FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

MIDWAY BANK & TRUST,

Plaintiff-Appellee,

vs.

R. BRUCE HOPKINS,

Defendant-Appellant.

Filed November 26, 1986

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6-320
85-1365

Appeal from the Iowa District Court for Black Hawk County (No. 64764) - James C. Bauch, Judge.

Defendant appeals from judgment for plaintiff in an action upon a promissory note. **AFFIRMED.**

William S. Smith of Smith & Kennedy, Waterloo, for defendant-appellant.

Donald B. Redfern of Redfern, McKinley, Mason & Dieter, Cedar Falls, for plaintiff-appellee.

Considered by Snell, P.J., Schlegel and Hayden, JJ.

HAYDEN, J.

On April 7, 1981, defendant cosigned a $10,000 note with his daughter and son-in-law. The purpose of the original loan was to consolidate and pay off previous debts to the bank at a fixed interest rate of sixteen and one-half percent. Prior to this time, on February 2, 1981, a petition had been filed under Chapter 13 in bankruptcy. This action was converted to a Chapter 7 proceeding on April 13, 1981, and ultimately a discharge from bankruptcy was filed in January 1983. The original loan was refinanced on April 29, 1982, with a new note drawn for $17,500. The note was made so that defendant's daughter and son-in-law could pay their debts and again defendant cosigned. The final note, which is the subject of this appeal, was created to reduce the interest on the existing loan. On December 8, 1982, defendant cosigned this final note which was drawn for $18,078.49.

The lawsuit was commenced on November 10, 1983, based upon the default of the note executed on December 8, 1982. A pretrial ruling on motions adjudicated, inter alia, the couple's 1983 discharge in bankruptcy did not bar the bank's action against defendant and lack of consideration to defendant did not void his obligation, although he could assert as a defense a lack of consideration to the signers of the note. Defendant testified at trial the bank had not disclosed to him its knowledge of his daughter and son-in-law's financial difficulties at the time he was asked to cosign the final note and he probably would not have cosigned if the bank had disclosed information about their debts.

The trial court entered judgment for the bank finding the daughter and son-in-law had received additional consideration for the note "in the way of substantially new money and a substantially reduced interest rate." In determining defendant had failed to establish fraud, misrepresentation, and/or breach of fiduciary duty, the court found he had knowledge the couple was experi-

encing financial difficulty and no material misrepresentations were made by the bank.

On appeal, defendant asserts: (1) the evidence was insufficient to establish the existence of consideration for the note and (2) the evidence was sufficient to establish defendant's claims of fraud, misrepresentation, breach of fiduciary duty, failure to disclose, and negligence.

Our review of the trial court is limited to errors of law. Iowa R. App. P. 4. Therefore, this case is reviewed as tried in the court below. Mosebach v. Blythe, 282 N.W.2d 755, 758 (Iowa 1979). If supported by substantial evidence and justified as a matter of law, the judgment will not be disturbed on appeal. Atlantic Veneer Corp. v. Sears, 232 N.W.2d 499, 502 (Iowa 1975); Iowa R. App. P. 14(f)(1). But the reviewing court is not bound by the trial court's determination of law. Mosebach, 282 N.W.2d at 759.

I.

On appeal, we are presented with an appellant brief that does not comply with the Iowa Rules of Appellate Procedure. Specifically, appellant failed to follow rule 14(a)(3), which provides:

> (3) **A statement of the issues presented for review.** Under each issue separately stated shall be a list of all cases, statutes and other authorities referred to in the argument covering that issue. The authorities which are considered to be the most pertinent and convincing shall be indicated by underlining. Not less than one nor more than four authorities under each separately stated issue shall be so indicated. Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue. (emphasis added)

Here, appellant listed authority under each issue but failed to insert said authority into the body of the argument.

In keeping with our desire to dispose of appeals on their merits, we will consider the issues raised on appeal as we are able to understand them. See

Culligan Soft Water Service v. Berglund, 259 Iowa 660, 662-63, 145 N.W.2d 604, 606 (1966).

II.

Defendant contends the evidence was insufficient to establish the existence of consideration for the note. Included within this assertion is the argument the debt is unenforceable because the debtors failed to properly reaffirm a debt that had been discharged in bankruptcy.

Defendant's daughter and son-in-law (debtors) filed under Chapter 13 of the bankruptcy code on February 3, 1981; this was converted to a Chapter 7 action on April 13, 1981. On April 17, 1981, debtors and defendant drafted a note for $10,000; this note was refinanced on April 29, 1982 and December 8, 1982. Discharge from bankruptcy was rendered on January 7, 1983.

Under Bankruptcy Code section 524(a), a discharge operates as an injunction against the commencement or continuation of an action to collect, recover, or offset any discharged debt as a personal liability of the debtor. 11 U.S.C. § 524 (1984). An exception to this absolute injunction is a reaffirmation agreement. Pursuant to Bankruptcy Code section 524(c), a reaffirmation agreement can be made between creditor and debtor, the consideration for which, in whole or in part, is based on a dischargeable debt. 11 U.S.C. § 524(c) (1984). To be enforceable, the reaffirmation agreement must be made prior to the discharge, the debtor must be given a thirty-day rescission period, and at the discharge hearing the court must give the admonitions required by Bankruptcy Code section 524(c)(1)[1]. See In re Roth, 43 Bankr. 484 (D.C. 1984).

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[1](1) inform the debtor

(A) that such an agreement is not required under this title [11 USCS §§ 1 et seq.], under nonbankruptcy

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Here, the debtors entered the loan to consolidate certain debts. Prior to the actual signing of the loan, debtors consulted with counsel and were advised to seek a reaffirmation from the bankruptcy court. Debtors did not follow this advice. The loan drawn on April 17, 1981, was never approved by the bankruptcy court. Our concern is whether this failure defeats the creditor's action against the cosignor.

Initially we note that we do have jurisdiction. Defendant filed a complaint for an Injunction and Application for Contempt of Court on November 29, 1983, in United States Bankruptcy Court in an attempt to stop plaintiff from enforcing the obligation. On April 10, 1984, the bankruptcy court denied and dismissed this cause. At the state court trial, Mr. Oppold testified the bankruptcy judge concluded he had no jurisdiction. In agreement, we follow the proposition that a bankruptcy court can affect only the relationship of debtors and creditors; it has no authority to affect the obligation of guarantors. R.I.D.C. Industrial Development Fund v. Snyder, 539 F.2d 487 (5th Cir. 1976), cert. denied, 429 U.S. 1095, 51 L. Ed. 2d 542, 97 S. Ct. 1112 (1977).

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law, or under any agreement not made in accordance with the provisions of subsection (c) of this section; and

(B) of the legal effect and consequences of

(i) an agreement of the kind specified in subsection (c) of this section; and

(ii) a default under such an agreement;

(2) determine whether the agreement that the debtor desires to make complies with the requirements of subsection (c)(6) of this subsection, if the consideration for such agreement is based in whole or in part on a consumer debt that is not secured by real property of the debtor.

Where the signatures on a promissory note are admitted, the burden is on the makers to establish any defense. Iowa Code § 554.3307(2) (1985); Manson State Bank v. Tripp, 248 N.W.2d 105, 107 (Iowa 1976). Here, defendant had the burden to show any affirmative defense.

Defendant contends since there was no reaffirmation agreement the loan to the debtors created no consideration because a discharged debt cannot constitute consideration for a refinanced loan. We agree with this premise, but we cannot reach the conclusion that no cause of action exists against the defendant. Defendant had the burden of proof to show the loan created on April 17, 1981, actually involved the refinancing of a discharged debt, and on this ground he failed. The only debts that were shown to have been consolidated were six unsecured loans that were not involved in the bankruptcy action. Defendant continually alleges the refinancing of discharged debts, but does not offer any proof beyond self-serving statements and mere allegations. This failure of proof is fatal to defendant's defense.

Along these same lines, we note a discharge in bankruptcy does not result in extinguishment of debts, but merely frees debtor(s) from personal liability and provides them with a personal defense to debt collection actions. 11 U.S.C. § 524(e) (1984); United States v. Midwest Livestock Producers Coop., 493 F. Supp. 1001, 1002 (E.D. Wisc. 1980); Stewart v. Underwood, 146 Ariz. 145, 148, 704 P.2d 275, 278 (Ct. App. 1985).

The debtors used the $10,000 loan to pay off six undischarged loans. This was sufficient consideration. A cosignor need not receive consideration for the principal loan to be enforceable. 38 Am. Jur. 2d Guaranty § 44 (1968). From the record presented, we conclude sufficient consideration existed and defendant failed his burden of showing that the loan involved a discharged debt.

III.

Finally, defendant contends the evidence presented at trial was sufficient to establish his claims of fraud, misrepresentation, breach of fiduciary duty, failure to disclose, and negligence. We disagree.

After reviewing the briefs and the transcript, we conclude the trial court's decision was supported by substantial evidence and justified as a matter of law.

AFFIRMED.