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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

PEOPLES BANK AND TRUST COMPANY,	)	
Plaintiff-Appellant,	)	
vs.	)	
DANIEL P. SCHWARTZ,	)	8-328 88-43
Defendant-Appellee.		

Appeal from the Iowa District Court for Black Hawk County (No. 68631), William G. Klotzbach, Judge.

Peoples Bank appeals from an adverse ruling determining the nature of loan arrangements between the parties. **AFFIRMED.**

Charles F. Hinton, Bruce B. Zager, and Stuart Hoover of Hinton & Zager Law Firm, Waterloo, for plaintiff-appellant.

Daniel P. Schwartz, defendant-appellee, appearing pro se.

Heard by Donielson, P.J., and Sackett and Habhab, JJ.

HABHAB, J.

Plaintiff, Peoples Bank & Trust Company, appeals the decision of the district court dismissing its petition against the defendant, Daniel Schwartz, regarding a letter of credit signed by the plaintiff. The district court found failure of consideration. We agree and accordingly affirm.

The plaintiff brought suit on a document it referred to as a promissory note. The defendant defended on the ground that such document was a letter of credit and that no funds were drawn against it; nor did he ever personally receive any of the funds. The court held for the defendant.

Peoples Bank argues the district court erred 1) in making findings of fact unsupported by substantial evidence or based on evidence not properly before the court; 2) in denominating the contract in question as a letter of credit rather than a promissory note; and 3) in failing to find a valid third-party beneficiary contract.

Our review is at law on errors assigned; we review the evidence in a light most favorable to the trial court's decision. Kurtenbach v. TeKippe, 260 N.W.2d 53 (Iowa 1977). It was for the trial court to determine the credibility of the witnesses and the weight to be accorded their testimony. Hawkeye Specialty Company v. Bendix Corporation, 160 N.W.2d 341, 343 (Iowa 1968). As the supreme court stated in Brickacek v. Hiskey, 401 N.W.2d 44, 47 (Iowa 1987):

> In a matter tried to the court, the court's findings of fact have the force of a jury verdict and we view the evidence in the light most favorable to those findings. If the findings are supported by substantial evidence, we are bound by them. Iowa R. App. P. 14(f)(1). The findings are broadly and liberally interpreted and in the case of ambiguity are construed to uphold the judgment. Murray v. Conrad, 346 N.W.2d 814, 817 (Iowa 1984).

See also Iowa R. App. P. 14(f)(1).

Daniel Schwartz is the secretary and one of two stockholders in a corporation known as Associated Manufactures Corporation (AMCO). The other stockholder and director of AMCO is Rowland Sverdahl, who was, at all times material, also the president of the plaintiff bank.

The corporation specialty was the sale of fertilizing plants manufactured by AMCO. The defendant, as secretary of the corporation, had previously worked closely with Mr. Sverdahl, as president of Peoples Bank, in arranging financing for the corporation. On those occasions, AMCO would secure financing by a letter of credit from the bank. The money under the letter of credit would not be advanced to the corporation until it had produced work orders, which in turn were used as collateral for the money then loaned. These were standard conditions required by the bank in such transactions.

On September 30, 1985, the defendant signed two separate documents at the bank, No. 133464 and No. 133465. Document No. 133464 was signed by the defendant in his

capacity as secretary of AMCO and specific collateral is listed on its face. It is undisputed that this was a promissory note for $156,339.58. It is not involved in this suit.

As it relates to document No. 133465, the bank requested the defendant sign this document in his individual capacity because the corporation was experiencing cash flow difficulties and the depressed economy had prompted the bank to take additional measures in transactions such as these.

As a result, document No. 133465 in the amount of $62,500 was signed in the defendant's individual capacity. However, no collateral is listed on the document securing the money in question as is the case with document No. 133464, which admittedly is a promissory note.

The defendant testified at some length and unswervingly upon cross-examination that he understood the second document to be a letter of credit to draw against in the event a signed order for a fertilizer plant was brought into the bank. This was the course of conduct carried on between the plaintiff and the corporation in all previous transactions. The defendant further testified that the agreement was that he would not be advanced any monies pursuant to the second document until he had brought in signed work orders, and then only after a showing of "work in process."

After explaining the procedure that had to be employed before a claim against the letter of credit took place, the defendant testified he was unable to procure any work orders nor did he ever personally or for the corporation seek money under this document. As it relates to the distribution of funds, it is clear that the defendant did not personally receive any of the funds. It is equally clear and without dispute that the money was used by the bank to consolidate and pay down loans made by the bank to the corporation. In this respect, the record reflects that the bank had loaned the corporation money on previous occasions. Those loans were in jeopardy. The money under the defendant's individual loan was used by the bank to pay itself for the money borrowed by the corporation and which the corporoation was unable to repay. Further, the defendant denied any knowledge of the transference of funds in the manner undertaken by the bank until the week before trial.

The plaintiff asserts the district court erroneously held that the document in question was a letter of credit and not an enforceable contract with consideration because it relied upon evidence not properly put before the court. The bank seeks to exclude the testimony of the defendant as incompetent, irrelevant, and immaterial. We disagree with this evidentiary contention of the plaintiff. Even when the controversial testimony is excluded, there is other substantial evidence to support the trial court's finding.

The plaintiff also asserts that because a major portion of the defendant's testimony was stricken, the court must have relied upon Mr. Schwartz's opening statement as testimony. There is no evidence in the record that the trial court proceeded in this manner. Accordingly, we find this argument without merit.

The plaintiff further argues that document No. 133465 cannot be held to be a letter of credit as defined by law. Traditionally, letters of credit are described as documents used in the sale of goods by which the issuer will honor drafts or demands for payment upon the condition that the merchant (seller) will provide to the bank documents specified in the letter of credit. First National Bank of Council Bluffs v. Rosebud H. Authority, 291 N.W.2d 41, 44 (Iowa 1980). When we review the record,we find substantial evidence to support the trial court's holding that document No. 133465 was a letter of credit.

The bank next argues that because the money ultimately benefited the corporation, the document should be held as a third-party beneficiary contract. It was for the trial court to test the credibility of the witnesses. In this respect, the trial court was unwilling to accept the testimony of the plaintiff's witnesses as true. The trial court on the contrary, when it found that the instrument in question was a letter of credit, determined essentially that the funds from the letter of credit was to be

disbursed to the defendant upon production of work orders and bills for raw materials to be used as collateral. Instead of doing this, the bank transferred the money to consolidate other corporate loans without the defendant's knowledge or consent and contrary to the agreement. There is substantial evidence in the record to support the trial court's finding. The trial court's findings of fact have the force of a jury verdict. If the findings are supported by substantial evidence, we are bound by them. We accordingly affirm the trial court.

AFFIRMED.

Donielson, P.J., concurs; Sackett, J., specially concurs.

SACKETT, J. (specially concurring)

I concur in the result only.