

IN THE COURT OF APPEALS OF IOWA

No. 9-340 / 88-1472

FILED

OCT 05 1989

CLERK SUPREME COURT

**PRODUCTION CREDIT ASSOCIATION
OF THE MIDLANDS n/k/a Mason City
Production Credit Association,**

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Plaintiff-Appellee,

vs.

**STEVEN C. LUNDT,
Defendant,**

IRENE LUNDT a/k/a IRENE M. LUNDT,

Defendant-Appellant,

**STEVEN C. LUNDT, As Coexecutor of
the CATO LUNDT ESTATE, Cerro Gordo
Probate No. 16796; UNITED STATES OF
AMERICA; FRED C. LUNDT; CHRIS LUNDT;
and SHEFFIELD FARMERS CO-OP; CERRO GORDO
COUNTY, IOWA; and PAPPAJOHN, SHRIVER,
EIDE & NICHOLAS,
Defendants.**

Appeal from the Iowa District Court for Cerro Gordo
County (49464), John C. Scoles, Judge.

Defendant-appellant appeals a district court order
rejecting her motion to quash general execution concerning
certain real estate and her resistance to garnishment of
her banking account. **AFFIRMED IN PART, REVERSED IN PART
AND REMANDED.**

Susan Cameron of Legal Services Corporation of Iowa,
Sioux City, for defendant-appellant.

Richard H. Moeller of Laird, Burlington, Heiny,
McManigal, Walters & Winga, Mason City, for
plaintiff-appellee.

Considered by Oxberger, C.J., and Sackett and Habhab,
JJ.

SACKETT, J.

Defendant-appellant Irene Lundt appeals a district court order denying her motion to quash general execution concerning certain real estate and her resistance to garnishment of her checking account. She contends plaintiff-appellee, Mason City Production Credit Association, was equitably estopped from pursuing a deficiency judgment against her, and the contents of her checking account were protected from garnishment by Iowa Code section 642.21. We affirm the district court as to the estoppel issue, but reverse and remand as to the garnishment issue.

Our scope of review is de novo. Iowa R. App. P. 4. We give weight to the district court's findings of fact but are not bound by them. Iowa R. App. P. 14(f)(7).

Defendant and her former husband, Steven Lundt, have been involved in foreclosure proceedings with the plaintiff since 1982. Defendant separated from her husband in October 1984 when he moved into a house the couple had purchased in Mason City. Defendant continued to live in the couple's farm house on the mortgaged real estate. Their marriage dissolution was finalized in July 1987.

Steven Lundt has been very uncooperative throughout the foreclosure and dissolution proceedings. It is believed he has concealed a great many assets from both the plaintiff and defendant. From time to time, plaintiff sought the

assistance of defendant in uncovering hidden assets and obtaining Steven's agreement to leases and settlement arrangements. Defendant alleges plaintiff promised not to pursue her for any deficiency in the foreclosure action, in return for her assistance. Plaintiff claims it made no such guarantee, and any agreement not to pursue defendant was conditioned on plaintiff obtaining full recovery of the debt from Steven. None of these agreements were ever reduced to writing. Testimony on the alleged nature of these agreements was confusing.

Plaintiff obtained a foreclosure judgment joint and severally against defendant and Steven Lundt in July 1986. The mortgaged real estate was sold the following September. Plaintiff attempted to collect part of the deficiency in April 1988 by filing a general execution against the Mason City house. The Mason City house had been awarded to defendant in the dissolution decree. Plaintiff also garnished defendant's checking account. In May 1988 defendant filed a motion to quash the general execution and a resistance to the garnishment. The district court ruled in favor of plaintiff on both issues. Defendant appeals, alleging plaintiff is estopped from pursuing any deficiency judgment against her. According to defendant, the doctrine of equitable estoppel prevents plaintiff from pursuing her for the deficiency because plaintiff had promised her it would not do so in return for

her help in the foreclosure matter. Plaintiff claims no such promises were made to defendant.

A party asserting equitable estoppel must establish each of the following elements by clear and convincing evidence:

- (1) A false representation or concealment of material facts;
- (2) lack of knowledge of the facts on the part of the actor;
- (3) intent of the party making the representation that the actor rely on it; and
- (4) reliance on the false representation of concealment, resulting in prejudice and injury to the party who relies.

Bettendorf Ed. Ass'n v. Bettendorf Community School Dist., 262 N.W.2d 550, 553 (Iowa 1978); Affiliated Foods, Inc. v. McGinley, 426 N.W.2d 646, 647 (Iowa App. 1988). The defendant has not met this burden.

Defendant alleges plaintiff failed to inform her of its true intention to pursue her if necessary to obtain the entire deficiency amount. Therefore, by indicating that it would not pursue her under any conditions, plaintiff concealed a material fact from defendant. We do not find the plaintiff agreed never to collect the deficiency from defendant. We determine defendant knew, or should have known, plaintiff would only avoid pursuing her if her cooperation netted a satisfactory settlement between plaintiff and Steven Lundt. We find no material facts were concealed from the defendant.

Defendant also alleges she relied on plaintiff's promises to her detriment. Defendant claims she gave up certain legal defenses to cooperate in the foreclosure proceedings. Her attorney testified he was not certain he would have proceeded differently in the absence of plaintiff's alleged promise not to pursue defendant. Defendant's cooperation, while helpful to plaintiff, was beneficial to defendant herself. Plaintiff had a joint and several judgment against defendant and Steven Lundt. Any amount collected from Steven on the judgment reduced defendant's personal liability. We find defendant has not met her burden of establishing all the elements of equitable estoppel. We affirm the district court's denial of defendant's motion to quash the execution against her Mason City home.

Defendant next argues that even if plaintiff is not equitably estopped from pursuing payment of the deficiency from her, the moneys in her checking account were disposable wages, exempt from garnishment. Iowa Code section 642.21 exempts an individual's disposable earnings "to the extent provided by the federal Consumer Credit Protection Act, Title III, 15 U.S.C. secs. 1671-1677 (1982)." Iowa Code § 642.21 (1987). Plaintiff contends, and the trial court found, this section only protects wages when in the hands of the employer. We disagree with the trial court on this issue.

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In MidAmerica Savings Bank v. Miehe, 438 N.W.2d 837 (Iowa 1989), the supreme court held that personal earnings exempt under section 642.21 continue to be exempt when deposited in a checking or savings account by the employee. Id. at 839. To maintain exempt status, the funds must be traced to wages received within ninety days preceding the levy. Id. at 839-40. The trial court did not have the benefit of MidAmerica at the time it rendered its decision.

Defendant testified that all the funds in her checking account at the time of garnishment were wages, deposited within a three-week period prior to the garnishment. We reverse the trial court and find the funds were disposable earnings, exempt from garnishment to the extent provided by the Federal Consumer Protection Act, Title III, 15 U.S.C. sections 1671-1677 (1982) and Iowa Code section 642.21. We remand to the trial court to determine what, if any, of these funds were subject to garnishment after applying the dictates of the Consumer Protection Act and Iowa Code section 642.21.

Costs on appeal are taxed one-half to each party.

AFFIRMED IN PART, REVERSED IN PART AND REMANDED.