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MAY 3 1 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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FARMERS SAVINGS BANK, BOYDEN, IOWA,

Plaintiff-Appellant,

vs.

EMMA KRUSE,

Defendant-Appellee.

Filed May 31, 1988

7-572
87-779

Appeal from the Iowa District Court for Sioux County (No. 16142), James L. McDonald, Judge.

The bank appeals from a district court judgment which found the deed of trust executed by the defendant as security for several loans to be invalid. **AFFIRMED.**

Dan W. Pluim of TePaske, Rens, Rensink & Pluim, Orange City, for plaintiff-appellant.

Lloyd W. Bierma of Oostra, Bierma & Schouten, Sioux Center, for defendant-appellee.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

PER CURIAM

This is an appeal from a district court ruling which concluded that a deed of trust on a sixty-two-acre farm owned and resided on by the defendant was invalid and should be set aside. The deed of trust on defendant's farm-homestead was given for a series of preexisting debts, and at the time of signing, the farm-homestead was unencumbered. The plaintiff bank appeals. Our review is de novo. Iowa R. App. P. 4. While we give deference to the findings of the trial court, we are not bound by them. Iowa R. App. P. 14(f)(7).

Like the trial court, we find the defendant has established by clear proof that a confidential relationship existed between plaintiff and defendant at the time defendant signed the deed of trust. The evidence also establishes that defendant was the subservient person and the bank the dominant party. Since such relationship existed, the bank as the superior party had a duty to disclose all material facts of which it was aware, or least those favorable to its own position and adverse to the defendant. Wilden Clinic, Inc. v. City of Des Moines, 229 N.W.2d 286, 293 (Iowa 1975). As this court stated in Peoples Bank & Trust Co. v. Lala, 392 N.W.2d 179 (Iowa App. 1986):

> The test of the doctrine of confidential relationship, therefore, is the presence of a dominant influence under which the act is presumed to have been done. Estate of Clark, 357 N.W.2d 34, 37 (Iowa 1984). By reason of the trust which has developed, the one who reposes confidence is not on guard; he is exposed and relies on the other. Curran, 206 N.W.2d at 322. As such, cases found on confidential relationships do not require a showing that the confidant actually stood over the other or in fact bent the will of the other to the confidant's wishes.

The plaintiff bank under the circumstances here was the dominant influence under which the defendant executed the deed of trust. She placed her confidence in the plaintiff bank and in doing so was not aware nor was she informed that by signing the deed of trust her homestead was placed in jeopardy in the event of default in payment on the preexisting debts.

The defendant's homestead right was a material fact which the bank had a duty to disclose before the bank sought to have her waive those rights. Lala, 392 N.W.2d at 188. In Iowa, a homestead is exempt from judicial sale for the owner's debts incurred after acquisition of the homestead. Iowa Code § 561.16 (1985).

Having found that a confidential relationship existed between the parties, the bank is not merely required to go forward with the evidence; it has the burden of persuasion to uphold the deed of trust. The bank "must produce clear, satisfactory, and convincing evidence." The bank was required to prove "entire good faith on its part and free, voluntary, and intelligent action" on the part of the defendant. First National Bank in Sioux City v. Curran, 206 N.W.2d 317, 322 (Iowa 1973).

On our de novo review, we find the evidence fails to show that the plaintiff bank made the defendant fully aware of the material fact that she was terminating her homestead exemption right by giving the deed of trust. Having failed to present clear and convincing evidence to rebut the presumptive invalidity of the deed of trust, we determine that the trial court was correct in setting it aside.

As an additional issue, the plaintiff asserts that the defendant's answers to interrogatories were not sufficient to raise the issue of a confidential relationship. Our examination of the pleadings, interrogatories, and trial record reveals to the contrary.

We affirm the trial court.

AFFIRMED.