one who has contracted with the corporation on the theory of inducing a breach of a contract where the officer or director while acting for the corporation has made decisions and taken steps that resulted in the corporation's promise being broken.

The trial court was correct in relying on Bossuyt v. Osage Farmers Nat'l Bank, 360 N.W.2d 769 (Iowa 1985), to reach this result. As long as the parties act in good faith and for the best interests of their corporation, they should be immune from liability. Id. There is no material issue regarding an interference with the contractual relationship. Therefore, the decision should be affirmed.

III. The third claim was that the trial court erred in granting the defendant's motion for summary judgment on the issue of fraud. The trial court held that no evidence existed which demonstrated any acts of fraud or deceit on the part of Jack Stapleton.

There is a presumption in favor of fair dealing and against fraud. Hall v. Wright, 261 Iowa 758, 766, 156 N.W.2d 661, 667 (1968). The elements of fraud must be affirmatively proven by the party relying on it. Id., 261 Iowa at 766, 156 N.W.2d at 666. The seven elements of fraud are: (1) material, (2) false, (3) representation coupled with (4) scienter and (5) intent to deceive, which the other party (6) relies upon with (7) resulting damages to the relying party. Sinnard v. Roach, 414 N.W.2d 100, 105 n.1 (Iowa 1987). No evidence was presented on the Stapletons' intention to deceive.

Plaintiff correctly asserts that the making of a guarantee can be fraud if there is no intent to honor it. Lockard v. Carson, 287 N.W.2d 871, 875-76 (Iowa 1980). However, no evidence was presented showing that Stapletons did not intend to honor the guarantee. Jack and Deborah Stapleton personally guaranteed the note and made efforts to personally borrow the funds. We find the trial court correctly decided this issue.

IV. Finally, the plaintiff claims the issue of emotional distress should have been submitted to the jury. The trial court found no evidence of outrageous conduct on the part of either Jack or Deborah Stapleton to support plaintiff's claim of intentional infliction of emotional distress.

The elements of emotional distress are:

(1) Outrageous conduct by the defendant;

(2) The defendant's intentional causing, or reckless disregard of the probability of causing emotional distress;

(3) Plaintiff has suffered severe or extreme emotional distress; and

(4) Actual proximate causation of the emotional distress by the defendant's outrageous conduct.

Tomash v. John Deere Indus. Equip. Co., 399 N.W.2d 387, 392 (Iowa 1987).

"For conduct to be outrageous it must be 'so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.'" Id., quoting Reihmann v. Foerstner, 375 N.W.2d 677, 681 (Iowa 1985). Plaintiff asserts that defendants were attempting to defraud plaintiff of his life savings and crippling the new business by withholding the debt release, preventing financing.

The goal of the contract was achieved within a reasonable time. The money and releases were obtained by Sinclair. The Stapletons' conduct can in no way be viewed as "outrageous" under the stringent standard adopted by the Iowa Supreme Court. Tomash, 399 N.W.2d at 393. Therefore, the trial court was correct in not submitting this issue to the jury.

We affirm the trial court on all four counts and find that summary judgment was proper.

AFFIRMED.