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IN THE COURT OF APPEALS OF IOWA

THORP CREDIT INC., Appellee, vs. RAYMOND KOOB, a/k/a RAYMOND F. KOOB, and LEONA KOOB, a/k/a LEONA M. KOOB, UNITED STATES OF AMERICA, FARMERS UNION GRAIN TERMINAL ASSOCIATION, a corporation, DUBUQUE COUNTY, AMERICAN FINANCE CORP. OF DUBUQUE, Appellants, APPEAL AGAINST ALL OTHER ABOVE NAMED PARTIES BY RAYMOND KOOB AND LEONA KOOB, Appellants.	Filed September 9, 1977 117 2-58797

Appeal from Dubuque District Court - T. H. Nelson, Judge.

Appeal from trial court's granting of plaintiff's motion for summary judgment, foreclosing plaintiff's mortgage against defendants.

AFFIRMED.

David Hughes, of Cascade, counsel for appellants, Raymond and Leona Koob.

Paul Fitzsimmons, of Dubuque, counsel for appellant, American Finance Corp. of Dubuque.

Benjamin W. Blackstock, of Cedar Rapids, counsel for appellee.

Heard by Allbee, C. J., Donielson, Snell, Oxberger and Carter, JJ.

DONIELSON, J.

Defendants Raymond and Leona Koob appeal the granting of plaintiff-Thorp Credit, Inc.'s motion for summary judgment, foreclosing plaintiff's mortgage against Koobs' property in the amount of $8431.74 plus interest. They contend that the loan which was secured by the mortgage was usurious and that the principal amount claimed by Thorp Credit was computed by including usurious interest in the principal amount claimed to be due.

In May, 1973, defendants borrowed $8104.64 from Thorp Credit, Inc., an industrial loan company licensed to do business in the State of Iowa, and were also charged $600 for credit life insurance, $360 for credit disability insurance, $40 for service fees and $4432.94 interest which was added to the amount of the loan and included in the principal amount of the promissory note given to Thorp Credit by the Koobs at the time they obtained the loan. By April, 1974, the Koobs were no longer able to make payments on the loan and defaulted. Thorp Credit subsequently instituted mortgage foreclosure proceedings against the Koobs in September. On October 15, the Koobs filed a petition in bankruptcy.

In the instant matter, the Koobs filed a motion for summary judgment on August 26, 1975, asserting that the pleadings and exhibits presented by the plaintiff demonstrated that the loan was usurious and, therefore, illegal. On September 4, Thorp Credit also filed a motion for summary judgment. In its Judgment and Decree filed September 24, the trial court stated that the suit was only for principal due and that usury was a defense to the interest portion only. Consequently, the court failed to specifically address the usury issue and granted Thorp Credit's motion for summary judgment. Our examination of the installment note convinces us that interest is included in the total amount owed. We, therefore, consider the usury issue.

In an equity case, our review is de novo. Rule 4, Rules of Appellate Procedure. If the judgment in an equity case is correct, it is our duty to affirm it although the reasons given by the trial court do not meet with our approval. Myers v. Smith, 208 N.W.2d 919, 921 (Iowa 1973); State ex rel. Turner v. Younker Brothers, Inc., 210 N.W.2d 550, 567 (Iowa 1973).

Rule 237 (e), Rules of Civil Procedure, provides:

> " . . . When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him." (emphasis added).

See Mead v. Lane, 203 N.W.2d 305, 306-308 (Iowa 1972); Daboll v. Hoden, 222 N.W.2d 727, 731-735 (Iowa 1974); A. T. & T. Co. vs. Dubuque Communications, 231 N.W.2d 12, 14 (Iowa 1975). Similarly, when one party moves for summary judgment, all material properly before the court must be viewed in the light most favorable to the opposing party. Carter v. Jernigan, 227 N.W.2d 131, 132 (Iowa 1975).

The court in Prior v. Rathjen, 199 N.W.2d 327, 330 (Iowa 1972) restated these basic principles from Gruener v. City of Cedar Falls, 189 N.W.2d 577, 580 (Iowa 1971):

> " 'Involved here is the basic purpose of summary judgment procedure. * * * By proper motion, a party can compel his adversary to come forth with specific facts which constitute competent evidence showing a prima facie claim or defense. Paper cases and defenses can thus be weeded out to make way for litigation which does have something to it. (Emphasis supplied).
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> " 'The language of our rule on summary judgments is very strong. Rule 237(e), Rules of Civil Procedure. * * * Conclusions and beliefs are insufficient: 'shall set forth such facts as would be admissible in evidence.' * * * When the motion itself is substantiated, the opposing party cannot simply rely upon his pleadings, for the pleadings are the very instruments that the procedure is designed to pierce: 'an adverse party may not rest upon the mere allegations or denials of his pleading.' Neither can the opposing party assert only generalities in resistance: 'his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. . . . ' " (emphasis in original).

Accord, Schulte v. Mauer, 219 N.W.2d 496, 500 (Iowa 1974); Iowa Civil Rights Com'n v. Massey-Ferguson, Inc., 207 N.W.2d 5, 8 (Iowa 1973); Bauer v. Stern Finance Company, 169 N.W.2d 850, 853 (Iowa 1969).

A review of both motions for summary judgment and resistances thereto convinces us that the Koobs did not present affidavits or plead specific facts to indicate that there was a genuine issue for trial. In their resistance to the motion for summary judgment, the Koobs only stated that the claim was barred by their filing a petition in bankruptcy, and that the loan contract was usurious. Such allegations do not meet the stringent requirements of rule 237, R.C.P., which direct the adverse party to set forth specific facts demonstrating that a genuine issue for trial exists. Gruener v. City of Cedar Falls, supra, at 580-581; Bauer v. Stern Finance Co., 169 N.W.2d 850, 853 (Iowa 1969). While Koobs now assert there is a factual issue as to whether Thorp is licensed as an industrial loan company so as to bring § 536A.23, The Code, into play, an affidavit of one of Thorp's officers that it was so licensed is not controverted. Consequently, the trial court did not err in granting Thorp's motion for summary judgment.

The Koobs argue that, notwithstanding the computations made by Thorp Credit, they were charged approximately 50 percent interest over a 35-month period, far in excess of the 9 percent maximum allowed by § 535.2, The Code. However, they ignore the terms and implications of § 536A.23, The Code. In Iowa-Des Moines National Bank v. Turner, Civil No. 73-255-1, (S.D. Iowa 1975), an unreported decision, U.S. District Judge W. C. Stuart concluded that § 536A.23 permits industrial loan companies to charge an effective interest rate in excess of the 9 percent authorized in § 535.2, and, therefore, is an exception to that provision. That section empowers industrial loan companies to charge a simple rate of interest as authorized by § 535.2, but permits the interest to be computed by either the "discount" or "add on" method on the total proceeds of the loan for the period from the date of the note to the date of the final installment, notwithstanding that the loan is repaid in installments. This results in a finance charge of more than 9 percent per year on the unpaid balance of the amount financed. If the note is repayable in other than equal monthly installments, the statute provides that the interest may be an amount computed on the basis of "the effective rates permitted" by the foregoing method if it had been repayable in equal monthly installments.

The note in the present case was not repayable in equal monthly installments. It provided for repayment of the total indebtedness, both principal and interest, in 35 monthly installments of $250 with a balloon payment of $4784.58 at the end of 36 months.

We construe the words "the effective rates permitted" as used in the statute under discussion to mean a rate calculated according to the actuarial method as a percent per year on the unpaid balances of the amount financed. This is the equivalent of the annual percentage rate required to be disclosed under federal law and presently under section 537.3210, The Code. The latter statute was not enacted at the time of the present transaction.

Giving the statute this meaning it appears that the effective rate of interest upon a 36 month installment loan discounted at 9 percent and repayable in equal monthly installments would be 23.99 percent. Thorp applied this effective rate to the principal portion of all the payments Koobs were required to make on the note, these being the 35 monthly payments and the balloon payment. In so doing, it followed a checklist and worksheet issued by the state auditor's office which supervises industrial loan companies. We believe that this method of computing interest is consistent with the provisions of § 536A.23.

It is apparent that the statute under discussion does not fix a maximum rate of interest to be charged based upon the actuarial method of computing interest. If the methods provided in the statute are employed the actuarial rate of interest varies depending upon the elements of the transaction. For example if the "add on" method of interest is employed on an installment loan repayable at 9 percent in equal monthly installments, the effective rate is 16.62 percent for a 12 month loan; 17.28 percent for a 24 month loan; and 17.51 percent for a 36 month loan. If, as in the present case, the "discount" method of interest is employed at 9 percent, the corresponding figures would be 18.26 percent, 21.07 percent and 23.99 percent for loans similarly repayable. For a loan repayable in equal monthly installments discounted at 9 percent for 48 months or 60 months the effective rates are 27.6 percent and 32.2 percent respectively.

We can conceive of a transaction which, although authorized by the statute in question, would be unconscionable and unenforceable under section 554.2302, The Code. But no such claim is involved in the present case and we are not inclined to so hold. If the rates permitted by the statute are too high, the change should come from the legislature.

Therefore, the judgment of the district court is affirmed.

AFFIRMED.