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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

TAYLOR ENTERPRISES, INC., LYLE K. TAYLOR, GEORGIA M. TAYLOR, WILLIAM TAYLOR, and DEBRA JO TAYLOR,

Plaintiffs-Appellants,

vs.

CLARINDA PRODUCTION CREDIT ASSOCIATION and FEDERAL INTERMEDIATE CREDIT BANK OF OMAHA,

Defendants-Appellees.

319

9-52
87-1794

Appeal from the Iowa District Court for Page County (21515), Glen M. McGee, Judge.

Plaintiffs appeal a judgment finding for defendants on plaintiffs' suit for breach of contract and interference with contractual relationships. **REVERSED AND REMANDED.**

William Shade, New Ulm, Minnesota, Robert F. Leonard and Jon Johnson of Leonard, Johnson & Graser, P.C., Sidney, and Emil Trott, Jr., of Barrett & Trott, Des Moines, for plaintiffs-appellants.

Jerrold L. Strasheim, Timothy V. Haight, and Carol C. Knoepfler of Baird, Holm, McEachen, Pedersen, Hamann & Strasheim, Omaha, Nebraska, for defendants-appellees.

Heard by Donielson, P.J., and Sackett and Habhab, JJ.

SACKETT, J. 320

This appeal addresses an alleged breach by a lender of a written loan commitment and charges the lender interfered with the borrowers' contractual relationships with others. We determine the trial court erred. We reverse the judgment for defendants and remand for new trial.

Plaintiffs borrowed from defendant Clarion Production Credit Association, frequently called the PCA. Defendant-appellee Federal Intermediate Credit Bank of Omaha is PCA's supervising agency. The plaintiff borrowers are appellants Taylor Enterprise, Inc.; Lyle K. Taylor, Georgia M. Taylor, William Taylor, and Debra Jo Taylor. Taylor Enterprise, Inc., is a family corporation in which the other plaintiffs hold interests.

On September 9, 1983, plaintiffs owed the PCA $2,787,154.92 on short-term notes. PCA and plaintiffs wanted to convert a substantial portion of the short-term debt to a long-term debt by refinancing with another lender.

The Citizens State Bank of Maryville, Missouri, agreed to be that other lender. Plaintiffs on September 9, 1983, executed a note and mortgage to Citizens for $2,000,000. The Citizens' note was secured by a first mortgage on approximately 3,607 acres of plaintiffs real estate. PCA released its existing three mortgages on the real estate to

give Citizens' priority. The Citizens' note provided for annual principal payments of $40,000 for five years with a balloon payment for the balance due on September 9, 1988. It also required semiannual interest payments at a flexible rate tied to the one year Treasury Bill yield. Citizens in making the loan to plaintiffs had requested defendants to guarantee the note. When it was determined such a guarantee was not possible because of defendant's regulations, the loan agreement which formed the basis of this controversy was negotiated.

In the agreement defendant promised to loan plaintiffs the money to make the five annual principal and interest payments over five years to Citizens. PCA did not agree to loan plaintiffs the money for the balloon payment due Citizens. The agreement was conditioned on PCA's receipt of the $2,000,000 Citizens loaned plaintiffs. In addition to the Loan Agreement, there was a Supplemental Agreement for Line of Credit Loan, a Real Estate Letter Agreement, a Line of Credit Note, a Budget Note, a Security Agreement, a Mortgage and the mortgage releases.

In March 1985 defendant failed to loan plaintiffs the money for the semiannual interest payment on the Citizens loan. Plaintiffs filed suit against defendants claiming defendants breached the loan agreement. Plaintiffs contended they were damaged by the breach. They also contended PCA interfered with their contractual

relationships with others and breach of fiduciary relationship. Defendants counterclaimed.

In addition to the loan agreement, plaintiffs had continual financial dealings with PCA. These financial dealings were not satisfactory and PCA claims actions of certain plaintiffs were responsible for their not honoring the loan agreement.

The matter came for trial and submitted to a jury on plaintiffs' claims for breach of the Loan Agreement, tortious interference, and breach of fiduciary duty. The jury returned a Special Verdict, finding no breach of contract, no interference with a contractual relationship, and no breach of fiduciary duty.

Plaintiffs appeal, contending the trial court should have determined as a matter of law there was a written contract in which PCA promised to loan funds to plaintiffs to make principal and interest payments on their note and mortgage to Citizens State Bank and PCA breached the contract by failing to loan plaintiffs the money for an interest payment and damage resulted from PCA's breach. Plaintiffs contend the evidence established as a matter of law a claim for breach of contract except for the amount of damages.

Plaintiffs contend the parties' signatures to the written agreement exhibits the meeting of the minds on all the terms contained in it and all the language used in the

contract is common without any special or unusual meanings except for "Budget Note" and "Line of Credit Note." Plaintiffs claim from the surrounding circumstances it is clearly established these two terms were understood and had the same meaning for both parties. Plaintiffs contend all the terms of the contract are clear and expressly stated in the written agreement; the writing even stated the loan agreement was in addition to other existing or future loan documents; and it was agreed the loan agreement did not release or waive any rights or obligations under any other document and it did not replace any other document or agreement.

The real question is whether the court should have determined as a matter of law a contract existed or whether the trial court was correct in determining the existence of a contract was a factual matter to be decided by the jury. If the terms of a contract do not involve disputed fact issues, the meaning of the contract is determined by the court. General Casualty Co. of Wis. v. Hines, 261 Iowa 738, 744, 156 N.W.2d 118, 123 (1968). Construction of a contract is generally one of law for the courts alone. Id. State Farm Mutual Auto Ins. Co., 361 N.W.2d 332, 334-35 (Iowa App. 1984).

Few agreements are as clear and straightforward as the loan agreement. Basically it provided Citizens was to loan plaintiffs $2,000,000 secured by a first mortgage on 3,607

acres and a promissory note for $2,000,000 with interest at five percent over Treasury Bill interest quoted in the Wall Street Journal on the anniversary date of the promissory note. Plaintiffs were to pay $40,000 principal each year for five years when there was a balloon. PCA agreed to lend plaintiffs money to make the annual payments of principal and interest but not the balloon payment.

To implement the commitment, plaintiffs agreed to execute a note referred to by PCA as a five-year "Budget Note" for $1,700,000. Plaintiffs were to pay the Budget Note down to a balance of $5.00 on or before September 28 of each year. But PCA agreed to loan plaintiffs annually the amount necessary to pay the Budget Note against what PCA called "Line of Credit Notes."

Plaintiffs were to give or reaffirm and grant PCA a security interest in all livestock, machinery, equipment, grain, growing crops for each year the commitment is outstanding, in all additions, new born animals, accessories, substitutes and other interests, mortgage or assignment of vendees contract, interest in all real estate The agreement was in additional to other agreements.

Defendants do not appear to disagree with this interpretation of the agreement nor do they claim the agreement is ambiguous. Instead, they contend there was a factual dispute as to whether there was a contract because (1) other agreements should have been considered, and (2)

plaintiffs did not sell land and plaintiffs traded in commodities. Defendant contends therefore extrinsic evidence is required to interpret the contract; consequently such interpretation was for the jury. 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).

Obviously, PCA had reason to be concerned about plaintiffs' financial management in March 1985. The period of 1983 to 1985 represented a period of serious decline in the agricultural economy. In retrospect, PCA may have made a bad financial decision in signing the agreement. But when PCA signed the loan agreement in 1983 they agreed to do certain things. Nowhere in the written loan agreement is there any reference to the factors PCA contends should now be taken into consideration in determining whether PCA entered into an agreement to lend.

While PCA challenges the enforcement of agreements to lend, we note this agreement was not the typical lender-borrower transaction. PCA was vitally interested in plaintiffs obtaining the loan from Citizens because it allowed the plaintiffs to reduce their short-term obligations to PCA. PCA was so interested they originally agreed to guarantee the payment to Citizens. The loan agreement only followed when PCA determined they could not

guarantee the loan by Citizens. PCA received the loan money that came from Citizens. Additionally, PCA received a mortgage on the plaintiffs' land subject only to Citizens' lien. The agreement automatically provided for PCA's security position to increase as additional money was advanced. As the land payments were made and the amount secured by Citizens' loan to plaintiffs decreased, PCA's security position in the land was increased by the amount Citizens' was decreased.

It was clearly established plaintiffs and defendants entered into the agreement to lend. Plaintiffs entered into the loan with Citizens. Plaintiffs executed the required documents, gave considerable security to defendants, including a mortgage on the real estate Citizens encumbered, subject only to Citizens' mortgage. Defendants received benefits from the transaction because they recouped $2,000,000 loaned to plaintiffs.

There is no ambiguity. There was no controverted evidence as to the terms of the written agreement. No different inferences could be drawn. When words are free from ambiguity, there is no occasion for interpretation. It is the court's duty to give effect to the language of the entire contract of assignment in accordance with commonly accepted and ordinary meaning. Brogles v. Iowa Dep't of Social Services, 305 N.W.2d 718, 721-22 (Iowa 1982). We determine the requisites for a contract were

shown. See Sorensen Health Studio No. II, Inc. v. McCoy, 261 Iowa 891, 896, 156 N.W.2d 341, 344 (1968). There is no factual dispute on the existence of the contract. The trial court erred in refusing to instruct the jury that a contract existed and had been breached. The matter should be reversed and remanded for new trial.

Plaintiffs contend the trial court erred in instructing the jury on the affirmative defense of excuse because (a) there was no substantial evidence of a material failure by Taylors to perform, or (b) the instruction was not a correct statement of the law. Over the plaintiffs' objections the trial court instructed the jury on the defense of excuse as follows:

> With respect to the affirmative defense of excuse asserted by PCA and FICB, you are instructed that the law of Iowa is as follows:
> PCA and FICB may be excused from the performance of any obligation to lend any funds under the written Loan Agreement if at the time of such performance there was an uncured failure by the Taylors to perform.

Plaintiffs contend there was not substantial evidence to support the giving of this instruction because it was undisputed the condition (payment of $2,000,000 for application on Taylors' debt) precedent to PCA's performance of its obligation to lend funds was totally and completely performed on September 9, 1983.

We find no evidence in this record of any nonperformance by plaintiffs of any condition in the written loan agreement. There being no substantial

evidence to support the giving of the instruction, it should not have been given.

REVERSED AND REMANDED.

Donielson, P.J., concurs; Habhab, J. dissents.

HABHAB, J. (dissenting)

I respectfully dissent.

This cause was submitted to the jury on special verdicts that related to whether there was a breach of contract. The jury was not asked to decide whether a contract existed for it is clear one did. The jury unanimously returned the special verdict answered as follows:

> 1. Did PCA breach a contract, interfere with a contractual relationship, or breach a fiduciary duty?
>
> ANSWER: "Yes" or "No"
>
> Breach of contract - No
> Interfere with contractual relationship - No
> Breach a fiduciary duty - No
>
> * * *
>
> Did FICB breach a contract, interfere with a contractual relationship, or breach a fiduciary duty?
>
> ANSWER: "Yes" or "No"
>
> Breach of contract - No
> Interfere with contractual relationship - No
> Breach a fiduciary duty - No

These findings are supported by substantial evidence. Therefore, I would affirm the trial court.

The appellant's main ground for reversal is that the trial court should have held as a matter of law there was a written contract in which PCA promised to loan funds to plaintiffs to make principal and interest payments on their note and mortgage to Citizens State Bank and that PCA

breached this contract by failing to make the loans in accordance with that agreement. When the record is read as a whole, it is apparent that in addition to this loan agreement the parties entered into no less than four other agreements that have significant bearing on that loan agreement. The trial court heard all the testimony as it related to the various agreements and listened to the testimony of the parties as to how the various agreements related to each other. The trial court determined that a factual dispute existed as to whether there was a breach of contract. This was the special question that the jury was asked to answer. The jury was not asked to answer whether a contract existed. Because of the manner in which the cause was submitted to the jury, I am unable to agree with the majority.

The trial court, in addition and without objection from plaintiffs, instructed the jury as follows:

> In determining the terms of the contract you may consider the following:
>
> 1. The intent of the parties along with a reasonable application of the surrounding circumstances.
>
> * * *
>
> 8. When entered into as part of one transaction, separate agreements, documents, and instructions must be read together as part of a single contract. Applicable law also becomes a part of any contract.

The plaintiffs assert that a number of affirmative defenses raised by the defendant should not have been

submitted to the jury. Assuming error was properly preserved for our review, and that it was error to so instruct, and I am unable to find prejudicial error for the jury specifically found that the defendants did not "breach a contract, interfere with the contractual relationship, or breach a fiduciary duty?" Having made these findings, and after considering the court's instructions as a whole, it was unnecessary for the jury to gi e consideration to the affirmative defenses raised by the defendants. Thus, there is no prejudicial error. Edwards v. Des Moines, 349 N.W.2d 786, 788-89 (Iowa App. 1984).

I would affirm.