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IN THE COURT OF APPEALS OF IOWA

MARY G. BRINDLE, Executor of)
the Estate of George Brindle,)
Deceased,)

Appellee,)

vs.)

JOHN L. RINGGENBERG,)

Appellant.)

Filed June 24, 1977

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No. 2-57971

Appeal from Hardin District Court -- A. J. Braginton,
Judge.

Appellant appeals a judgment entered by the trial court
on a fraud case tried in equity - AFFIRMED.

William N. Dunn, of Dunn Law Firm, of Eldora, counsel for
appellant.

John L. Butler and R. Kurt Swaim, of Lundy, Butler, Wilson,
& Hall, of Eldora, counsel for appellee.

Heard by Allbee, C. J., Donielson, Snell, Oxberger and
Carter, JJ.

DONIELSON, J.

Defendant, Ringgenberg, appeals judgment entered by the trial court cancelling promissory note given by the plaintiff to the defendant for purchasing an interest in a corporation, the net worth of which, the defendant allegedly misrepresented to the plaintiff. The court also ordered the cancellation of a note given to Ringgenberg by the plaintiff for a special assessment for "*working capital*" which was in effect reimbursement for funds Ringgenberg had advanced to the corporation. The court found that the plaintiff purchased an interest in a corporation which was worth grossly less than what it was represented to be. Also, the defendant had misrepresented how the special assessment proceeds would be utilized.

This case was filed and decided in equity and appeal comes to us for a review de novo pursuant to First National Bank in Lenox v. Brown, 181 N.W.2d 178, 181 (Iowa 1970). See also 37 Am.Jur.2d *Fraud & Deceit* §326 (1968).

The defendant asserts that the plaintiff should not be entitled to rely upon the alleged misrepresentation of the defendant where the plaintiff's conduct and knowledge do not permit such reliance.

We find that the trial court's ruling was correct in finding that Brindle had a right to rely upon the statements of Ringgenberg as to the net asset value of the corporation. The facts concerning the financial status of the corporation were peculiarly and exclusively within the knowledge of Ringgenberg. Hise v. Thomas, 181 Iowa 700, 705, 165 N.W. 38, 49 (1917); Christy, v. Heil, 255 Iowa 602, 123 N.W.2d 408 (1963).

The appellant-defendant urges us to apply the exception of the limited doctrine of equal opportunity to the instant

fraud case. Wead v. Ganzhorn, 216 Iowa 478, 249 N.W. 271 (1933). However, it was clear from the record that Ringgenberg was in complete control of the corporation. On the other hand, Brindle had no knowledge of the true facts and no means of ascertaining them. We are also guided by a rather old but still applicable case of Fort v. Ott, 186 Iowa 820, 828, 173 N.W. 121, 124 (1919) which held: *"A person guilty of fraud may not be heard to urge that his victim ought to have found him out in time to have prevented the wrongdoer from perpetrating the wrong undertaken."* See also Andrew v. Baird, 221 Iowa 83, 92, 265 N.W. 170, 175 (1936).

The defendant's second error contends that the trial court erred in not permitting him to assert laches in the present case. This argument will not be considered since the defendant failed to pleaded laches and thereby precludes him from raising this defense on appeal. Holi-Rest, Inc. v. Treloar, 217 N.W.2d 517 (Iowa 1974).

AFFIRMED.