FILED
FEB 25 1987
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

127

HAROLD C OVESEN and ESTHER E. OVESEN,

Plaintiffs-Appellants,

vs

WILTON SAVINGS BANK, A Banking Corporation,

Defendant-Appellee.

Filed February 25, 1987

6-504
86-655

Appeal from the Iowa District Court for Muscatine County (No. C2939-983) - Edward B deSilva, Jr , Judge.

Plaintiffs appeal a judgment for defendant in a breach of contract action.

AFFIRMED

David Scieszinski, Wilton, for plaintiffs-appellants.

John R Pearce of Stanley, Lande, Coulter & Pearce, P.C., Muscatine, for defendant-appellee

Considered by Schlegel, P.J., and Hayden, and Sackett, JJ.

PER CURIAM

Plaintiffs appeal a judgment for defendant in a breach of contract action. We affirm.

Plaintiffs' petition at law alleged that defendant bank had breached an oral agreement under which plaintiffs would invest savings at the bank and, using the savings as collateral, obtain loans at a favorable rate of interest. The bank was also to provide free entertainment to plaintiffs.

Plaintiffs invested $40,000 at the bank in six-year certificates of deposit. In 1979 they obtained a $40,000 loan on terms consistent with the alleged agreement. They were also taken out to dinner by officers of the bank on two occasions. After the first loan was repaid the bank refused to make a second $40,000 loan upon terms as favorable as were sought by plaintiffs. The plaintiffs did not cash in their certificates of deposit prematurely and attempt to reinvest elsewhere. A six months' interest penalty would have been charged had they done so.

Two bank employees testified that no agreement as alleged was reached and that the first loan was made consistent with a bank policy which had changed at the time the second loan was requested. They also testified that the two occasions of entertainment were not part of any agreement.

The trial court found that plaintiffs had failed in their burden of proving the existence of an oral agreement, most particularly with regard to the element of a meeting of the minds. The court also stated that if a contract had been established, plaintiffs had failed to take certain steps to mitigate damages.

Our review is on errors of law. Iowa R. App. P. 4. Therefore, this case is viewed as tried in the court below. Mosebach v. Blythe, 282 N.W.2d 755, 758 (Iowa 1979).

The trial court found that the plaintiff did not establish, by a preponderance of the evidence that the alleged oral contract existed nor what its terms were, nor any reliance in the alleged contract by the plaintiff. We agree with these conclusions The preponderance of the evidence does not reveal the existence of a contract There was no mutual assent Without this, there was no contract See Service Employees Intern v Cedar Rapids Community School District, 222 N W 2d 403, 408 (Iowa 1974) The trial court's findings were supported by substantial evidence and we affirm its judgment.

AFFIRMED