

NOV 26 1980

194

IN THE COURT OF APPEALS OF IOWA SUPREME COURT

GARY GARLOCH,)

Plaintiff-Appellant,)

Filed November 26, 1980

vs.)

GUTHRIE COUNTY STATE BANK,)

Defendant-Appellee.)

0-238
2-64000

Appeal from Guthrie District Court - M. C. Herrick, Judge.

Plaintiff appeals from directed verdict for defendant bank in plaintiff's action for wrongful dishonor of his checks and tortious interference with present and prospective business advantage. **AFFIRMED.**

Thomas R. Hronek and Stephen M. Terrill of Maurer, Terrill & Hronek, Ames, for plaintiff-appellant.

R. Y. Taylor and R. E. Feilmeyer of Taylor, Taylor & Feilmeyer, Guthrie Center, for defendant-appellee.

Heard by Donielson, Acting C.J., and Snell, Carter, and Johnson, JJ. Oxberger, C.J., takes no part.

DONIELSON, J.

Plaintiff, Gary Garloch, appeals from directed verdict for defendant bank in plaintiff's suit for wrongful dishonor of his checks and tortious interference with present and prospective business advantage. We affirm.

Our review is limited to correction of errors at law. Iowa R. App. P. 4.

I.

Plaintiff filed his petition in this action in September, 1976, alleging that the Guthrie County State Bank had wrongfully dishonored certain checks drawn on his account at the Bank and that the Bank had tortiously interfered with plaintiff's business relationships. The matter proceeded to trial in July, 1979, and, at the close of plaintiff's evidence, the court granted the Bank's motion for a directed verdict as to both of plaintiff's contentions.

From November, 1973 to June, 1974, plaintiff executed ten promissory notes payable to defendant Bank, for a total principal loan of \$40,050. The parties signed three separate security agreements, each of which provided that the plaintiff's crops and machinery and any proceeds from the sale thereof would serve as collateral for the loans. The security agreements also provided that if the Bank had reason to feel insecure, it could take possession of the collateral even though plaintiff was not then in default and that upon the occurrence of certain events, the Bank, either orally or in writing, could declare the entire unpaid balance immediately due and payable and could furthermore declare plaintiff in default if he failed to pay the amount then due. Specifically, the Bank could accelerate the due dates of the notes if, among other things, the plaintiff had failed in his business or had breached other provisions of the security agreements, such as the one requiring him to obtain written consent from the Bank before selling his crops.

In February, 1974, plaintiff contracted with a local elevator for the sale of his entire soybean crop and entered into a similar contract the following July for the sale of his corn crop. Although plaintiff maintains that he had informed the Bank of the existence of these contracts prior to signing them, Bank officials testified that the contracts were signed without their knowledge or consent and that the Bank was not informed of the sales until late July. Bank officials testified that in early August, 1974, plaintiff was orally notified that the due dates on his promissory notes had been accelerated and that the Bank would require the proceeds from the crop sales to be

applied to the notes. Plaintiff denies that he ever received notice, either oral or written, of the acceleration. The Bank also contacted the grain elevators involved and requested that any checks for plaintiff's crops be made out jointly to both plaintiff and the Bank.

Plaintiff received the first of such checks for the sale of his crops on October 16, 1974. He took it to the Bank, where the Bank president applied the entire amount, approximately \$11,350, to plaintiff's notes. According to the plaintiff, the entire procedure was carried out without discussion; the Bank president, however, testified that he explained that he was applying the proceeds to the notes and that the plaintiff did not object. The president then drafted a check in the amount of approximately \$11,350, made it payable to the Bank, and asked plaintiff to sign his name to it, which plaintiff did without protest. Only then did plaintiff object to application of the proceeds to the notes, indicating that he had several cash rent and insurance payments due soon.

On or about October 28, 1974, a second check for plaintiff's crops was received directly by the Bank. This check was for \$20,964 and the Bank applied all but about \$20 of it against plaintiff's notes. The Bank then sent plaintiff a deposit slip acknowledging receipt of the check from the elevator, but did not indicate to the plaintiff at that time that almost the entire amount of the check had been applied to pay off his notes. Aware only that the check had been deposited in his account, plaintiff then wrote several checks for large amounts in payment of his cash rent obligations. In actuality, however, his account contained only about \$320 and the Bank refused to honor the checks plaintiff gave to the cash rent landlords. When plaintiff learned from one of the landlords that the checks had not cleared, he went to the Bank and only then did he learn that the deposit slip had been sent solely for record purposes and that most of the check had actually been applied to his notes. Although plaintiff apparently was able to combine enough corn to obtain emergency funds to pay off his landlords, most of his cash rent leases were cancelled for the next year for various reasons, including the fact that the Bank had refused to honor the checks written by the plaintiff in late October.

Bank officials further testified at trial that the plaintiff had given them several reasons to feel insecure about his ability to repay the money he owed to the Bank. Plaintiff had contracted to sell his entire crop, and Bank officials were concerned that plaintiff would use the proceeds, in which the Bank had a perfected security interest, to

pay off his various other creditors. Additionally, an examination of plaintiff's crops by the Bank's vice-president indicated that the crop was not doing as well as expected. The Bank was also concerned because, in addition to the \$40,050 owed the Bank, plaintiff also had various other substantial debts. In fact, his total obligation amounted to \$160,000, while his assets totaled only \$84,000. He had made extensive efforts to obtain other financing, but his loan applications had all been denied. Finally, the plaintiff had a serious problem with bad checks. He wrote numerous insufficient funds checks in 1973 and 1974, including \$1400 in bad checks in January of 1974 alone. During a six-week period of time in the fall of 1974, plaintiff wrote twenty-two insufficient funds checks for a total of over \$4400. The security agreements, however, did not give the Bank the right to accelerate the due dates of plaintiff's notes on the basis of insecurity alone.

II.

On appeal from the granting of a directed verdict, the reviewing court must determine whether the evidence presented by the appellant was sufficient to generate a question for the jury. Pieper v. Harmeyer, 235 N.W.2d 122, 125-26 (Iowa 1975). To be sufficient for this purpose, the appellant's evidence must be substantial. Id. Moreover, the evidence must be viewed in the light most favorable to the party against whom the motion was made. Iowa R. App. P. 14(f)(2). Applying these considerations to the instant case, we agree with the trial court's decision to grant the Bank's motion for directed verdict.

We first conclude that, although both parties have briefed and argued the case on the theories of acceleration and setoff, this case presents no legitimate issue on either (a) the Bank's right to accelerate an unmatured obligation, or (b) the Bank's right to set off the accelerated obligation against the balance of plaintiff's checking account. We reach this conclusion because it appears to be undisputed that the Bank, under the security agreement between the parties, had a lien on the proceeds of the sale of plaintiff's crops which were pledged as collateral. § 554.9306(2), The Code 1979.

A lien on proceeds, if it means anything, means that the secured party has a right to require that such proceeds be held intact and not dissipated by the debtor. In the present situation, this means the funds were not available for plaintiff's use, even if his debts to the bank had not been accelerated. In light of the practicality of this circumstance, it would have been unfair to the plaintiff not to prepay the loan balances

with those proceeds because such course of action would only serve to visit additional interest costs on plaintiff. Plaintiff therefore may not complain of the actions taken.

Even if we were to adopt the parties' statement of the legal issues, we would find that the plaintiff has failed to present substantial evidence that the Bank wrongfully dishonored his checks. In order to show that dishonoring the checks was wrongful, plaintiff was obligated to present substantial evidence showing that application of the checks to his notes was also wrongful, and this he has failed to do.

First, it is obvious from the security agreement that the Bank was justified in accelerating the due dates of the notes. The agreement gave the Bank the right to accelerate upon the occurrence of certain events, among which were plaintiff's failure in the farming business and plaintiff's breach of other provisions of the agreement, including the one requiring him to obtain the Bank's written consent before selling his crops. While there is some dispute as to whether the Bank thought plaintiff had failed in his business, the record clearly indicates that the plaintiff failed to obtain written permission from the Bank to sell his crops, a failure that violates the provisions of the security agreement. This also would justify the Bank's decision to accelerate the due dates on the notes.

Plaintiff's wrongful dishonor claim appears to be based on the contentions that the Bank accelerated the notes solely on the grounds of insecurity and that the security agreements did not authorize acceleration on the grounds of insecurity alone. While we agree with the latter of plaintiff's contentions, we do not find that the Bank's insecurity was the sole grounds for acceleration of the notes. While insecurity may have influenced the Bank's decision to accelerate to some extent, we think the record adequately indicates that the acceleration was based on plaintiff's failure to obtain the Bank's written consent to a sale of the collateral and, to a certain degree, to the Bank's belief that the plaintiff had failed at farming. Moreover, we also note that a bank in this state may apply funds deposited with it in an account of general deposit against a debt owed it by the depositor if the debt is mature or, if the debt is not mature, if the depositor is insolvent. Jensen v. State Bank of Allison, 518 F.2d 1, 5 (8th Cir. 1975); Farmers Cooperative Elevator, Inc., Duncombe v. State Bank, 236 N.W.2d 674, 677 (Iowa 1975); Olsen v. Harlan National Bank, 162 N.W.2d 755, 759-61 (Iowa 1968). Since plaintiff's notes matured when the Bank legitimately accelerated their due dates, the Bank was justified in applying the checks' proceeds to plaintiff's debts. In sum, plaintiff

has not presented substantial evidence to show that the Bank's dishonor of his checks was wrongful.

III.

Plaintiff also contends that the Bank tortiously interfered with his present and prospective business advantage. He was obliged to present substantial evidence on this point, Pieper, 235 N.W.2d at 125-26, and we find that he has failed to do so.

Interference with business advantage is a recognized tort in Iowa. Clark v. Figge, 181 N.W.2d 211, 213-14 (Iowa 1970). The basic elements of tortious interference are: 1) the existence of a valid contractual relationship or business expectancy; 2) knowledge of the relationship or expectancy on the part of the interfering party; 3) intentional interference causing a breach or termination of the relationship or expectancy; and 4) damage resulting to the party whose relationship or expectancy has been disrupted. Stoller Fisheries, Inc. v. American Title Insurance Co., 258 N.W.2d 336, 340 (Iowa 1977). In cases of interference with prospective business advantage, a purpose to injure or destroy is essential. Farmers Cooperative Elevator, 236 N.W.2d at 679. We find that the plaintiff has failed to show by substantial evidence either that the Bank's purpose was to injure or destroy him or that the Bank intentionally interfered with his present or prospective business relationships. We conclude instead that the Bank's purpose in accelerating the notes and applying the proceeds in payment thereof was to protect itself from what it considered the very real possibility that the plaintiff would not be able to repay his loans. Given the Bank's concern that it be repaid, we think it much more likely that the Bank would encourage prosperous business relationships for the plaintiff instead of attempting to destroy such relationships. While there appears to be some issue as to whether plaintiff was misled to his detriment as a result of the Bank's notice to him that the proceeds had been placed in his checking account, any right to recover on this theory has not been argued on appeal and is therefore waived pursuant to Iowa R. App. P. 14(a)(3). Accordingly, we find a lack of substantial evidence to support plaintiff's claim of tortious interference and we affirm the trial court's directed verdict for the Bank.

AFFIRMED.