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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-423 / 93-1505

JIM ARENS,

Appellee,

vs.

HERBERT L. DORFMAN,

Appellant.

Appeal from the Iowa District Court for Bremer County, Stephen P. Carroll, Judge.

Defendant appeals the decision of the district court finding a previous release did not bar plaintiff's claim of breach of an oral loan agreement. **AFFIRMED.**

Mark W. Fransdal of Redfern, Mason, Dieter, Larsen & Moore, Cedar Falls, for appellant.

H. Daniel Holm, Jr. of Ball, Kirk, Holm & Nardini, P.C., Waterloo, for appellee.

Considered by Hayden, P.J., and Cady and Huitink, JJ.

HAYDEN, P.J.

Jim Arens filed an action against Herbert Dorfman based on two alleged counts of breach of an oral loan agreement made in May 1986. The district court found Arens was entitled to recovery, and we affirm.

Arens and Dorfman met in 1958, and Arens testified he considered Dorfman a personal friend. Arens was employed by, and eventually president of, the First National Bank of Waverly (Bank). Dorfman was a director of the Bank. He owned an auto supply business in Waverly.

In 1980 Dorfman asked Arens to have the Bank make a loan to Jim Denning, an automobile dealer. Denning owed Dorfman money for auto supplies. Arens told Dorfman the Bank would approve the loan if Dorfman would personally guarantee it. Dorfman agreed, and a loan of $25,000 was made. The Bank took the titles to several vehicles as collateral. Per its usual practice, the Bank did not perfect liens on the vehicles, but only held the titles.

After Denning stopped making payments on the loan, the Bank discovered he had obtained duplicate titles and had sold the collateral. Denning subsequently declared bankruptcy. In October 1981 Arens asked Dorfman to fulfill his guarantee of the loan. Dorfman told Arens he did not have the money and stated he would have to obtain a loan. With Arens' assistance, Dorfman obtained a loan for $20,230 from the Iowa State Bank of Clarksville and paid off the Denning loan in full. Thus, after October 1981, there was not a Denning debt, but only a Dorfman debt.

Dorfman made no payments on the loan. In October 1982 he obtained a loan at the Bank, and paid off the debt at Iowa State Bank. Dorfman made no payments on this loan either, but in 1984 persuaded Denning to pay $6000 on the debt. During this period of time, Dorfman was experiencing some financial difficulties with his business.

In April 1986 Arens became concerned because bank examiners were coming to the Bank, and Dorfman, a director, had a nonperforming loan. At this point, due to accumulated interest, the debt was $28,818. Again with Arens' assistance, Dorfman obtained a new loan from the Farmers State Bank of Plainsfield to pay off his debt at the Bank. However, because of Dorfman's financial condition, Farmers State Bank would lend him only $24,000. Dorfman asked Arens to personally lend him $5000 to make up the difference, and Arens did so.

Shortly thereafter, after further reviewing Dorfman's financial situation, Farmers State Bank told Dorfman he would have to pay $12,000 of the debt immediately. Dorfman told Arens he did not have the money and asked Arens to personally lend him $12,000. Arens agreed to obtain a loan and pay $12,000 to Farmers State Bank.

Arens was terminated from his employment at the Bank in September 1986. He asked Dorfman to repay him the $17,000 which he had lent him. Dorfman did not refuse to pay or tell Arens he did not owe the money. He did not repay Arens, however. Dorfman treated the $5000 as a loan for tax purposes.

Arens initiated a suit against the Bank and its directors, including Dorfman, for wrongful discharge. On March 1, 1989, the parties entered into a settlement. In pertinent part, the settlement provided:

> Upon receipt of the payment provided for in Paragraph 1 of this Stipulation of Settlement, Jim and Louise Arens will file a Dismissal with Prejudice of said lawsuit and execute and deliver to Bank and all Defendants a complete Release of claims on which said lawsuit is based and any other claims or cause of action arising out of his employment with Defendant Bank.

The release filed with the court contained similar language. Arens testified he asked for this specific language because he did not intend to release his personal claim against Dorfman based on the oral loan agreements.

Arens then filed this suit alleging Dorfman breached an oral agreement to pay him $17,000 plus interest. Dorfman claimed the release barred Arens' claims. The district court found the release was not intended to cover the personal loans Arens made to Dorfman and Arens was entitled to recovery under the theories of promissory estoppel and unjust enrichment. The court entered judgment against Dorfman for $20,343, which represented principle of $17,000 plus $3,343 in interest. Dorfman appealed.

This case involves mixed questions of law and equity. The petition and the district court's ruling designate it as a law case. We conclude our review is for the correction of errors at law. Iowa R. App. P. 4.

I. Dorfman contends the district court erred by finding the March 1, 1989, release did not bar Arens from bringing the present suit. Dorfman believes the language of the release is ambiguous and it should be construed against Arens, who chose the specific language used. He states the release should be construed broadly to include any claims which may be reasonably related to Arens' employment at the Bank. He claims the facts which give rise to the present action so intertwines Arens' actions as president of the Bank and as an individual we should conclude the suit arises from Arens' employment with the Bank. Dorfman argues Arens should have specifically reserved his claim against Dorfman in the release in order to preserve this claim.

A release is a contract, and its validity is governed by the usual rules relating to contract. Stetzel v. Dickenson, 174 N.W.2d 438, 439 (Iowa 1970). The cardinal principle is the intent of the parties must control and, except in cases of ambiguity, this is determined by what the contract itself says. Verne R. Houghton Ins. Agency, Inc. v. Orr Drywall Co., 470 N.W.2d 39, 42 (Iowa 1991). A release must be construed according to its terms. Rich v. Dyna Technology, Inc., 204 N.W.2d 867, 870 (Iowa 1973).

The question of whether a claim is precluded by a prior release depends upon whether the claims arose out of the same facts, and thus, is a question for the trier of fact, not a matter of law. Verne R. Houghton, 470 N.W.2d at 43.

Where claims arise out of the same incident, a release of one party is held to be a release of the entire controversy, absent any reservation of a right to sue. Robinson v. Norwest Bank, 434 N.W.2d 128, 130 (Iowa App. 1988). However, where the incidents are separate, a release is not construed so broadly. Id.

In the present case, the district court found the claims arose from two separate incidents. We determine there is substantial evidence to support the court's finding. Arens' wrongful discharge claim arose when he was terminated from his position as president of the Bank. The present claim arose from an oral loan agreement. Because the claims arose from two separate incidents, Arens was not required to reserve the right to sue to preserve his claim against Dorfman.

Furthermore, we find the release was not intended to apply to the claims in this case. Arens testified he specifically did not want to release his claims against Dorfman. Dorfman testified he never considered the issue of the personal loans during the settlement negotiations for the wrongful discharge suit. We find no error in the district court's construction of the terms of the release.

II. Dorfman contends the district court erred in finding Arens was entitled to recovery under the doctrine of promissory estoppel. He claims there was no clear and definite oral agreement between them. Dorfman states he never felt any obligation to pay the Denning debt and

thought it should have been written off as a bad debt by the Bank. He states, therefore, he did not agree to repay Arens for the amounts Arens paid toward the Denning debt.

The three elements of promissory estoppel are: (1) a clear and definite agreement; (2) proof the party urging the doctrine acted to its detriment in reasonable reliance on the agreement; and (3) a finding the equities support enforcement of the agreement. In re Estate of Graham, 295 N.W.2d 414, 418 (Iowa 1980). The burden of proving estoppel is on the party asserting it, and strict proof of all elements is required. National Bank of Waterloo v. Moeller, 434 N.W.2d 887, 889 (Iowa 1989).

Under Restatement (Second) of Contracts § 90 (1981), an agreement for purposes of promissory estoppel is a promise which the promisor should reasonably expect to induce action on the part of the promisee. Id.

We conclude there is evidence of a clear and definite agreement in the present case. The evidence supports a finding Dorfman realized he was responsible for the Denning debt, otherwise there is no good reason why Dorfman would have signed a series of promissory notes in the amount of the debt. Eventually, when his financial condition would not permit him to obtain a promissory note for the full amount of the debt, Dorfman sought to borrow money from Arens, which carried with it the expectation Dorfman would pay the money back. Arens acted in reasonable reliance on this expectation by giving Dorfman $17,000, which was used

to pay Dorfman's debt. Dorfman has presented no evidence to show why Arens would have been responsible for the Denning debt or any reason why Arens would have voluntarily paid a portion of the debt.

We conclude the district court correctly found there was a clear and definite oral agreement between Arens and Dorfman.

III. Dorfman claims the district court erred by finding the equities supported enforcement of the agreement because Dorfman had received unjust enrichment. He states he did not actually receive any of the $17,000, and thus, he was not unjustly enriched.

Unjust enrichment is an equitable principle mandating one shall not be permitted to unjustly enrich oneself at the expense of another or to receive property or benefits without making compensation for them. West Branch State Bank v. Gates, 477 N.W.2d 848, 851-52 (Iowa 1991).

Here, Arens loaned money to Dorfman, which allowed Dorfman to pay some of his debt. The fact Dorfman immediately used the money is beside the point. Dorfman benefited by receiving money from Arens. If Dorfman was not required to pay back the loan, he would be unjustly enriched.

We affirm the decision of the district court requiring Dorfman to pay back the money he received from Arens. Costs of this appeal are assessed to Dorfman.

AFFIRMED.