

IN THE COURT OF APPEALS OF IOWA

FILED

OCT 23 1984

CLERK SUPREME COURT

**ROBERT L. STOKES and
SANDRA S. STOKES,**

Plaintiffs-Appellants,

vs.

**THE FIRST NATIONAL BANK OF
WAVERLY, Waverly, Iowa,**

Defendant-Appellee.

Filed October 23, 1984

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4-294
83-1440

Appeal from the Iowa District Court for Bremer County - John F. Stone,
Judge.

Plaintiffs appeal from the judgment for defendant bank in this suit claiming
damages for an allegedly unreasonable sale of repossessed collateral. REVERSED
AND REMANDED.

John S. Pieters of Pieters & Pieters, Waterloo, for plaintiffs-appellants.

Paul W. Riffel of Leslie & Riffel, Waverly, for defendant-appellee.

Considered by Oxberger, C.J., and Snell and Hayden, JJ.

PER CURIAM

The plaintiffs, Robert and Sandra Stokes, were farmers until 1978. On August 18, 1978, the defendant, First National Bank of Waverly, loaned the Stokes \$12,231.70 to prevent another bank from foreclosing on the Stokes' farm equipment while they were trying to sell it. This loan was secured by a 1974 combine, a three-row corn head attachment, a two-row corn head attachment, and a grain platform, all of which the Stokes were trying to sell. The Stokes made some payments on the note but were unable to sell the equipment and eventually defaulted.

The bank, being quite cooperative, granted the Stokes extensions on the note, in hopes that they would find a buyer. The Stokes consigned the goods to a farm equipment dealer and also advertised the goods in local newspapers. A prospective buyer contacted the Stokes in June, 1981, and was referred to the implement dealer. After learning of the bank's security interest, all of his future contact was with the bank. The Stokes were asking \$13,500.00 for the equipment. The buyer offered \$7,000 for the equipment which the bank accepted, apparently without attempting to negotiate a higher price. The facts at this point are somewhat in dispute, but it appears that on June 23 a bank officer telephoned Mrs. Stokes and informed her that they had a prospective buyer. It is not clear whether she orally consented to the sale at that time. On June 24, the buyer delivered a check to the bank and took possession of the equipment. That day, the bank contacted Mrs. Stokes and told her the sale had been completed. Mrs. Stokes became angry and subsequently contacted a lawyer. Following the sale, the Stokes paid the bank the deficiency of \$2,679.89.

Shortly after the sale, the bank informed the buyer that there might be problems with the sale, and that his check would be held for a time. The bank wrote the Stokes on July 23rd, a month following the sale, and told them that they could redeem the equipment by paying the bank \$7,000. The Stokes did not

respond to this letter and on August 4, 1981, the bank endorsed Robert Stokes' name on the check, which was made out jointly to him and the bank, and credited it to the Stokes' loan.

The Stokeses brought this action for return of the amount of the deficiency judgment paid to the bank and punitive damages of \$75,000. The case was tried to the court. The court noted that the bank gave plaintiffs the opportunity to buy the equipment back for \$7,000 and concluded that the plaintiffs acquiesced in the sale in that they knew the price the equipment was being sold for and did nothing thereafter. The petition was ordered dismissed.

Although the bank was very accommodating in granting extensions to the Stokes, we find that it is not entitled to the deficiency because of its failure to comply with the requirements of Iowa Code section 559.9504(3). Section 559.9504(3) states:

Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, if he has not signed after default a statement renouncing or modifying his right to notification of sale.

Iowa Code § 559.9504(5) (1983) (emphasis added).

There is no evidence that the Stokes signed a statement renouncing their rights following the default. The goods were not perishable nor likely to decline speedily in value. The bank did not file an appeal brief explaining their failure to comply with 559.9504(3).

It is clear under Iowa law, that the secured party's failure to give reasonable notice under 554.9504(3) deprives him of his right to recover any deficiency between the sales price of the collateral and the amount of the unpaid balance. Herman Ford-Mercury, Inc. v. Betts, 251 N.W.2d 492, 495-96 (Iowa 1977); Federal

Deposit Ins. Corp. v. Farrar, 231 N.W.2d 602, 605 (Iowa 1975); Twin Bridges Truck City, Inc. v. Halling, 205 N.W.2d 736, 738 (Iowa 1973).

Because of the bank's failure to give reasonable notice of the sale, they should not have been allowed to retain the deficiency paid by the Stokes.

There is no showing that the bank acted willfully or maliciously in failing to give notice. The claim for punitive damages is therefore denied.

The plaintiffs also argue that the equipment was sold for less than the fair market value and that they are entitled to damages for the difference between the fair market value and the amount it was sold for. This issue was not raised in the pleadings and therefore cannot be raised on appeal.

The trial court should have ordered the deficiency payment returned to the plaintiffs.

REVERSED AND REMANDED.