FILED
AUG 27 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

THE FEDERAL LAND BANK OF OMAHA,	)	Filed August 27, 1986
Plaintiff-Appellant,	)	
vs.	)	6-163 85-1397
RICHARD J. BERNS,	)	
Defendant-Appellee.	)	

Appeal from the Iowa District Court for Clayton County (No. C2602-0685), Joseph C. Keefe, Judge.

Plaintiff appeals with permission from the order overruling its motion for summary judgment in a foreclosure action. **REVERSED.**

Dale L. Putman and Andrew F. Van Der Maaten of Strand, Anderson, Wilmarth & Putnam, Decorah, for plaintiff-appellant.

James H. Reynolds, Dubuque, for defendant-appellee.

Heard by Oxberger, C.J., Schlegel, and Sackett, JJ.

OXBERGER, C.J. 89

The plaintiff appeals from the trial court's order overruling the plaintiff's motion for summary judgment. The plaintiff asserts that the evidence was insufficient to generate a genuine issue of material fact as to whether a course of conduct existed between the parties waiving the plaintiff's right to invoke an acceleration clause contained in a mortgage agreement, or relatedly, that if a course of conduct were established, the evidence was sufficient to show that such waiver had been withdrawn. After reviewing the record, we find no genuine issue of material fact and reverse.

Iowa Rule of Civil Procedure 237(c) governs the granting of a motion for summary judgment. That rule provides in relevant part:

> . . . The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavit, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

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

The purpose of a motion for summary judgment is to enable a party asserting a just cause to obtain a judgment expeditiously without the unnecessary expense of a trial where there exists no material issue to be tried. David v. Comito, 204 N.W.2d 607, 608 (Iowa 1973). The burden is upon the movant to show the absence of any genuine issue of a material fact. All material properly before the court must be examined in the light most favorable to the party opposing the motion. Anita Valley, Inc. v. Bingley, 279 N.W.2d 37, 40 (Iowa 1979).

In Westercamp v. Smith, 239 Iowa 705, 31 N.W.2d 347 (1948), the supreme court found a course of conduct effectuating the waiver of an acceleration clause because, "the entire record shows a course of dealings between the buyer and the seller wherein the seller accepted payments made on dates other than those fixed by the contract." After a careful examination of the record in the

instant case, we have been unable to find any issue of material fact as to the existence of a course of conduct sufficient to satisfy this standard. See also Dunn v. General Equities of Iowa, Ltd., 319 N.W.2d 515, 517 (Iowa 1982).

Moreover, rule 237(e) of the Iowa Rules of Civil Procedure requires that:

> . . . When a motion for summary judgment is made and supported as provided in this rule, 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 that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

The defendant has alleged no specific facts evidencing the existence of a course of conduct.

On these bases, we conclude that the plaintiff was improperly denied summary judgment. Because we have found no facts supporting the defendant's argument that the plaintiff waived the acceleration clause, we find it unnecessary to address the appellant's remaining contention concerning the withdrawal of any waiver.

REVERSED.