IN THE COURT OF APPEALS OF IOWA

No. 0-963 / 10-1093
Filed March 30, 2011

BANK OF THE WEST, Successor in Interest to COMMERCIAL FEDERAL BANK, F.S.B.,
Plaintiff-Appellee,

vs.

EARLY FARM PARTNERSHIP and PARTIES IN POSSESSION,
Defendants-Appellants.

Appeal from the Iowa District Court for Appanoose County, Daniel P. Wilson, Judge.

The Early Farm Partnership appeals from the district court's grant of summary judgment to Bank of the West. **AFFIRMED.**

Robert C. Gainer and Jerrold Wanek of Garten & Wanek, Des Moines, for appellants.

Jason M. Steffens and Lynn Wickham Hartman of Simmons, Perrine, Moyer, Bergman, P.L.C., Cedar Rapids, for appellee.

Heard by Vogel, P.J., and Doyle and Tabor, JJ.

DOYLE, J.

In this mortgage foreclosure action, the Early Farm Partnership appeals from the district court's order granting summary judgment in favor of Bank of the West, as successor-in-interest to Commercial Federal Bank. The partnership contends summary judgment was inappropriate because it raised genuine issues of material fact as to whether Kevin Early, a partner in the partnership, lacked authority to act individually for the partnership and whether the bank knew that he lacked such authority. Finding no genuine issues of material fact that affect the validity of the mortgage, we affirm the district court's ruling.

***I. Background Facts and Proceedings*.**

When viewed in the light most favorable to the defendants, the summary judgment record could establish the following facts: In 1998, Kevin Early and his father, Richard Early, entered into a partnership agreement creating the Early Farm Partnership, with Kevin and Richard each being fifty-percent partners. The purpose of the partnership was

> to acquire, own, mortgage, lease, sell or otherwise dispose of farm real estate and engage in farming operations and to do anything necessary or incidental to the foregoing and such other business matters that are lawful in the State of Iowa.

Under the agreement, "[a]ny partnership decision having a substantial effect upon the interest of the partnership, or of any partner, shall require the unanimous agreement of the partners." No modifications or amendments to the agreement were "valid or binding unless and until each modification or amendment shall have been reduced to writing and executed by each of the parties hereto."

Additionally, the partnership was to continue indefinitely unless terminated by mutual agreement of the partners, and the partnership was not to be dissolved in the event of a death of one of the partners. Upon the death of a partner:

> The legal representative of the deceased party shall . . . elect either to retain the partnership interest of the decease partner, or to sell the interest to the surviving partner . . . . In the event the interest of a deceased partner is retained, the owner of such interest shall not be admitted as a partner, but shall only have an interest in the profits or losses of the partnership.

Richard Early died on March 20, 2004. Richard's wife (and Kevin's mother) Sheila Early subsequently entered into an oral agreement with Kevin that she would step into the shoes of her deceased husband and be admitted as a partner and a one-half owner of the partnership. In stepping into Richard's position, she assumed his pro-rata share of the entirety of the legal and equitable rights due a partner under the agreement.

At some point thereafter, Mid-States Mfg. & Engr., Inc. (Mid-States), a corporation owned by Kevin and Audra Early, requested a loan from Commercial Federal Bank (CFB). CFB's loan officer required assets of the partnership as collateral to secure Mid-States's loan. Kevin informed the loan officer that Sheila was an admitted partner in the partnership and she was a required signatory for any mortgage instrument affecting the partnership's assets.

On December 29, 2004, Mid-States executed a written promissory note, signed by Kevin and Audra as directors, in favor of CFB for the principal sum of $435,000, together with interest. To secure payment on the note, on the same date, the partnership executed and delivered in favor of CFB a mortgage that encumbered certain real property owned by the partnership. The mortgage was

signed only by Kevin as "general partner" of the partnership. Included in the mortgage is a "Grantor's Representations and Warranties" clause that stated, in part: "Grantor warrants that . . . Grantor has the full power, right, and authority to enter into this Mortgage and to hypothecate the Property . . . ." On the last page of the mortgage was a "Partnership Acknowledgment" executed by a notary (the loan officer), which stated in part:

> On this 29th day of December, A.D., 2004, before me, the undersigned Notary Public . . . personally appeared Kevin D. Early of Early Farm Partnership, . . . who being by me duly sworn, did say that he . . . is one of the partners or designated agents of said partnership, and that the instrument was signed . . . on behalf of the partnership by authority of the partnership . . . .

Additionally, Kevin executed and delivered to the bank a "Partnership Authorization." This authorization stated: "At a meeting of the partners of the Partnership . . . the agreements and authorizations set forth in this Authorization were adopted." The authorization further stated Kevin was authorized on behalf of the partnership to mortgage or encumber partnership property as security for the Mid-States loan.

Additionally, to further secure the note, the partnership later made, executed, and delivered to Bank of the West a commercial security agreement, again signed only by Kevin on behalf of the partnership. This agreement, dated October 20, 2007, includes a "Grantor's Representations and Warranties" stating, in part: "Grantor warrants that . . . Grantor has the full right, power and authority to enter into this agreement and to pledge the Collateral to Lender . . . ." On the same day, Kevin on behalf of the partnership executed an extension agreement that references the commercial security agreement.

In a November 28, 2007 amendment to the extension agreement, signed by Kevin on behalf of the partnership, it is stated: "Grantors each represent and warrant that the execution, delivery and performance of the Amendment and the documents referenced herein are within the authority of . . . the Grantors and have been duly authorized by all necessary action." The same language is included in a second amendment to extension agreement executed by Kevin on behalf of the partnership in 2008. The same language is also included in the third amendment to the extension agreement signed by Kevin on behalf of the partnership in 2009.

On April 27, 2009, Bank of the West, as successor-in-interest to CFB, filed a petition to foreclose its mortgage. The bank sought judgment in rem against the partnership's real estate in the amount of $304,326.85, plus attorney fees, costs, and interest. The petition alleged defaults under the note and security documents for failure to make payments as agreed.

On August 19, 2009, the bank filed a motion for summary judgment. The partnership resisted, asserting the mortgage encumbering the partnership's real estate was invalid because Sheila Early did not sign the mortgage. Specifically, the partnership argued that the bank was aware that the partnership agreement had been orally modified to admit Sheila as a full partner in the partnership, and it failed to have Sheila execute any mortgage securing the partnership's property. The partnership supported its resistance to the motion for summary judgment with, among other things, the affidavits of Kevin, Sheila, and the loan officer. Kevin's affidavit states, in part:

> [The loan officer] was informed by both me, and the Early Farm Partnership attorney, that Sheila Early was an admitted partner and a required signatory for any mortgage instrument affecting Early Farm Partnership assets.
>
> [The loan officer] was informed of Sheila Early's status as an admitted partner of Early Farm Partnership prior to my signing any mortgage on any assets of Early farm Partnership.
>
> [The loan officer] required execution by both myself and Sheila Early on the mortgage for Early Farm Partnership; however, [the loan officer] never obtained Sheila Early's signature.

Sheila's affidavit states, in part:

> I did not sign any document conveying my interest, or the partnership's interests, in any assets of Early Farm Partnership to Bank of the West.
>
> I did not, now [sic] would I, authorize Early Farm Partnership to enter into any agreement wherein a benefit would not inure to the Early Farm Partnership itself.

The loan officer's affidavit states, in part:

> Prior to issuing any loans to Kevin Early that were to be collateralized by assets of Early Farm Partnership, I was aware of Sheila Early's status as an admitted partner in the Early Farm Partnership.

The partnership asserted that material factual questions existed as to the validity of the mortgage document, such that summary judgment was not proper.

Following hearing, the district court entered its ruling granting the bank's motion for summary judgment. The court concluded:

> Under section 486A.301(1) [of the Iowa] Code, each partner is an agent of the partnership for purposes of its business.
>
> > An act of a partner, . . . binds the partnership, unless the partner had no authority to act for the partnership in the particular matter, and the person with whom the partner was dealing with knew or had received a notification that the partner lacked authority.
> >
> > . . . .
>
> There may be some issue raised with respect to Sheila Early's position in the [partnership], acquired subsequent to [Richard's] death in 2004. However, any such dispute is not a dispute of material fact that affects the validity of the mortgage or other

> documents now being enforced by [the bank] in this foreclosure proceeding. [Kevin] was empowered to bind the partnership to the obligations that the bank now seeks to enforce.

The partnership moved to amend and enlarge the findings and modify judgment. One question it raised was whether, in reaching its conclusion Kevin had authority to act for the partnership, the court determined the bank knew or had received a notification Kevin lacked authority. Citing to the affidavits of Kevin and the loan officer, the partnership asserted the bank had received notification that Kevin lacked authority, acting alone, to enter into the mortgage. As to that question, the bank responded the partnership read too much into the affidavits and that it had submitted no evidence demonstrating someone notified the bank that Kevin did not have authority to execute the mortgage, or even that Sheila did not agree to the mortgage. Focusing on this question, and others, the court denied the partnership's motion for the reasons set forth in the bank's resistance, the matters noted in the court's previous ruling, and based upon the entirety of the record. Thereafter, the court entered a decree of foreclosure foreclosing the mortgage.

The partnership now appeals.

***II. Scope and Standards of Review*.**

We review the district court's summary judgment rulings for the correction of errors at law. Iowa R. App. P. 6.907 (2010); *Alliant Energy-Interstate Power & Light Co. v. Duckett*, 732 N.W.2d 869, 873 (Iowa 2007). Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show there is no genuine issue of material fact, and the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P.

1.981(3); *Walderbach v. Archdiocese of Dubuque, Inc.*, 730 N.W.2d 198, 199 (Iowa 2007). A fact question arises if reasonable minds can differ on how the issue should be resolved. *Walderbach*, 730 N.W.2d at 199. The court reviews the record in a light most favorable to the opposing party. *Frontier Leasing Corp. v. Links Eng'g, L.L.C.*, 781 N.W.2d 772, 775 (Iowa 2010). We afford the opposing party every legitimate inference the record will bear. *Id*. "No fact question exists if the only dispute concerns the legal consequences flowing from undisputed facts." *McNertney v. Kahler*, 710 N.W.2d 209, 210 (Iowa 2006) (citation omitted).

***III. Discussion*.**

On appeal, the partnership contends the district court erred in granting summary judgment in favor of the bank. It asserts that genuine issues of material fact existed as to whether (1) Kevin lacked authority to mortgage the partnership's property without the signature or assent of Sheila Early and (2) the bank knew Kevin lacked the authority to mortgage the partnership's property without the signature or assent of Sheila Early.

Iowa Code section 486A.301(1) (2009) of the Uniform Partnership Act provides, in relevant part:

> Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, *unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority*.

(Emphasis added.) Thus, the inquiry is twofold: (1) Are there issues of genuine fact that Kevin had no authority to act for the partnership in obtaining a mortgage? and (2) Are there issues of genuine fact that the bank knew or had received a notification that Kevin lacked authority to act for the partnership? If we find in the negative on either prong, summary judgment is appropriate.

Ordinarily a partner may bind a partnership by his or her acts. Iowa Code § 486A.301(1). Although the Early Farm Partnership agreement required unanimous agreement of the partners concerning partnership decisions having a substantial effect upon the interest of the partnership, there is nothing in the agreement requiring joint signatures from all partners on such transactional documents. So, pursuant to the partnership agreement, Kevin could bind the partnership by his acts so long as all partners agreed.

Certainly none of the documents Kevin signed and provided to the bank suggested he lacked authority to bind the partnership. In fact, the documents declare just the opposite. The mortgage contains a partnership acknowledgement indicating Kevin represented he had authority to execute the mortgage on behalf of the partnership. In a separate partnership authorization Kevin specifically represented to the bank "the partners of the [p]artnership" authorized Kevin on behalf of the partnership to mortgage the partnership property. Kevin represented he had full right, power, and authority on behalf of the partnership to enter into the commercial security agreement. In each of the extension agreements Kevin represented and warranted that he had been duly authorized to act on behalf of the partnership. Thus the documents themselves would not have provided any clue to the bank that Kevin may not have had

authority to act on behalf of the partnership in encumbering the partnership property.

The bank asserts that the loan officer's statement

> is dispositive that [the loan officer's] affidavit does *not* show that he knew that Kevin Early lacked authority to execute the mortgage on behalf of the partnership. Knowledge that Sheila Early was an "admitted partner" does not equate to knowledge that Kevin Early lacked authority to act on behalf of the partnership.

We agree.

Kevin's statement that he and the partnership's attorney told the loan officer Sheila was "a required signatory" for any mortgage instrument affecting partnership assets was not notification to the bank that Kevin lacked the authority to act on behalf of the partnership. The partnership agreement contained no such requirement. Further, Kevin's statement that the loan officer required execution by both Kevin and Sheila on the mortgage, but never obtained Sheila's signature, is of no assistance to the partnership. None of the loan documents prepared by the bank provide for Sheila's signature. Whether or not the bank required Shelia's signature does not equate, under the facts presented here, to knowledge Kevin lacked authority to act on behalf of the partnership.

Although there is some dispute in the record, and even though we review the record in a light most favorable to the partnership, we conclude the partnership has not established that a genuine issue of material fact exists with respect to whether the bank had knowledge or notice that Kevin lacked authority to bind the partnership in encumbering partnership property. Having failed to establish a genuine issue of material fact on one prong of our two-fold inquiry, we need not decide if the partnership established a genuine issue of material fact as

to whether Kevin lacked authority to act for the partnership in obtaining the mortgage encumbering the partnership property.

We therefore conclude the district court did not err in granting summary judgment in the bank's favor. Accordingly, we affirm the district court's ruling.

AFFIRMED.