

IN THE COURT OF APPEALS OF IOWA

FILED

FEB 21 1984

CLERK SUPREME COURT

WILLIAM R. SIEMENS,

Plaintiff-Appellant,

vs.

**TOM OUVERSON, M. WAYNE OLTROGGE,
NADA S. OLTROGGE, JON R. LEE,
KAY E. LEE, and SHORELINE
DEVELOPMENT COMPANY,**

Defendants-Appellees.

Filed February 21, 1984

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Appeal from the Iowa District Court for Cerro Gordo County-Louis F.
Beisser, Judge.

Plaintiff appeals from a judgment for defendants in this action on a
promissory note. AFFIRMED.

James M. Stanton of Boyle, Schuler, Stanton, Grabinski & Sorenson,
Clear Lake, for plaintiff-appellant.

Dewayne A. Knoshaug of Knoshaug & Poppen Law Firm, Clarion, for
defendants-appellees.

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

OXBERGER, C.J.

Plaintiff appeals from a judgment for defendants in this action on a promissory note. Plaintiff asserted that (1) the defendants were guarantors, rather than endorsers, of the note; (2) the court should have admitted parol evidence to explain the intent of the parties, as the document allegedly is ambiguous; (3) the renewal of the note by plaintiff did not discharge it, so defendants remained liable on their guaranties; and (4) this court should adopt a rule that when persons who otherwise would be accommodation parties sign a note primarily to benefit their own business interests, they are co-makers of the note. We affirm.

Plaintiff and defendants Tom Ouverson, Wayne Oltrogge, and Jon Lee are stockholders in defendant Shoreline Development Company, which was formed to build and sell condominiums on the shore of Clear Lake. The company was started by the individual defendants. Plaintiff learned of the corporation from defendant Oltrogge, his lawyer, and subsequently loaned it \$35,000. He also bought twenty percent of the stock.

In early 1978 the corporation needed money again. Plaintiff, who is a prosperous farmer, went to his bank in Britt and obtained a \$65,000 loan. The loan is to plaintiff individually, not the corporation. Plaintiff took the note form to the individual defendants and told them to sign on the back because "that is how the bank wants it."

Plaintiff loaned the \$65,000 to Shoreline, which used part of the money to repay plaintiff for his earlier loans. When plaintiff's note with the bank was due a year later, Shoreline was unable to repay the loan. Plaintiff renewed the note with another personal promissory note, and the bank "assigned" the first note to him. This was evidently an attempt to keep the individual defendants liable on their signatures on the first note, if any liability existed. The plaintiff paid off the second note in several installments.

This is an action at law and our review is on error. Iowa R. App. P. 4.

L. Status of the Signatures

Siemen's main theory is that the individual defendants incurred a contractual obligation to him by signing their names on the reverse side of the \$65,000 promissory note. The trial court found that Iowa Code section 554.3402 controlled and that the signatures were presumed to be those of endorsers and not co-makers. That section states: Unless the instrument clearly indicates that a signature is made in some other capacity it is an endorsement. Iowa Code § 554.3402.

The general rule of law is that " '[b]ills and notes are generally described as contracts, and fundamental rules governing contract law are applicable to the determination of legal questions arising in connection with such instruments, except as modified by statute.' " First Nat'l Bank of Creston v. Creston Implement Co., ____ N.W.2d ____ (Iowa 1983)(emphasis added).

The instrument in question was a promissory note for \$65,000 listing "William R. Siemens" as the debtor. The back of the note had two columns of signature lines: one column, in handwriting, is headed "Personal" and one is headed "Corporate". The individual defendants' signatures appear in the personal column and "Shoreline Developments[,] Tom Ouverson, Pres.[,] M. Wayne Ottrogge, Secy[,] " appear in the "Corporate" column. The note carries no explanation of these signatures. We agree with the trial court that in light of section 554.3402 and without more, these signatures must be resolved to be endorsements. See Uniform Laws Annotated, Uniform Commercial Code § 3-402 (Master ed. 1977) and cases cited therein. Furthermore, "parol evidence is not admissible to show any other capacity... the question is to be determined from the face of the instrument alone, and unless the instrument itself makes it clear

that he has signed in some other capacity the signer must be treated as an [e]ndorser." Iowa Code § 554.3402, Iowa Code Comment. This instrument did not make it clear; nor were the signatures in such a place that the court could judicially notice or otherwise establish "some other capacity." See id. As such, we must find no error in the trial court's ruling that defendants signed as endorsers.

The court further ruled that when the plaintiff attempted to establish by parol evidence a contrary intention of the defendants in signing the promissory note, such was inadmissible. Since parol evidence is not admissible to show any other capacity, we must find no error in that ruling.

II. Liability of the Endorsers

An endorser is liable upon dishonor of a note. See Iowa Code § 554.3414. Neither the original note endorsed by defendants, nor the renewal note used to pay the original note was dishonored. Even if the renewal note saved the rights accrued under the original note as is argued by Siemens, since the renewal note was paid any obligation of the endorsers under that note must also be discharged. As such Siemens has no right of action against the defendants.

Siemens argues that the defendants were guarantors. However, a guarantor's undertaking is to pay the debt if the debtor cannot. First Nat'l Bank v. Drake, 185 Iowa 879, 882, 171 N.W. 115, 116 (Iowa 1919). A guarantor is not primarily liable upon his principal's contract, and only becomes liable upon the default of the latter. Id. at 884, 171 N.W. at 117. Therefore, whether the defendants are endorsers or guarantors, once the debt has been discharged, the defendants have no liability.

Therefore, we agree that defendant's liability has been discharged.

III. Co-Makers

Siemens asserts that this court should adopt a rule that receipt of benefits when a note is signed may be considered as substantial evidence that the party

signed as a co-maker. Siemens cites Lasky v. Berger, 536 P.2d 1157 (Colo. 1975) as authority for that proposition. However, in that case, the exact form of the note was not provided. There is nothing to indicate anything other than that Lasky and Berger signed in the designated blanks provided for makers of notes. Therefore, we are not persuaded to apply Lasky to a situation such as this.

AFFIRMED.