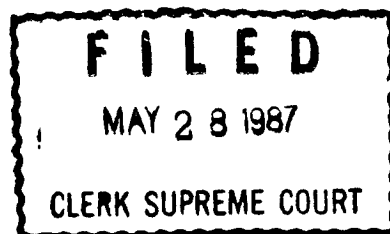


IN THE COURT OF APPEALS OF IOWA



LINDA E. SINNARD WALSH,)

Plaintiff-Appellee,)

vs.)

JACK W. ROACH, JOHN M. WALSH, and)
KEY CITY BANK & TRUST COMPANY,)
an Iowa Banking Corporation,)

Defendants-Appellants.)

Filed May 28, 1987 381

6-203
85-1438

Appeal from the Iowa District Court for Dubuque County (No. 44258),
William G. Klotzbach, Judge.

Defendants appeal and plaintiff cross-appeals from judgment for plaintiff
in an action seeking damages for fraudulent misrepresentation and cancellation
of an assignment of equity and mortgage documents. **AFFIRMED.**

W. Don Brittin, Jr. and K. J. Walker of Nyemaster, Goode, McLaughlin,
Emery & O'Brien, P.C., Des Moines, for defendants-appellants Roach and bank.

Frank D. Gilloon III, Dubuque, for defendant-appellant Walsh.

Victor D. Sprengelmeyer of Sprengelmeyer & Henkels, Dubuque, for plain-
tiff-appellee.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ.

DONIELSON, P.J.

The defendants appeal and plaintiff cross-appeals from a judgment entered for the plaintiff in an action seeking damages for fraudulent misrepresentation and cancellation of equity and mortgage documents. All defendants assert that: (1) the evidence was insufficient to support either a finding of fraudulent misrepresentation or the existence of a confidential and/or fiduciary relationship giving rise to any special duty of disclosure; (2) the evidence was insufficient to support submitting the issue of punitive damages to the jury and that the amount awarded was excessive; (3) a requested instruction should have been given concerning presumption of fair dealing and burden of proof; and (4) a requested instruction should have been given relating to the effect of failure to read a written instrument before signing it. Defendants Roach and Key City Bank additionally assert that: (1) the trial court should have responded in the negative to a jury question asking whether a notary must actually watch a person sign a document in order for it to be legal; (2) the trial court's finding that plaintiff was entitled to equitable relief was unsupported by the evidence and that the award of legal and equitable relief was duplicative; (3) the order awarding damages was imprecise and should be clarified; and (4) plaintiff's cross-appeal should be dismissed since no issues were argued or stated. Defendant Walsh asserts that: (1) the delivery of the jury verdict was improper under Iowa Rule of Civil Procedure 203(b); (2) requested instructions should have been given on defenses of ratification and loss resulting from circumstances, unrelated to the alleged fraud, beyond the control of the parties; and (3) the jury should have been instructed specifically on the definition of various legal terms and the law regarding security agreements. We affirm.

Upon the death of her second husband in 1979, the plaintiff, Linda Walsh, became the owner of a home valued at approximately \$250,000.00 and a benefi-

ciary of a life insurance policy which she elected to have paid in three annual installments of \$100,000.00 plus interest. Linda met defendant John Walsh in the spring of 1980, following which they dated regularly. Linda and John were married in December of 1980.

At the time of the parties' marriage, John had recently lost his re-election bid to the Iowa Senate. Shortly thereafter, John's father announced that John was returning to the family store business in Dubuque. However, following a trip to South Africa, John became increasingly involved with the possibilities of trade with South Africa and travelled to South Africa in May of 1981. John's father, however, did not share in his son's enthusiasm for foreign trade and would not participate or invest in these ideas. John's relationship with his father and the store business became strained, and John's employment was terminated.

By August of 1981, John had established a separate office in downtown Dubuque for his trading business activities, apparently from \$29,000.00 John had borrowed in April and May of 1981 from the East Dubuque Savings Bank. John paid these notes on September 3, 1981, by renewal. On September 2, 1981, Linda, at the request of John, executed a writing dictated by John indicating to the president of the East Dubuque bank that the second \$100,000.00 Linda had received and deposited in the bank would be used as collateral for the Walsh Trading Company, which John had formed in June of 1981. On September 3, 1981, John obtained a \$70,000.00 loan from the bank which was secured by the \$100,000.00 certificate of deposit, No. 2561. Using funds from the borrowed money, John and Linda went to South Africa for three weeks, the purpose of which was to gain business contacts. Linda did not participate in any business activities.

John became interested in selling three-wheeled tractors to South Africa. John, however, became unhappy with the East Dubuque bank and told Linda

that an account with a bank that had international connections would be necessary to achieve his goals. In November of 1981, John spoke with defendant Jack Roach, who was president of Key City Bank, concerning the possibilities of John borrowing \$200,000.00 to finance his project. Roach explained that they would loan the money on certain conditions, one of which was for Linda to transfer her deposits to the Key City Bank and deposit with him the third and final \$100,000.00 benefit check, which was to be paid in January of 1982. On November 13, 1981, John placed a phone call to Roach, at which time Linda spoke with Roach. Linda stated to Roach that she would send a letter to her insurance company directing them to send the final check to the Key City Bank and would also deposit her other assets with the Key City Bank. There were no discussions of loans or security documents at that time. Roach prepared a letter to the insurance company and gave it to John for Linda to sign. Linda signed the letter.

John then delivered a completed financial statement to Roach. Roach had previously been provided a statement indicating that the East Dubuque bank was owed \$96,000.00 which had been secured by a \$100,000.00 certificate of deposit. Apparently this fact was not discussed in the November 1981 meeting between Roach and John. The financial statement provided to Roach by John was a form which Linda had previously signed in blank and which she believed at the time was needed by the East Dubuque bank. On November 24, 1981, the board of directors of the Key City Bank approved a \$200,000.00 loan to John, and John received a first installment of \$80,000.00 the next day. By the end of 1981, the Key City Bank had already loaned John a total of \$165,000.00.

Sometime in late December 1981 or early January 1982, Linda met Roach for the first time. Roach testified that this meeting occurred on December 23, 1981, at which time both Linda and John signed in his presence an assignment of equity which gave Key City Bank a lien on her home. Roach testified that

he did not keep a copy of the document, but gave it to the Walshes at a later date. The assignment of equity was never recorded at the courthouse. Linda, however, testified that she was never at the bank in December of 1981 and that no discussion was ever held concerning any assignment of equity in the home.

During January of 1982, John again presented a stack of papers for Linda to sign. Linda identified one at trial as a corporate banking resolution which she signed on January 25, 1982. The other papers were later identified at trial as documents granting an assignment of equity in Linda's home. Linda testified at trial that she had no idea what those papers were at the time she signed them and also that none of the papers were signed at the bank nor were they signed by her before a notary public. John testified in an earlier deposition that neither he nor Linda signed the papers in front of a notary. Roach admitted that he had sent the document providing for the assignment of equity out of the bank for Linda to sign, but stated the others were signed in his presence. Though Roach kept a detailed diary concerning the various meetings with John, there were no diary entries concerning any meeting with Linda or discussions held regarding the signing of these documents.

On January 25, 1982, John received another cash advance for \$25,000.00 and took an extended tour of Peru, Panama, and South Africa. Upon his return, for the first time he informed Linda of the problems and delays concerning the sale of "tractors" to South Africa. John told Linda not to worry, that in the next six months the difficulties would be resolved and sufficient money would be coming in to pay off the Key City Bank. Linda, though anxious over John's lack of income, did not become alarmed because throughout this period of time her certificates of deposit in both banks were renewed, and Linda continued to receive the monthly interest. At no time during this period did Linda

receive any letters, telephone calls, or other communications from any of the banks indicating any potential problems or delinquencies.

On July 1, 1982, all of the Key City Bank notes became delinquent and remained in default and unpaid in September. On September 28, 1982, John filed a petition for Walsh Trading Co. Inc. seeking relief under Chapter 11 bankruptcy. The petition showed total outstanding debts to both the East Dubuque bank and Key City Bank of \$325,000.00. The petition was dismissed one month later. In October of 1982, John persuaded Linda to purchase a local restaurant. Following the purchase, John and Linda went on an evening of drinking and eating. Upon their return home, John once again presented Linda with a stack of papers, explaining to her that they were for the renewal of her certificates of deposit. Linda testified that she had quite a bit to drink that evening and could hardly see the papers she was signing. John testified that he took these papers home for Linda to sign, such papers in reality providing for renewal of the bank notes. Roach, however, testified that both Linda and John came to his office to sign the papers for renewal and that he provided a detailed disclosure to Linda that he was taking possession of one of the \$100,000.00 certificates of deposit.

Approximately around Thanksgiving 1982, Linda's interest payments from the East Dubuque bank stopped. In January 1983, the East Dubuque bank brought suit and Linda was served with papers. Key City Bank also ceased monthly payments at that time. By late March 1983, Linda's restaurant was losing money, and Linda decided to mortgage her home through Dubuque Bank & Trust. However, an officer of that bank informed Linda that there was already a mortgage on her home for over \$100,000.00. Linda then attempted to take her own life. Upon recovery, she learned that both the East Dubuque bank and the Key City Bank had taken all her deposits totalling \$210,000.00.

John had left for South Africa several days before Linda became aware of the mortgage on her home. Linda did not hear from John for nearly two months. Linda commenced divorce proceedings, which were finalized in December of 1983. Linda filed her petition against John, Roach, and the Key City Bank on July 14, 1983, alleging fraud and misrepresentation. Following a jury trial, verdicts were rendered against John for \$208,000.00 actual damages and \$500,000.00 punitive damages; against Roach for \$46,000.00; and against Key City Bank for \$46,000.00 actual and \$500,000.00 punitive damages. John, Roach, and Key City Bank have appealed.

I.

We first address the defendant's argument that there was insufficient evidence to support the jury's finding that John, Roach, and the Key City Bank were guilty of fraud and misrepresentation. John contends that Linda acted blindly in signing the numerous documents in question, disregarding opportunities to discover for herself the contents of the papers she signed. John also contends that there was no confidential relationship between him and Linda and that Linda possessed the same knowledge as he possessed. John also argues that the losses incurred by Linda were due to factors beyond John's control. Roach and the Key City Bank likewise contend that Linda was afforded numerous opportunities to read and review the papers which she signed. Roach and the Bank also argue that they owed no duty to Linda to disclose the enormous debt which John had incurred and that Linda and the Bank were not in a confidential relationship. Roach and the Bank further contend that the only reliance Linda manifested was her reliance on Roach and the Bank to ensure that the interest from her certificates of deposit was properly paid into her account. We disagree.

The elements of fraud are: (1) a material misrepresentation (2) made knowingly (scienter) (3) with intent to induce the plaintiff to act or refrain

from acting (4) upon which the plaintiff justifiably relies (5) with damages. Beeck v. Kapolis, 302 N.W.2d 90, 94 (Iowa 1981). To establish a cause of action predicated on a claim of fraudulent misrepresentation, the plaintiff must prove each element by a preponderance of clear, satisfactory, and convincing evidence. Beeck v. Aquaslide 'N' Dive Corp., 350 N.W.2d 149, 155 (Iowa 1984). We have recognized, however, that evidence of fraud is rarely direct and may be proved by circumstantial evidence. Kunkle Water & Electric, Inc. v. City of Prescott, 347 N.W.2d 648, 653 (Iowa 1984).

A misrepresentation is material if a reasonable person would attach importance to it in making a decision regarding the transaction in question. Restatement (Second) of Torts § 538. Misrepresentation may be shown not only by words spoken or written, but may also be shown by other conduct that amounts to an assertion not in accordance with the truth. Lockard v. Carson, 287 N.W.2d 871, 876-77 (Iowa 1980). Misrepresentation may also be shown by silence resulting from the failure to disclose the existence of something which the other person has a reason to be disclosed. Sedco Intern. S.A. v. Cory, 522 F. Supp. 254, 323 (S.D. Iowa 1981), affirmed 683 F.2d 1201 (8th Cir. 1982), cert. denied 459 U.S. 1017, 103 S. Ct. 379, 74 L. Ed. 2d 512 (1982). Mere silence, however, in an arm's length transaction will serve to create actionable fraud only where there exists a relationship of trust or confidence and the trusted party has a superior knowledge of the facts, resulting in the inequality of condition or knowledge between the parties. Smith v. Peterson, 282 N.W.2d 761, 767 (Iowa 1979). The party with the superior knowledge is therefore charged with a duty to disclose those material facts which may be favorable to him and unfavorable to the other party. Id.

To prove the "falsity" element of an action based on fraudulent misrepresentation, the plaintiff must establish that the representation was false at the

time it was relied upon. Hagarty v. Dysart-Geneseo Community School Dist., 282 N.W.2d 92, 95 (Iowa 1979). A false statement innocently but mistakenly made will not establish intent to defraud. Beeck, 350 N.W.2d at 155.

Concerning the scienter and intent to deceive elements of a cause of action for fraud, we note that intent to deceive is closely related to scienter and is ordinarily established from the same evidence. Sedco Intern., 522 F. Supp. at 324. Because scienter and intent to deceive are closely related, each element may be shown not only when the speaker has actual knowledge of the falsity of his or her misrepresentations, but also when he or she speaks in reckless disregard of whether such statements are true or false. Beeck, 350 N.W.2d at 155. For purposes of proving fraud, intent, being a mere state of mind, may be established by appropriate inference and presumption from the overt acts proved. Kunkle, 347 N.W.2d at 654.

Reliance on an alleged misrepresentation exists if a party gives substantial weight to the representation. Sedco Intern. S.A. v. Cory, 683 F.2d 1201, 1206 (8th Cir. 1982), cert. denied 459 U.S. 1017, 103 S. Ct. 379, 74 L. Ed. 2d 512 (1982). The test for determining whether a plaintiff has a right to rely on representations of another is whether the plaintiff, in view of his or her own information and intelligence, had a right to rely on such representations. Lockard, 287 N.W.2d at 878. The representation does not have to be the sole cause of damage, but rather it is enough if it has a material influence upon the plaintiff's conduct or is a substantial factor in bringing his or her action or inaction. Sedco Intern., 683 F.2d at 1206. When an individual acts on the representations of another and relies on them in good faith, he or she has no duty to further investigate. Cedar Falls Bldg. Center, Inc. v. Vietor, 365 N.W.2d 635, 639 (Iowa Ct. App. 1985).

Applying the foregoing analysis to the facts of the present case, we find substantial evidence to support the jury's verdict finding the defendants guilty of fraudulent misrepresentation. John argues that Linda was an active partner in the Walsh Trading Company and encouraged John to pursue his dream of becoming a player in the international trade market to pursue her own selfish desires. John attempts to paint Linda as a spouse who accepted the benefits of the sale of the tractors to South Africa with full knowledge of her husband's misrepresentations. The record, however, belies these contentions.

It is abundantly clear from the record that the Walsh Trading Company was John's project and John's alone. John had entertained ideas of developing an international trading company before John and Linda were married. The record reveals that Linda was supportive of John to the extent that she was interested in seeing her husband pursue something he enjoyed. In June of 1981, John filed a sworn statement in the Dubuque County Courthouse indicating that he was the sole owner of the Walsh Trading Company. John reaffirmed his sole ownership in the business in a statement to the Key City Bank. Though Linda was named as corporate secretary of the Walsh Trading Company, John offered no evidence to show that Linda took any major part in the business activities. The record shows that all of the debt of more than \$300,000.00 was created and procured by notes signed by John alone. John had control of the checkbook and wrote the checks and spent the borrowed funds in any way he saw fit. John travelled extensively on behalf of the business throughout the parties' marriage, most of the time without Linda. On the few occasions Linda did join John in his travels, John explained to Linda that foreign businessmen did not like doing business with a woman. Thus there is no evidence in the record to support John's apparent argument that Linda participated fully in the trading company's business activities.

We also find that the jury could reasonably conclude from the evidence offered at trial that John secured financing through Linda's assets by presenting Linda with blank forms to sign, John indicating to Linda that these forms were requested by the East Dubuque and Key City banks for the purposes of obtaining financial statements or renewals of her certificates of deposit. On at least several occasions, John told Linda simply to sign the papers and that he would fill them out later at his office. Though John testified that Linda was aware of his extensive borrowings and that he thoroughly informed Linda of the contents of the documents she signed, the voluminous testimony offered at trial reveals that John could not recall with certainty when or if he ever explained to Linda the substance of the papers she signed. John did admit, however, that most of the documents pertaining to his borrowing money were never signed by Linda at the bank, but rather were signed at their home and that they were not signed in front of a notary public. The jury could reasonably conclude from the evidence that on at least one occasion, on October 14, 1982, Linda, while intoxicated from an evening of drinking and eating following her purchase of the Cock-n-Bull restaurant, signed a stack of papers presented to her by John, John representing to Linda that the papers were renewals of the Key City note taken out in December of 1981 and her certificates of deposit. These documents, however, were in actuality documents for a mortgage on Linda's Arbor Oaks home for \$138,293.65. The record reveals that as compared with her other signatures, Linda's signatures on these documents were barely legible.

The jury could also reasonably find from the evidence that Linda was not experienced in the world of business. Linda had achieved only a high school education and had been previously a homemaker for most of her life. When Linda inherited a considerable sum of money upon her second husband's death, she heavily relied on advice from her lawyer and a friend who was employed

at the East Dubuque bank in determining how such money should be invested. The jury could also have found from the evidence that Linda exhibited complete faith in her husband in protecting her assets. Even as late as December of 1982, at which time Linda had already lost the interest from her certificates of deposit, Linda expressed her love for and confidence in John. From this the jury could reasonably infer that Linda trusted John to the extent that she did not second-guess John's representations as to what she was signing. We therefore conclude that there was substantial evidence from which the jury could reasonably conclude that John made false, material misrepresentations to Linda in order to secure Linda's assets as security for his loans, that he did so with full knowledge and intent, and that Linda in turn justifiably relied on those misrepresentations.

Roach and the Key City Bank's main contention on appeal is that neither Roach nor any other employee of the Bank made any affirmative misrepresentations to Linda about the nature or the meaning of the documents she signed. Roach and the Bank further maintain that there was no fiduciary or confidential relationship that existed between Linda and the Bank and that consequently they had no duty to disclose to Linda the extent of John's indebtedness. Roach and Key City Bank additionally point out that Linda had numerous opportunities to read the documents before she signed them, but chose not to.

In Manson State Bank v. Tripp, 248 N.W.2d 105, 108 (Iowa 1976), the Iowa Supreme Court held that a confidential relationship does not arise out of every bank-borrower relationship. The Tripp court opined that a confidential relationship is ordinarily nonexistent in such situations. Id. Iowa courts have held that a confidential relationship arises "when one person has gained the confidence of another and purports to act or advise with the other's interests in mind." Punelli v. Punelli, 364 N.W.2d 259, 261 (Iowa Ct. App. 1984). The gist of a confidential relationship is the presence of a dominant influence by one person over

another. Id. The plaintiff alleging a confidential relationship has the burden to show by clear proof the existence of such a relationship. Id. Once a confidential relationship is shown, however, the effect of such a relationship is to raise a presumption of fraud and undue influence and shift the burden to the party claiming no confidential relationship. Id.

In the present case, we believe there is substantial evidence to support a finding that a confidential relationship existed between Roach and the Key City Bank and Linda. The record reveals that in the initial conversations in November 1981 regarding John's request to borrow \$200,000.00, Roach insisted that Linda transfer her final \$100,000.00 certificate of deposit to the Key City Bank as collateral for Walsh Trading Company. Linda stated she would transfer her assets and the certificate of deposit to the Key City Bank, but reminded Roach that she wished to set up her account so that she could receive the monthly interest. Linda stated to Roach that she needed the monthly interest to support the family, since the monthly interest was at that time the Walshes' primary source of income. From these facts the jury could therefore reasonably find that Linda entrusted her assets and \$100,000.00 certificate of deposit to Roach and the Key City Bank with the express understanding that her assets be protected to the extent that she continue to receive monthly interest. The jury could therefore reasonably find that a confidential relationship existed between Roach, as president of Key City Bank, and Linda.

The record reveals that at the time John sought to borrow \$200,000.00 from Key City Bank, Roach knew that John had already borrowed large sums of money. Even though Roach requested that Linda put up her certificates of deposit as collateral, at no time did Roach inform Linda of the extent of John's debt. Roach testified very positively that he met with Linda on three separate occasions in 1981 and 1982. Roach testified that he kept a detailed

diary of his meetings with Linda and that Linda signed the papers securing her certificates of deposit for John's debt at his office. An examination of Roach's lengthy testimony at trial reveals, however, that Roach was extremely vague when recounting what was discussed at the alleged meetings. Though Roach testified that Linda signed the papers in his office and were notarized in her presence, John positively testified that most of the papers securing Linda's home and certificates of deposit as collateral for John's debts were signed at home and were not notarized in Linda's presence. John testified that some of the papers were filled out by Roach and given to John for him to obtain her signature.

The record also reveals that neither Roach nor any other officer or employee of the Key City Bank ever revealed to Linda the status of John's loans or the delinquencies in payment of the loans which began occurring in the late spring of 1982. John's loans were seriously delinquent. Though Roach knew that Linda's certificate of deposit was to be directly applied to the unpaid balance in case of default, no telephone calls, letters, or other notices were ever sent to Linda informing her of the seriousness of her financial situation. Roach testified that after all the Key City Bank notes became delinquent on July 1, 1982, the bank's attorney sent a letter to both John and Linda informing them of the matter, but no evidence of such letter was ever introduced into evidence. Despite this knowledge, Roach continued to renew Linda's certificate of deposit and pay into her account the monthly interest income. The payments of interest were stopped in November, but not until April 1, 1983, did Linda receive notice that her certificate of deposit was redeemed by the Key City Bank. From this the jury could infer that Roach and the Key City Bank represented to Linda that all was well with her certificate of deposit, when in fact it was in jeopardy of being taken.

There is also substantial evidence from which the jury could conclude that documents signed by Linda and prepared by Roach were themselves confusing and conflicting. On the security agreement and note dated January 3, 1983, for a total of \$112,356.53, the document specifically states that the Key City Bank "has no security interest in and makes no claim to, nor will it in the future acquire any security interest in any real property which will be used . . . as the principal residence of the Debtor." Yet, the "Loan Guaranty Agreement" and "Assignment of Equity" dated January 25, 1982, by their terms stated that Linda's interest in her Arbor Oaks home was assigned to the Key City Bank as security for the \$200,000.00 loan obtained by John in November of 1981. The real estate note dated October 11, 1982, also stated a claim of security in Linda's home. None of the other agreements signed by Linda or John contained the assignment of interest clause.

From the foregoing analysis, we conclude that the jury could reasonably conclude from the evidence offered at trial that John, Roach, and the Key City Bank were guilty of fraudulent misrepresentation. Whether the defendants intended to deceive and defraud Linda was a matter for the jury under all the circumstances in evidence. Hall, 156 N.W.2d at 670. A trier of fact is not bound to accept testimony as true merely because it is uncontradicted. In Interest of G.R., 348 N.W.2d 627, 632 (Iowa 1984). "Testimony may be unimpeached by any direct evidence to the contrary and yet be so contrary to natural laws, inherently improbable or unreasonable, opposed to common knowledge, inconsistent with other circumstances established in evidence, or so contradictory within itself, as to be subject to rejection by the court or by the jury as trier of the facts." Kaiser v. Stothas, 263 N.W.2d 522, 526 (Iowa 1978). We therefore hold that there is clear and convincing evidence to support the jury's verdict.

II.

John, Roach, and the Key City Bank additionally argue that even if there was evidence to support a finding of fraudulent misrepresentation, the evidence was insufficient to support an award of punitive damages and further argue that in any event the punitive damages award was shockingly excessive. We disagree.

The jury assessed \$500,000.00 in punitive damages against John and \$500,000.00 against the Key City Bank. Such an award of punitive damages is justified when a defendant acts maliciously. Midwest Management Corp. v. Stephens, 353 N.W.2d 76, 82 (Iowa 1984). The malice may either be actual (express), such as personal spite, hatred, or ill will, or it may be legal (implied), as where the defendant acts illegally or improperly with willful or reckless disregard for another's rights. Beeck, 350 N.W.2d at 167. Pursuant to our discussion in Division I of this opinion, we find that the jury could reasonably conclude that the defendants' actions involved reckless disregard of Linda's rights. We therefore cannot say the trial court abused its discretion in allowing punitive damages.

In determining whether a punitive damage award is excessive, each case must be determined on its own special facts. Waddell v. Peet's Feeds, Inc., 266 N.W.2d 29, 32 (Iowa 1978). Amounts of damages are primarily for the trier of fact to determine. Beeck, 350 N.W.2d at 164. Since the trier of fact arrives at particular amounts after seeing and hearing the witnesses and viewing all the incidents of the trial, we review the award in a light most favorable to the findings of the trier of fact. Id. Iowa courts have uniformly held that jury verdicts pertaining to damages will not be disturbed on appeal unless they are flagrantly excessive, so out of reason as to shock the conscience, the result

of passion or prejudice, or lacking in evidentiary support. Harsha v. State Savings Bank, 346 N.W.2d 791, 799 (Iowa 1984).

In the present case, the total actual damages award was \$300,000.00. Total punitive damages totalled \$1,000,000.00. Thus the punitive damages awarded in the present case are slightly more than three times actual damages. At first glance the punitive damages award does not appear excessive. Roach and the Key City Bank, however, assert that since they were each assessed actual damages of \$46,000.00, an assessment of \$500,000.00 punitive damages against the Key City Bank is outrageously excessive.

Punitive damages are awarded as punishment and as a deterrent to the wrongdoer. Pringle Tax Service, Inc. v. Knoblauch, 282 N.W.2d 151, 154 (Iowa 1979). The Iowa Supreme Court has held that even a failure to award actual damages will not bar punitive damages when actual damage has been shown and that punitive damages must be reasonably proportionate to the actual damage as shown, and not necessarily as assessed. Id. Applying the above principles to the present case, we hold that the punitive damages assessed against John and the Key City Bank are proportionate to the actual damages sustained by Linda and are not unreasonable in light of the circumstances of the present case.

III.

John, Roach, and the Key City Bank additionally allege that the trial court erred in refusing to submit a number of requested jury instructions. John, Roach, and the Key City Bank first allege that the trial court erred in refusing to instruct the jury on the defense of failing to read the various documents before signing them. John, Roach, and the Key City Bank argue that because their requested instruction was not included, their defense was prejudiced as a result. We find no merit in such argument.

John, Roach, and the Key City Bank requested the following instruction, based upon the language in Miles F. Bixler Co. v. Argyras, 206 Iowa 1081, 1082, 221 N.W. 828, 829 (1928):

You are instructed that where one is capable of reading a written instrument, is not prevented from reading it, and signs it without reading it, that person cannot avoid the document by reason of false representations made by the other party to the instrument prior to signing it and is bound by the terms of the instrument.

Thus if you find that Plaintiff was capable of reading the instruments presented to her in connection with the loans made by the Defendant Bank to Walsh Trading Co. and Walsh Trading Co. Inc., that she was not prevented by the Bank from reading such instruments, and that signed them without reading them, she is bound by the terms of such instruments regardless of any false representations which might have been made to her by Defendants.

Instruction No. 22, which John, Roach, and the Key City Bank allege is insufficient, states:

With regard to Proposition No. 6 of Instruction No. 14, the recipient of a representation of fact is justified in relying upon its truth, although she might have ascertained the falsity of the representation had she made an investigation.

Where, however, the recipient has equal information of certain knowledge as the maker, the recipient has no right to rely upon the maker's statements. Moreover, the recipient of a representation is required to use her senses, and cannot recover if she blindly relies on a representation the falsity of which would be obvious to her if she had used her opportunity to make a cursory examination or investigation.

The recipient's right to rely on the maker's representation must be governed by what she could reasonably be expected to do in view of her own information and intelligence.

We initially note that Instruction No. 22 is virtually identical to Uniform Jury Instructions (Civil) 26.10. Furthermore, Instruction No. 22 adheres to the principles set forth in Lockard, 287 N.W.2d at 877-78. A trial court is free to use its own language in jury instructions and need not use wording suggested by the parties. Knauss v. City of Des Moines, 357 N.W.2d 573, 577 (Iowa 1984). Where the trial court's instructions fairly cover the issues to be decided, and where the instructions, when viewed as a whole, sufficiently convey to the jury

the appropriate legal principles applicable to the issues presented, we will find no reversible error. Bossuyt v. Osage Farmers National Bank, 360 N.W.2d 769, 774 (Iowa 1985). Upon viewing the jury instructions as a whole, we conclude that Instruction No. 22 fairly informed the jury as to plaintiff's duties regarding reliance and duty to investigate. We find nothing inappropriate or misleading in Instruction No. 22.

John, Roach, and the Key City Bank also assert that the trial court erred in refusing to submit to the jury their requested instruction concerning presumption of fair dealing and burden of proof. We disagree.

Under Iowa law it is clear that the "preponderance of clear, convincing, and satisfactory evidence" standard is the appropriate one in damage actions for fraud. Lockard, 287 N.W.2d at 874; Fisher, 282 N.W.2d at 715. Instruction No. 6 in the present case stated to the jury that "[t]he party making a claim has the burden of proving the necessary allegations of their [sic] claim by the preponderance or greater-weight of clear, convincing, and satisfactory evidence." The Iowa Supreme Court, in Omaha Bank, etc. v. Siouxland Cattle Co-Op, 305 N.W.2d 458, 464 (Iowa 1981), held that burden of proof as stated in the present Instruction No. 22 was all that was necessary in informing the jury of the plaintiff's burden of proof. The court held that the trial court was not required to instruct the jury on why the burden of persuasion in a fraud case is phrased as it is. 305 N.W.2d at 464. The court held that on retrial the court should not inform the jury of the presumption of fair dealing. Id. We therefore hold that Instruction Nos. 6, 7, and 8 concerning plaintiff's burden of proof were sufficient and that an instruction concerning the presumption of fair dealing was inappropriate.

John argues that the trial court erred in refusing requested instructions on ratification and loss resulting from circumstances, unrelated to the alleged

fraud, beyond the control of the parties. John additionally argues that the jury should have been instructed on the definition of various legal terms and the law regarding security agreements. Having examined the extensive volume of testimony in the present case, the peculiar facts involved on appeal, and the appropriate authorities, we conclude that John's contentions are without merit. We therefore hold that the trial court did not err in refusing to grant the requested instructions.

We likewise reject Roach and the Key City Bank's argument that the trial court, in refusing to answer a jury question concerning the effect of a document signed without being properly notarized, effectively placed within the jury a misunderstanding that a deficient notarization voids the effect of a signed document. In response to the jury's question, the trial court stated:

The question you have presented is a legal question and this is a function of the Court. Your duty as Jurors is to determine the facts and apply the law given to you in the instructions. The question that you have asked is not an issue in this case and you should consider only those issues which are covered by the instructions.

We find nothing misleading about the court's response. The response was neutral and expressed the idea to the jury that they must consider only those issues presented to them by the instructions. We find no reversible error here.

IV.

Roach and the Key City Bank also contend that the trial court's findings of fact and conclusions of law and judgment as to Count III of Linda's petition, which voids the assignment of equity and real estate mortgage and dismisses Key City Bank's cross-claim for foreclosure, is not supported by substantial evidence. In light of our holding in Division I, we find substantial evidence to support the trial court's judgment as to Count III, and we therefore find no merit in Roach and the Bank's argument.

V.

Roach and the Key City Bank additionally contend that the district court's order confirming the jury verdict was in error. Roach and the Key City Bank argue that the order was silent on whether the \$46,000.00 judgment against both of them was joint or several. They argue that since Roach was president of Key City Bank and that the actions of Roach were also that of the Key City Bank, the liability for the \$46,000.00 is joint and not several. We disagree.

Under Iowa law, a corporate officer is individually liable for torts which he commits while acting within his scope of employment. Grefe v. Ross, 231 N.W.2d 863, 868 (Iowa 1975). In Grefe, the Iowa Supreme Court held that because the corporate officer's liability was based on fraud, and not contract, the fact that the defendant officer had entered into the agreement to loan money in his capacity as corporate officer did not immunize him personally from liability for fraud involved in making the agreement. Id. The principle that a corporate officer is individually liable for fraudulent corporate acts which he committed is supported by several other decisions concerning fraudulent conduct. See Freeman v. Bonnes Trucking, Inc., 337 N.W.2d 871, 879 (Iowa 1983); Briggs Transportation Co., Inc. v. Starr Sales Co., Inc., 262 N.W.2d 805, 808-09 (Iowa 1978). We additionally note that under the principle of respondeat superior, a "master and servant may each and both be liable for a servant's tort committed in the course of employment, with the master ordinarily having right of recourse against the agent in the event the former be held liable for the [tort] of the latter." Graham v. Worthington, 259 Iowa 845, 866, 146 N.W.2d 626, 640 (1966). We therefore find Roach and the Key City Bank's argument that Roach could not be held personally liable for his fraudulent acts since those acts were committed in his representative capacity as being without merit. We additionally note that Roach did not object to the instruction to the jury regarding the assessment

of damages. If Roach believed the instruction to be inadequate, an objection should have been made before the instructions were submitted. Iowa R. Civ. P. 196.

VI.

John lastly contends that the trial court erred in receiving the verdict contrary to Iowa Rules of Civil Procedure 203(b) and 203(c). John alleges that the trial judge walked out of the closed jury room with the unsealed verdict in his hand, dismissed the jury, sent them home, and entered an order confirming the verdict.

Iowa Rule of Civil Procedure 203(b) provides that when a jury agrees on a general verdict, the jury "shall bring the finding into court where it shall be read to the jury and inquiry made if it is the jury's verdict." Rule 203(c) provides that "[w]hen, by consent of the parties and the court, the jury has been permitted to seal its findings and separates before it is rendered, such sealing is equivalent to a rendition and a recording thereof in open court, and such jury shall not be polled or permitted to disagree with respect thereto."

Though the sealed verdict provision of rule 203 may have technically been violated, we do not believe that the trial judge's actions resulted in any prejudice to any of the defendants. The circumstances of the receipt of the verdicts were fully recorded by the trial court. The record reveals that at approximately 12:00 noon the trial judge requested that the court attendant take the jury to lunch. The court attendant shortly thereafter reported that the jury was close to reaching a verdict and did not wish to leave for lunch. At approximately 12:15 P.M., the court attendant advised the trial judge that a verdict had been reached.

The record also reveals that all the courtrooms were being used for other trials at that time. From the record it is apparent that it was the trial judge's

understanding that when deliberations began the verdict would be returned without the physical presence of counsel. Because no other room was available, the trial judge entered the jury room, examined the verdict to ensure that all questions were properly answered, and that the verdict form had been properly signed by seven of the jurors pursuant to a previous one-less-than-all instruction. Finding the verdict form in proper order, the trial judge dismissed the jury.

Shortly thereafter, a hearing was held with all parties in attendance concerning the manner in which the verdict was received. The record reveals that trial counsels were busy with other matters when the verdict was reached. Though the defendants' trial counsel stated that there was no understanding that a sealed verdict was to be used, we are satisfied that such method had been agreed upon and that the trial judge, being present at the time the jury reached the verdict, determined that it would be best to ensure that the verdict was in proper form and properly signed. We find no evidence anywhere in the record that the trial judge in any way attempted to influence the jury or interfered with the recording of the verdict. We therefore hold that none of the defendants was prejudiced by the trial judge's actions.

AFFIRMED.