FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

HAWKEYE BANK AND TRUST,)

Plaintiff-Appellant,)

vs.)

GERMAINE E. BECHEN,)

Defendant-Appellee.)

Filed October 29, 1985

144 5-422
84-1799

Appeal from the Iowa District Court for Jackson County - James R. Havercamp, Judge.

Plaintiff bank appeals from judgment upon a verdict for the defendant, co-signer of a promissory note. **AFFIRMED.**

Kenneth E. Wright, of Goodenow, Wright & Machowski, Maquoketa, and Deborah S. Robertson, of Robertson & Robertson, LaPorte City, for the plaintiff-appellant.

David E. Schoenthaler and Glenn Bartelt, of Schoenthaler, Schoenthaler, Roberg & Bartelt, Maquoketa, for the defendant-appellee.

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

PER CURIAM

Dennis Bechen, a farmer, borrowed money on a promissory note from Hawkeye Bank and Trust Company. Dennis' mother, Germaine, co-signed promissory note. The borrowed money was not repaid when due, and the bank filed a petition against both Dennis and Germaine. However, Dennis later filed bankruptcy, and his obligation was discharged. The bank's suit proceeded against Germaine. Germaine asserted several affirmative defenses including fraudulent misrepresentation. She alleged that the bank had procured her signature as co-signer by fraudulently misrepresenting Dennis' financial condition, his prospects of success in farming, and the consequences to her of co-signing the note.

The jury returned a verdict in favor of Germaine and found on a special verdict form that Germaine had established the affirmative defense of fraudulent misrepresentation. The bank filed a motion for judgment notwithstanding the verdict and a motion for new trial alleging that Germaine's evidence failed to prove the elements of fraudulent misrepresentation. The trial court overruled these motions. The bank has appealed from the resulting judgment contending the trial court erred in overruling its motions.

Plaintiff in its brief seeks to reargue the facts anew. The jury is the trier of fact and their findings of fact are binding upon us if supported by substantial evidence. Iowa R. App. P. 14(f)(1). In a motion for judgment notwithstanding the verdict, as with a motion for directed verdict, the court views the evidence in the light most favorable to the party against whom the motion was made. Iowa R. App. P. 14(f)(2). After viewing the evidence in the light most favorable to the defendant, if reasonable minds could differ on that issue, then it is appropriate to submit the issue to the jury and the verdict should be upheld. Dennett v. City of Des Moines, 347 N.W.2d 691, 692 (Iowa App. 1984). In ruling upon

a motion for new trial, broad discretion is vested in the trial court. Iowa R. App. P. 14(f)(3).

In establishing fraudulent misrepresentation as a defense to an action on a promissory note, defendant Germaine must have proven representation, falsity, materiality, scienter, intent to deceive, reliance, and resulting injury and damage. Manson State Bank v. Tripp, 248 N.W.2d 105, 107 (Iowa 1976).

Germaine and Dennis met with plaintiff's bank officers concerning Dennis' financial condition for approximately two hours on January 12, 1983. A week later Germaine had her second meeting with plaintiff's bank officers at which such time she co-signed the note in question. There is some conflict in the testimony about what happened at those two meetings, but the evidence is to be viewed in the light most favorable to Germaine to determine whether there is substantial evidence to support the jury's verdict.

Germaine testified that she told the bank officers that she would not sign and that they kept pressuring her. She testified that the bank officers told her "there's no other way out," and if she did not sign, they would have a farm sale.

There is evidence in the record that plaintiff bank failed to disclose to Germaine these following facts: (1) that Dennis' net worth had dropped $40,000 in one year, (2) that the amount of Dennis' current debts were approximately twice the amount of his current assets, and (3) that should Germaine have to pay the loan how that payment would affect her financial condition. Defendant's banking expert testified that plaintiff bank was under a duty to disclose these facts to Germaine. The record also indicates that Germaine had reason to believe these facts would be disclosed in light of her long-standing relationship with plaintiff bank.

There was ample evidence for the jury to find that the misrepresentations substantially affected the transaction since Germaine testified she would not have co-signed the note if she had known the undisclosed facts. There is evidence in the record that defendant bank knew that Dennis' financial condition had seriously deteriorated and that Germaine did not know or fully understand this fact due to her limited financial experience.

We find there is substantial evidence in the record to support the jury's verdict for defendant Germaine. We affirm the trial court's denial of plaintiff's motion for judgment notwithstanding the verdict and motion for new trial.

AFFIRMED.