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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-426 / 88-1054

BRENTON NATIONAL BANK OF DES MOINES,

Plaintiff-Appellee,

vs.

JOHN L. HENSS, RUTH K. HENSS, and **JOHN L. HENSS, CPA, P.C.,**

Defendants-Appellants.

Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge.

Defendants appeal a district court order entering judgment against the defendants on a promissory note. **AFFIRMED.**

Richard A. Bartolomei, Des Moines, for appellants.

Bernard L. Spaeth, Jr., and Gary A. Norton of Whitfield, Musgrave & Eddy, Des Moines, for appellee.

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

PER CURIAM

This case is a suit on a promissory note given to Brenton National Bank of Des Moines, plaintiff-appellee, by John L. Henss, Ruth K. Henss, and John L. Henss, CPA, P.C., defendants-appellants. The issues before us deal with the amount of indebtedness, the time specified for payment, and payments provided for under the terms of the indebtedness.

This appeal follows a trial court order entering judgment for plaintiff on the note. The note was in the principal amount of $391,652.08. It had a variable rate of interest and specified certain dates for principal payments. The controversy centers around a principal payment in the amount of $53,000 due November 15, 1985. In defendants' answer to the petition, they raised as an affirmative defense a claim they had tendered the amount due but the tender had been refused. They also alleged as an affirmative defense that any acceleration of the note was in bad faith and unconscionable under the circumstances.

The trial court heard the evidence of plaintiff and defendants. After defendants had presented their case, certain motions, including a motion for directed verdict, were made. The trial court ruled on the motions orally and then filed a written ruling on the motion for directed verdict and judgment entry. By virtue of the ruling, judgment was entered in plaintiff's favor. Defendant has appealed.

Defendants raise a series of issues on appeal directed to (1) the procedure utilized by the trial court to reach judgment, (2) the failure to find defendants had tendered payments to keep the note current that were rejected, and (3) claims of UCC violations, including unconscionability of the note in question.

The case is a law action and went to trial before the trial court without a jury. Our review is for correction of errors at law. Iowa R. App. P. 4. Fact-findings of the trial court will be affirmed if supported by substantial evidence. Iowa R. App. P. 4.

I.

Defendants argue the trial court erred in directing a verdict because in doing so it impermissibly weighed the evidence, and the ruling did not properly consider defendants' affirmative defenses. To be successful on this issue defendants must show any error affected the result. Baysinger v. Haney, 261 Iowa 577, 583, 155 N.W.2d 496, 499 (1968). Defendants contend the order appealed from is a ruling on a motion for directed verdict, the trial court erred in making factual determinations in said motion, and the trial court failed to find defendants had tendered payment to keep the note current.

The challenged ruling contains findings of fact made by the trial judge sitting in a law action as judge and jury at the conclusion of defendants' case in chief. We,

therefore, examine those findings to determine whether they are supported by substantial evidence. See Chariton Feed & Grain, Inc. v. Harder, 369 N.W.2d 777, 782 (Iowa 1985). We will affirm the trial court on any ground, whether urged or not. According to the note, a payment of $53,000 plus interest was due November 15, 1985. In August 1985 defendants had paid plaintiff $28,000 for the release of real estate secured by the loan. Defendants contend the plaintiff had agreed this $28,000 payment would be credited toward the November 15, 1985, payment. Plaintiff denied such an agreement.

On November 15, 1985, defendants tendered $57,592.67, which they contend was the amount of principal and interest due November 15, 1985, less $28,000. The plaintiff, while contending the tender was insufficient, held defendants' tender and tried to work something out. Ultimately, the tender was returned to defendants.

The trial court found as a part of its findings of fact that the payment due on November 15, 1985, was $53,000 principal plus $34,818.22 interest, and there was no evidence to support a finding the $28,000 payment was made in partial satisfaction of the November 15 payment. Defendants acknowledge in their brief there was conflicting evidence on the issue of whether the tender was made in a correct amount. There being substantial evidence to support these findings, we affirm on these issues.

II. 33

Defendants' next argument is the plaintiff violated the Uniform Commercial Code in several respects. Defendants' brief does not direct us to where this issue was raised at the trial court level, and we do not, on our independent review of the record, find it to have been raised at the trial court level. Issues will not be considered for the first time on appeal. Kroblin v. RDR Motels, Inc., 347 N.W.2d 430, 434 (Iowa 1984); Thomas Truck & Caster Co. v. Buffalo Caster & Wheel Corp., 210 N.W.2d 532, 535 (Iowa 1973).

AFFIRMED.