



IN THE COURT OF APPEALS OF IOWA

No. 9-469 / 89-174

422

WELLMAN SAVINGS BANK,

Plaintiff-Appellee,

vs.

VERNA ADAMS,

Defendant-Appellant.

Appeal from the Iowa District Court for Keokuk County,
Dan F. Morrison and James P. Rielly, Judges.

Appellant appeals a district court order reforming the
loan guaranty agreement between the parties and later
entering judgment in favor of the Bank against her for the
guaranty amount. **REVERSED.**

William L. Mearden of Meardon, Sueppel, Downer & Hayes,
Iowa City, for appellant.

William S. Vernon of Moyer & Bergman, Cedar Rapids, for
appellee.

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

SCHLEGEL, P.J.

Adams appeals a district court order reforming the loan guaranty agreement between the parties and later entering judgment in favor of Wellman Savings Bank (Bank) against Adams for the guaranty amount. Adams contends that the district court erred in: (1) reforming the loan guaranty agreement prepared by the Bank by deleting reference to discounted notes; and (2) excluding extrinsic evidence concerning the circumstances under which the guaranty was signed. The Bank seeks a limited remand of this case for the purpose of fixing attorney fees for appeal. We reverse.

In 1983, David Dumont, Verna Adams' son, desired to expand his hog operation. David contacted the Bank about securing a loan for this operation. The Bank informed David that the signature of a suitable guarantor would be necessary before the Bank would extend a loan. Verna agreed to act as guarantor.

On June 3, 1983, Verna and David went to the Bank where Verna executed a loan guaranty agreement. The agreement provided that Verna would guarantee payment of notes not exceeding \$25,000 made by David, "already discounted or which may hereafter be discounted by the bank" The guaranty was declared to be a continuing guaranty until all obligations existing at the time Verna revoked the guaranty were paid.

In September 1984, the Bank sent Verna a letter informing her of David's debts and requesting an updated financial statement from her. Verna completed the form and returned it to the Bank but she did not list her guaranty obligation as a liability.

In October 1985, the Bank filed suit seeking a judgment against Adams for \$25,000 based on her loan guaranty agreement. Adams answered, claiming that she was only liable for "discounted notes." None of David's notes were "discounted." Adams also alleged that her guaranty extended only to the first \$25,000 in debts her son incurred and not to subsequent obligations.

In a bifurcated trial, the district court first reformed the guaranty by eliminating the reference to "discounted notes." The district court then found Adams liable for the \$25,000 guaranty. Adams has appealed.

The bifurcation of the trial requires this court to apply a separate scope of review for each issue. The action to reform the contract is an equitable action and our scope of review is de novo. "Constructive trusts and reformation of instruments are recognized heads of equity jurisdiction; such relief is exclusively equitable in nature." First National Bank In Sioux City v. Curran, 206 N.W.2d 317, 320 (Iowa 1973). See also Detrick v. Aetna Casualty And Surety Co., 261 Iowa 1246, 158 N.W.2d 99 (1968). We have a duty to examine the entire record and

adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7). The essential character of a cause of action and the relief it seeks, as shown by the complaint, determine whether an action is at law or equity. Moseback v. Blythe, 282 N.W.2d 755, 758 (Iowa App. 1979). Where the primary right of the plaintiff arises from nonperformance of a contract, where the remedy is money, and where the damages are full and certain, remedies are usually provided at law. Id. The contract action below was tried at law. Our scope of review as to that issue is on assigned error only. Iowa R. App. P. 4.

Appellant contends reference to the word "discounted" in the contract should not have been deleted by the trial court. In order to reform a contract it is necessary to show a mutual mistake or a mistake on the part of one party and fraud or inequitable conduct on the part of the other and that the policy as written does not express the agreement of the parties. Detrick, 261 Iowa 1255, 158 N.W.2d 105. One who seeks reformation contending the instrument does not reflect the real agreement between the parties has the burden of establishing his contention by clear, satisfactory and convincing proof. Kufer v. Carson,

230 N.W.2d 500, 503 (Iowa 1975). Reformation, of course, does not mean changing terms of an instrument but refers to a change in the instrument to reflect the real agreement of the parties. Id. If an instrument as written fails to express the true agreement between the parties, equity will grant relief without regard to the cause of the failure to express the agreement as actually made, whether it is due to fraud, mistake in the use of language, or anything else which prevented the instrument from expressing the true intention of the parties. Walnut Street Baptist Church v. Oliphant, 257 Iowa 879, 887, 135 N.W.2d 97, 102 (1965).

Based on these general principles, the trial court's reformation of the contract does not express the true agreement between the parties. The record is clear that Verna Adams was not to have continuing liability on the debts of her son. There is substantial evidence to show that the guaranty was to cease after repayment of the money used to purchase the hogs. The equities clearly lie with Verna. The Bank made representations that would lead her to believe her obligation would be over after payment for the hogs. The Bank also drew up the contract and therefore the contract shall be construed strictly against it. Id. at 101. The intent of the parties was to allow Verna to exit from further dealings after this repayment. A bank deals in this type of transaction every day and must take care to make clear to guarantors exactly what their

liabilities are. The trial court erred in reforming the contract to delete the reference to the discounted notes.

The construction of the contract is incorrect as a matter of law. The rejection of the trial court's reformation requires reversal of the law action. Verna Adams is no longer liable as guarantor because there are no discounted notes.

REVERSED.