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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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CAROLINE L. BROMM,	)	
Plaintiff-Appellant,	)	Filed March 9, 1988
vs	)	
BUD CORIERI *and* ***LES CORIERI,***	)	7-416 86-1808
Defendants-Appellees.	)	

Appeal from the Iowa District Court for Hamilton County (No. 23386), Mark S Cady, Judge.

Plaintiff appeals from the district court order dismissing her suit for unpaid wages, statutory attorney fees, repayment of her investment, and punitive damages against her former partners. **AFFIRMED.**

Dan T. McGrevey of McGrevey & Sherman, Fort Dodge, for plaintiff-appellant.

James A. Brewer of Newbrough, Johnston, Brewer, Maddux & Nadler, Ames, for defendants-appellees.

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

DONIELSON, P.J.

On September 19, 1985, appellant, Caroline L. Bromm, initiated the present action, seeking wages allegedly due her and damages allegedly resulting from the fraudulent conduct of appellees Bud Corieri and Les Corieri. The three parties were previously partners in a business known as the "Paradise Tanning Hut," located in Webster City, Iowa. Trouble in Paradise—the failure of that business and Bromm's withdrawal therefrom—serves as the factual catalyst for this suit. The district court concluded that as a partner, Bromm must seek an accounting of the partnership prior to suing her ex-partners. Based upon this conclusion, the court dismissed Bromm's petition. This appeal followed. Our review is limited to the correction of legal errors. Iowa R. App. P. 4.

As as initial matter, we are content to note our agreement with the district court that the evidence produced at trial "fell well short of fraud." In order to succeed on such a claim a plaintiff must demonstrate, by a preponderance of clear, satisfactory, and convincing evidence, the following elements: (1) a material misrepresentation, (2) made with 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. Aquaslide 'N' Dive Corp., 350 N.W.2d 149, 155 (Iowa 1984). Bromm clearly has not done so.

Bromm also seeks unpaid wages and statutory attorney's fees under Iowa Code Chapter 91A, the Iowa Wage Payment Collection Law. Notwithstanding her partnership status, Bromm attempts to bring herself within that chapter, which governs wage payments between "employer" and "employee," by reliance on the following portion of the partnership agreement:

> The said Carolyn [sic] L. Bromm shall be entitled to a salary of $200 [per] week. The partnership shall consider her as an employee and shall carry Workmen's Compensation insurance on her behalf, and for any other employees that may be employed either full-time or part-time by the said Carolyn [sic] L. Bromm.

Bromm contends this provision allows her to come within the protection of the Iowa Wage Payment Collection Law. In addition, she argues, it allows her to overcome the general rule that a partner cannot maintain an action at law against his or her copartners to recover compensation for services rendered the partnership until an accounting of the partnership has taken place. 60 Am. Jur. 2d Partnership § 358 at 244 (1972); see Hanson v. Lassek, 261 Iowa 707, 711-12, 154 N.W.2d 872, 874 (1967). The district court disagreed. So do we.

The district court determined, correctly we believe, that the fact the partnership considered Bromm an employee for workmen's compensation purposes does not make her any less a partner for purposes of the above-noted general rule. Nor, we think, does it turn Bud Corieri and Les Corieri, defendants in the present action, into Bromm's "employers" within Iowa's Wage Payment Collection Law. As the above-quoted portion of the partnership agreement demonstrates, even for the limited purpose of workmen's compensation insurance Bromm's "employer" was the partnership, not the individual partners. The district court's findings are supported by substantial evidence and, we think, are correct applications of the pertinent law. We reject Bromm's arguments to the contrary.

These considerations also mandate our rejection of Bromm's claims to reimbursement for her capital investment in the partnership and for partnership profits. Such claims must await an accounting of the partnership affairs. Hanson, 261 Iowa at 711-12, 154 N.W.2d at 874. As such as accounting has not yet taken place, Bromm's claims are premature and were properly dismissed by the district court.

AFFIRMED.