IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

No. 7-771 / 97-0493
Filed February 25, 1998

DANIEL E. BOUSKA,
Appellant,

vs.

000057

FIRST NATIONAL BANK OF NEW HAMPTON and STAN LAURES a/k/a STANLEY B. LAURES,
Appellees.

Appeal from the Iowa District Court for Chickasaw County, James L. Beeghly, Judge.

The plaintiff appeals a district court order granting defendants' motions for summary judgment and dismissing his claims against them based on defendants exercising an offset against funds in plaintiff's account. **AFFIRMED.**

Peter C. Riley of Tom Riley Law Firm, P.C., Cedar Rapids, for appellant.

Raymond H. Terpstra II of Terpstra, Terpstra & Epping, Cedar Rapids, Stanley R. Parker of Sloan, Listrom, Eisenbarth, Sloan & Glassman, L.L.C., Topeka, Kansas, and Timothy W. Hamann of Clark, Butler, Walsh & Hamann, Waterloo, for appellees.

Heard by Huitink, P.J., and Streit and Mahan, JJ.

HUITINK, P.J.

Daniel Bouska appeals from an adverse ruling on summary judgment motion dismissing his interference with a contract claim against First National Bank of Hampton and Stanley Laures. We affirm.

I. Background Facts and Proceedings.

First National Bank of Hampton exercised its right of offset against Daniel Bouska's farm checking account. The proceeds were applied to Bouska's delinquent farm notes. As a result, Bouska's rent check to a lessor of farm land was dishonored. The bank's subsequent foreclosure action against Bouska was dismissed with prejudice after Bouska paid the balance of his debt to the bank.

In this case, Bouska sued the bank and its officer Stanley Laures for intentional interference with an existing contract with his landlord. He alleges his farm lease was canceled as the result of the dishonored rent check.

The bank's motion for summary judgment was granted and Bouska's interference with existing contract claim was dismissed. The district court determined Bouska's claim was precluded by his failure to assert a compulsory counterclaim in the earlier foreclosure action. The court also concluded Bouska's interference with a contract claim failed as a matter of law because the summary judgment record did not set forth evidence that the bank's offset was motivated by a purpose to financially injure or destroy Bouska.

On appeal Bouska contends his claim against Stanley Laures is not precluded as a compulsory counterclaim because Laures was not an opposing party in the foreclosure action. Bouska also argues the bank's purpose to financially injure or destroy Bouska is not an essential element of proof in an interference with existing contract claim and it was error for the district court to conclude otherwise.

II. Standard of Review.

Our review is for errors of law. Iowa R. App. P 4. Summary judgment is appropriate only if there exists no genuine issue of material fact. *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. *Id.* The evidence must be viewed in the light most favorable to the nonmoving party. *Thorp Credit, Inc. v. Gott*, 387 N.W.2d 342, 343 (Iowa 1986). This procedure is functionally akin to a directed verdict, and every legitimate inference that reasonably can be deduced from the evidence should be afforded the nonmoving party. *Id.* A fact issue is generated if reasonable minds can differ on how the issue should be resolved. *Id.* If the conflict in the record consists only of legal consequences flowing from undisputed facts, entry of summary judgment is proper. *Milne*, 424 N.W.2d at 423.

However, the nonmoving party may not simply rest on its pleadings and allegations once a motion for summary judgment is filed.

> When a motion for summary judgment is made and supported as provided in [Iowa R. Civ. P. 237], 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 there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

Iowa R. Civ. P. 237(e).

III. Interference with Existing Contract.

Because the bank's right of offset is well established, Bouska must prove the bank's action was attended by impropriety and by an intent to interfere with Bouska's farm lease. *Burger v. Cas' Feed Store,* 543 N.W.2d 597, 598 (Iowa 1996) (citations omitted). The district court's reference to requisite proof of the bank's predominant motive to financially injure or destroy Bouska is in apparent conflict with the recognized elements of an intentional interference with an existing contract and claim. *Id.* In *Burke v. Hawkeye Nat'l Life Ins. Co.*, 474 N.W.2d 110 (Iowa 1991), the court stated:

> We recently compared the closely-related elements of these two causes of action [interference with existing and prospective contracts] in *Nesler v. Fisher and Co., Inc.,* 452 N.W.2d 191, 196-99 (Iowa 1990). Intentional interference with a contract requires proof that (1) plaintiff had a contract with a third party; (2) defendant knew of the contract; (3) defendant intentionally and improperly interfered with the contract; (4) the interference caused the third party not to perform, or made performance more burdensome or expensive; and (5) damage to the plaintiff resulted. *Id.* at 198. Proof of intentional interference with a *prospective* contract or business relationship essentially calls for evidence on the same elements relative to *future* business. *See id.* at 198-99.

> The primary distinction between the two causes of action is the nature and degree of proof required on the element of motive. In a claim of intentional interference with a prospective business advantage, plaintiff must prove that the defendant intended to financially injure or destroy the plaintiff. *Id.* at 199; *Page County Appliance Center v. Honeywell, Inc.*, 347 N.W.2d 171, 177 (Iowa 1984); *Harsha v. State Sav. Bank*, 346 N.W.2d 791, 799 (Iowa 1984). In cases of interference with existing contracts, proof of such purpose is not essential. *Nessler*, 452 N.W.2d at 199; *Farmers Coop. Elevator, Inc., Duncombe v. State Bank*, 236 N.W.2d 674, 679 (Iowa 1975).

Id. at 114. The district court's application of the standard applicable to interference with prospective contracts is not dispositive of the merits of this appeal because we conclude Bouska's claim fails under either measure of the bank's motive behind its decision to offset Bouska's checking account. We will affirm on appeal where any proper basis appears from the district court's ruling even though it is not the one upon which the court based its ruling. *Galloway v. Bankers Trust Co.*, 420 N.W.2d 437, 441 (Iowa 1988).

The record made on the bank's motion for summary judgment shows no more than the bank's lawful exercise of its right of offset. This act, even if intentional, does not make it improper for purposes of an intentional interference with contract claim. *Burger v. Cas' Feed Store,* 543 N.W.2d at 599. None of the facts cited in Bouska's resistance to summary judgment and supporting record directly established or support an inference of the required intent or impropriety. Bouska has not met his burden to set forth facts showing the bank's intent to interfere with his farm lease or other improper conduct. The district court correctly determined the summary judgment

record disclosed no more than the bank's exercise of its lawful right of offset. We accordingly affirm on this issue. The resolution of this issue is sufficient to dispose of Bouska's appeal on the merits and it is unnecessary to consider the other issues raised in his brief.

AFFIRMED.