

IN THE COURT OF APPEALS OF IOWA

No. 9-643 / 88-1710

FILED

JAN 25 1990

CLERK SUPREME COURT

MURPHY OF IOWA, INC.,

Plaintiff-Appellee,

vs.

DAVID PAPLOW,

Defendant-Appellant.

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Appeal from the Iowa District Court for Crawford County,
Terry L. Huitink, Judge.

Defendant appeals a summary judgment granted to plaintiff on two of three promissory notes between the parties, contending genuine issues of material fact exist as to all the notes. **AFFIRMED.**

Robert Kohorst of the Kohorst Law Firm, Harlan, for appellant.

Robert Malloy and Gary G. Matteson of the Malloy Law Firm, Goldfield, for appellee.

Considered by Donielson, P.J., and Schlegel and Hayden, JJ. Sackett, J., takes no part.

PER CURIAM

In April 1988, plaintiff-appellee Murphy of Iowa, Inc. filed a petition at law claiming defendant-appellant David Paplow had failed to pay on three separate promissory notes. Defendant initially appeared pro se and requested time to secure counsel. Eventually, defendant's attorney filed a resistance claiming defendant was not obligated on the notes because there was a condition precedent to his obligation: plaintiff was to pay off certain indebtedness owed by defendant. Defendant claimed this condition was not met by the plaintiff.

On June 6, 1988, the district court granted partial summary judgment, stating that defendant only disputed the amount owed as to one of the three promissory notes. The court entered judgment against defendant on the two remaining notes. After defendant's motion to vacate the judgment on the two notes was denied, he appealed, alleging a dispute as to material facts.

Defendant contends an affidavit signed by him on May 26, 1988, outlines this dispute. He claims the district court considered this affidavit in making its ruling on plaintiff's motion for summary judgment. The record clearly shows, however, that the affidavit was not filed until September 1, 1988. Thus the trial court could not have considered it in making the June 6 ruling.

Defendant had the burden of showing the existence of a genuine issue of material fact in order to successfully resist the motion for summary judgment. Liska v. First Nat'l Bank, 310 N.W.2d 531, 534 (Iowa App. 1981); Iowa R. Civ. P. 237(e). The trial court considered all evidence presented to it by the defendant at the time of the hearing and granted summary judgment. We find the trial court made the correct decision, given the information it had at the time.

The ruling of the trial court is affirmed.

AFFIRMED.