



IN THE COURT OF APPEALS OF IOWA

ROHNER MACHINE WORKS, INC.,
An Iowa Corporation,

Plaintiff-Appellee,

vs.

MOSER FARMS, INC., A Kansas
Corporation, and CARL MOSER,

Defendants,

and ERNEST J. ENGEL,

Defendant-Appellant.

Filed April 23, 1986

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85-719

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Appeal from the Iowa District Court for Muscatine County (No. C2 955-1083) - Linda K. Neuman, Judge.

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

Thomas J. Goodman and Danny McClean of Jenk, Jenk, Goen, McClean & Goodman, Dyersville, and Lyle J. Koenig of Germer, Koenig, Murray, Johnson & Daley, Hebron, Nebraska, for defendant-appellant.

James R. Keele of Keele & Keele, P.C., West Liberty, for plaintiff-appellee.

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

PER CURIAM

Plaintiff Rohner Machine Works, Inc. brought this action to recover on a promissory note which defendant Ernest J. Engel endorsed as guarantor. Rohner operates a machine shop in West Liberty, Iowa. Engel is part-owner of Energy Execs, Inc., and the sole owner of Engel Enterprises, both Nebraska corporations. These corporations were formed by Engel in 1976 as part of an effort to promote, develop, and manufacture a new type of engine. Engel pursued negotiations with a Florida inventor, Joseph Papp, to purchase all of Papp's technology for an engine which synthesizes its fuel out of five inert gases found in the air. By 1978, Engel had come up with about fifty investors to develop the engines and these investors formed Energy Execs, Inc. Engel testified that approximately two million dollars was raised for the engine's development.

Engel first met with Rohner Machine Works, Inc.'s president, Robert J. Rohner, in Nebraska in 1979. At that time Rohner agreed to manufacture the Papp engines after they were developed. Engel also met Carl Moser, the president of Moser Farms, Inc., in 1979. While the rest of the board of Energy Execs disapproved, Engel hired Moser to head the operations concerning Rohner's manufacture of the engines.

In the late spring of 1981, Rohner became concerned when it appeared to him that no one had obtained a fuel license to operate the engine after it was built. In July of 1981, Moser traveled to Florida to negotiate the purchase of the fuel license from Papp. It was disputed at trial whether Moser made the trip on behalf of Engel or Rohner. Papp and Moser agreed to the purchase for \$500,000; \$100,000 down with the balance due after the engines were in production.

Moser contacted Rohner at this time regarding a \$100,000 loan. A promissory note was executed on July 29, 1981, for the sum of \$100,000, plus interest

at the rate of eighteen percent per annum until September 29, 1981, the note's due date. The money was payable to Rohner Machine Works, Inc. in West Liberty, Iowa. The note was signed by Moser Farms, Inc., by Carl A. Moser, and personally guaranteed by Carl A. Moser and Ernest J. Engel.

Rohner then loaned the \$100,000 to Moser. Although subsequent demands for payment were made, no part of the note was repaid. Rohner later obtained from Joseph Papp the license to manufacture the engine and fuel.

After trial, the district court entered judgment in favor of Rohner. On appeal, Engel asserts that: (1) the order which initially sustained his special appearance should not have been vacated and he lacked the minimum contacts with the state necessary to support an exercise of in personam jurisdiction; (2) the evidence was sufficient to establish the affirmative defense of duress and/or coercion; (3) he did not receive the benefit of the bargain and the note should therefore not be enforced; (4) the evidence was insufficient to show consideration for the note; and (5) the note should not be enforced against him as guarantor in the absence of an attempt to collect from the maker.

Because Engel's appeal was not timely filed, it must be dismissed. Iowa R. App. P. 5(a) provides that:

Appeals to the supreme court must be taken within, and not after, thirty days from the entry of the order, judgment or decree, unless a motion for new trial or judgment notwithstanding the verdict is provided in R.C.P. 247, or a motion as provided in R.C.P. 179(b) is filed, and then within thirty days after the entry of the ruling on such motion

This provision is mandatory and jurisdictional. Kunau v. Miller, 328 N.W.2d 529, 530 (Iowa 1983). Iowa R. Civ. P. 247 provides a motion for new trial "must be filed within ten days after the verdict, report or decision is filed, or the jury is discharged, as the case may be, unless the court, for good cause shown and not ex parte, grants an additional time not to exceed thirty days."

While it is well settled that a proper motion for new trial extends the time for appeal, an improperly filed motion for new trial cannot enlarge or extend the statutory period for taking an appeal. Matter of Estate of Dull, 303 N.W.2d 402, 404 (Iowa 1981); Lutz v. Iowa Swine Exports Corp., 300 N.W.2d 109, 110 (Iowa 1981) ("An untimely posttrial motion is defective and does not toll the running of the thirty-day period within which an appeal must be taken.")

In the case at bar, the trial court's decision was filed on March 20, 1985. Engel's notice of appeal was not filed until May 22, 1985, which clearly exceeds the thirty-day period. The timeliness of Engel's appeal is therefore dependent upon the propriety of his posttrial motion for a new trial.

On April 4, 1985, Engel filed a motion for new trial claiming that he did not receive the trial court's decision until March 28 and requesting additional time for filing the motion. The trial court granted the additional time requested, considered the merits of the motion for new trial, and denied the motion.

We find that Engel's motion for extension of time and new trial was not timely, and therefore did not extend the thirty-day period for filing notice of appeal. Any extensions of time for filing posttrial motions must be filed before the expiration of the ten-day period specified in Iowa R. Civ. P. 247. Rudolph v. Iowa Methodist Medical Center, 293 N.W.2d 550, 554 (Iowa 1980). Rule 247 establishes a deadline by which the motion for extension must be filed. Id.

We can only conclude that Engel's appeal was not timely filed and is hereby dismissed.

AFFIRMED.