FILED
DEC 29 1992
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-384 / 91-849

LIBERTY BANK AND TRUST, f/k/a FOREST CITY BANK AND TRUST COMPANY,
Appellee,

vs.

DONALD A. CROSSLEY, PATRICIA CROSSLEY, and LARRY A. CROSSLEY,
Appellants,

and

FRANCIS BALLARD,
Defendant.

DONALD A. CROSSLEY, PATRICIA CROSSLEY, and LARRY A. CROSSLEY,
Counter-Plaintiffs-Appellants,

vs.

LIBERTY BANK AND TRUST, f/k/a FOREST CITY BANK AND TRUST COMPANY,
Counter-Defendant-Appellee.

Appeal from the Iowa District Court for Winnebago County, Jon S. Scoles, Judge.

The Crossleys appeal from a district court judgment and decree of foreclosure dismissing their counterclaims against Liberty Bank, entering judgment against Donald and Patricia Crossley on unpaid promissory notes, and foreclosing Donald and Patricia Crossley's assignment for security purposes in favor of the bank. **AFFIRMED.**

John F. Arens, Gregory T. House, and Joshua J. Dara, Sr. of Arens Law Firm, Fayetteville, Arkansas, for appellants Donald and Patricia Crossley.

Greg W. Steensland, Ames, then Larry A. Crossley, Forest City, pro se, for appellant Larry Crossley.

Mark L. McManigal of Shearer, Templer & Pingel, P.C., West Des Moines, for appellee.

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

OXBERGER, C.J.

In March 1973, Donald and Patricia Crossley entered into a real estate contract with James and Francis Ballard to purchase a 240-acre farm. This contract is yet to be paid in full.

Since 1983, the Crossleys have borrowed money from Liberty Bank. In April 1985, the bank loaned the Crossleys over $165,000 pursuant to a promissory note. At the same time, the Crossleys executed a loan agreement which provided for a line of credit and short-term notes subject to several conditions. Also in April 1985, the Crossleys executed an assignment for security purposes concerning their rights as contract purchasers of the farm. Several other notes were executed subsequent to these agreements.

In April 1986, the Crossleys defaulted in their payments to Liberty under the various notes. In October 1986, Francis Ballard assigned her interest as vendor in the real estate contract to the Crossleys' son, Larry. Larry then was required to make the payments as provided by the 1973 contract. According to the terms of that Assignment, the consideration provided was Larry's agreement to "make all payments necessary to bring such Contract and Addendums to Contract current through such date [November 30, 1986]." In September 1988, Larry and Francis released the Crossleys from any liability under the contract. The Crossleys never paid the amount owed under the contract. Subsequently, the Crossleys executed a notice of revocation of their assignment to Liberty since they no longer had rights in the real estate.

In October 1988, Liberty Bank filed a petition in equity seeking to recover on the unpaid promissory notes and to foreclose the April 1985 assignment for security purposes concerning the farm. The Crossleys filed a counterclaim against the bank for breach of contract, promissory estoppel, fraud, interference with contract, and breach of obligation of good faith and fair dealing. The Crossleys claimed that the bank should have continued to provide them financing. The bank's attempt to assert a fraud defense to the counterclaims was denied.

The counterclaim case proceeded to trial first. The district court directed a verdict for the bank on all claims, except breach of contract and fraud. The jury found for the bank as to the remaining counterclaims. The court then considered the bank's petition. Following trial on the bank's claim, the district court entered judgment in favor of the bank on the notes and concerning the assignment. The court found the assignment an equitable mortgage that was not extinguished by the actions of Larry and Francis. Following judgment, a decree of foreclosure was entered, determining that Liberty Bank's interest in the farm was superior to all defendants subject to the 1973 contract. A receiver was subsequently appointed.

Following entry of the foreclosure decree, Donald and Patricia Crossley, as well as Larry Crossley, filed notices of appeal. Donald and Patricia primarily object to the dismissal of their counterclaim action, while Larry argues with the foreclosure of the farm pursuant to the equitable mortgage.

I. **Admissibility of Evidence of Crossley's Financial Statements.** Crossleys first contend the district court erred in allowing cross-examination regarding the accuracy of information provided by Crossleys in their financial application. The Crossleys claim the evidence was inadmissible since the court had previously denied the Bank's motion to include fraud as an affirmative defense in its pleadings.

The scope of cross-examination is within the sound discretion of the trial court. Avery v. Harms Implement Co., 270 N.W.2d 646, 649 (Iowa 1978). We reverse only on a showing of abuse of discretion and then only if it appears prejudice resulted. Id.

> Under our rules, cross-examination is limited to matters testified in chief. However, this does not mean counsel is restricted to a categorical review of those matters testified to on direct examination. We have said cross-examination may be used to rebut not only the direct testimony but the presumptions or inferences which such testimony reasonably raises.

Id. at 650 (citations omitted).

In this case, counsel for Crossleys questioned numerous witnesses regarding the Crossleys' financial statements and financial condition. In addition, the Crossleys' loan file, including their financial application, was admitted in evidence on the motion of Crossleys' counsel.

Questioning regarding the accuracy of the information was not beyond the scope of direct examination. Counsel for Crossleys "opened the door" during direct examination. Accordingly, the trial court did not abuse its discretion in allowing cross-examination regarding the accuracy of that information.

II. **Directed Verdict**. Crossleys next contend the district court erred in granting the Bank's motion for a directed verdict against the Crossleys on their counterclaims for interference with contract, promissory estoppel, and breach of obligation of good faith and fair dealing.

A directed verdict is appropriate in cases where each element of the claim is not supported by substantial evidence. Oberreuter v. Orion Industries, Inc., 398 N.W.2d 206, 209 (Iowa App. 1986). A court ruling on a motion for directed verdict must view the evidence in the light most favorable to the nonmoving party. Beitz v. Horak, 271 N.W.2d 755, 757 (Iowa 1978); Iowa R. App. P. 14(f)(2). Movant is considered to have admitted the truth of all evidence offered by nonmovant and every favorable inference that may be deduced from it. B & B Asphalt Co. v. T. S. McShane Co., 242 N.W.2d 279, 284 (Iowa 1976). To overrule the motion, the court must find substantial evidence in support of each element of nonmovant's claim. Beitz, 271 N.W.2d at 757. If reasonable minds could differ, an issue is for the jury. Harvey v. Palmer College of Chiropractic, 363 N.W.2d 443, 444 (Iowa App. 1984). The trial court is vested with considerable discretion in determining whether evidence is sufficient. Hoover's Hatchery, Inc. v. Utgaard, 447 N.W.2d 684, 687 (Iowa App. 1989).

The trial court correctly ruled the interference with contract and promissory estoppel counterclaims were essentially breach of contract claims. The Crossleys' attempt to rely on alleged oral representations made prior to the written contract between the parties to support these claims. They argue they should be permitted to submit evidence of oral agreements to the jury. The parole evidence rule forbids use of extrinsic evidence to vary, add to, or subtract from a written agreement. Pappas v. Hauser, 197 N.W.2d 607, 611 (Iowa 1972). In addition, the Crossleys fail to cite to portions of the transcript which support the existence of the alleged oral agreements. The Bank officials testified no oral agreements were made. Accordingly, the trial court did not abuse its discretion in finding the evidence insufficient to support Crossleys' claims of interference with contract and promissory estoppel.

The obligation of good faith constitutes "an implied term of the contract requiring cooperation on the part of one party to the contract so that another party will not be deprived of his reasonable expectations." Corenswet, Inc. v. Amana Refrigeration, Inc., 594 F.2d 129, 138 (5th Cir. 1979) (applying Iowa law.)

The trial court concluded the Crossleys failed to establish by a preponderance of the evidence that the Bank failed to act in good faith or that it failed to act reasonably in the performance of its obligations under the agreement. The court noted voluminous evidence was presented regarding the duties of the parties under the loan agreement and their performance of those duties. There is no evidence in the record to indicate the trial court erred in directing a verdict. Accordingly, we affirm the trial court.

We now turn to the claims presented by Larry Crossley.

III. Equitable Mortgage. Crossley contends the district court erred in granting the Bank an equitable mortgage. He claims the Bank acquired only a buyer's interest in the property and, accordingly, cannot foreclose on the property.

In March 1973, the Crossleys purchased the property on contract from James and Francis Ballard. At that time, equitable title to the property passed to the Crossleys. See Newbury v. McCammant, 182 N.W.2d 147, 151 (Iowa 1970).

Subsequently, the Crossleys assigned the property to the Bank for security purposes. The assignment of the interest of a vendee in a contract for the sale of land as security for a debt creates an equitable mortgage. See 59 C.J.S. Mortgages § 14(b) (1949 & Supp. 1992).

Accordingly, we affirm the trial court's ruling that the assignment executed by the Crossleys created an equitable mortgage in favor of the Bank.

Larry Crossley next contends that a subsequent complex series of transactions resulted in a forfeiture of the contract. We hold it was not a forfeiture pursuant to Iowa Code Chapter 656 and, accordingly, did not have the effect of eliminating the equitable mortgage held by the Bank. We also note the Bank did not receive notice of any forfeiture.

Both the Crossleys and Larry Crossley raise numerous additional issues. We have reviewed their contentions and find them without merit. We affirm the trial court in all respects.

AFFIRMED.