

IN THE COURT OF APPEALS OF IOWA

No. 2-179 / 11-1188
Filed April 25, 2012

PATRIOT BANK,
Plaintiff-Appellee,

vs.

RICHARD T. AHRENS,
Defendant-Appellant.

Appeal from the Iowa District Court for Poweshiek County, Annette J. Scieszinski, Judge.

Defendant appeals the district court's decision finding him personally liable to plaintiff bank on a promissory note. **AFFIRMED.**

Donald J. Charnetski of Charnetski Olson & Lacina, L.L.P., Grinnell, for appellant.

Richard S. Fry, Laurie L. Dawley, and Dana L. Oxley of Shuttleworth & Ingersoll, P.L.C., Cedar Rapids, for appellee.

Considered by Danilson, P.J., Bower, J., and Mahan, S.J.* Mullins, J., takes no part.

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

MAHAN, S.J.**I. Background Facts & Proceedings.**

Richard Ahrens is the sole shareholder of R & C Industries, Inc. (R & C). In 2004, R & C was informed by Wells Fargo it would not be renewing its loan with R & C that was maturing in October 2004. Ahrens decided to seek a new banking relationship for R & C. He heard Patriot Bank was coming to Grinnell, Iowa, and he contacted Rick Happe, vice president of commercial lending.

A September 20, 2004 letter, introduced at trial as exhibit 1, indicates Patriot Bank was proposing a term loan to R & C, as well as Richard T. Ahrens individually. After some negotiations, on November 8, 2004, Ahrens signed a promissory note for \$900,000. He signed above a line, "Richard T. Ahrens, President," and above a line, "Richard T. Ahrens, Individually." On the top of the document, the borrower's name was listed as R & C Industries, Inc. The note provides, "'I,' 'me' or 'my' means each Borrower who signs this note and each other person or legal entity (including guarantors, endorsers, and sureties) who agrees to pay this note." The loan was secured by a mortgage on real estate owned by R & C and a security agreement. Both of these documents were signed by Ahrens as president of R & C.

R & C, Ahrens, and Patriot Bank continued to have a banking relationship. On August 25, 2007, Ahrens signed a note for \$200,000, signing both as president of R & C and individually. Again, on March 7, 2008, he signed a note for \$200,000, both as president of R & C and individually. Also, in 2008, Ahrens pledged personally-owned stock as collateral for loans R & C had with Patriot

Bank. Furthermore, Ahrens paid some of the loan payments from his personal bank account.

R & C ran into financial difficulties, and it fell behind on payments on the 2004 note. Patriot Bank filed a petition on January 29, 2010, seeking to foreclose on the mortgage and to obtain a personal judgment against Ahrens based on the 2004 promissory note. Ahrens denied he was personally liable. He raised affirmative defenses of estoppel and fraudulent inducement. Ahrens additionally raised fraudulent inducement as a counterclaim against the bank.

The bank filed a motion for summary judgment, which Ahrens resisted. The court granted the motion, entering an in personam judgment against R & C and an in rem judgment on the real estate. The court, however, denied the summary judgment motion in regard to Ahrens.

The case proceeded to a bench trial on May 17, 2011. Happe testified the bank would not have made the loan to R & C if Ahrens had not been personally liable. He stated the bank would not have required Ahrens to sign individually if it did not intend for him to be personally liable for the note.

Ahrens testified the reason he did not continue to borrow from Wells Fargo was because he did not want to be personally liable for the debts of R & C. Ahrens stated he believed he was required to sign individually in order to indicate he, as the sole shareholder of R & C, agreed to the loan. He stated Happe told him he had to sign as an individual because there was no corporate resolution showing he was able to sign on behalf of the company. The bank produced evidence of a corporate authorization resolution dated November 5, 2004, just three days before the note was signed.

The district court found Ahrens was personally liable for the November 8, 2004 loan. The court found, “The evidence is overwhelming that Ahrens put his personal liability on the line at the outset of R & C’s borrowing relationship with Patriot Bank.” The court noted Ahrens’s personal financial position played a pivotal role in the relationship between R & C and the bank. The court also found, “There is no credible proof to support Ahrens’s trial stance that Patriot Bank only sought his signature for purposes of a shareholder confirmation of the President’s borrowing action.” Furthermore, the court concluded the facts did not support Ahrens’s claim that his signature was improperly induced. The court entered judgment against Ahrens for \$405,073.79, plus interest and attorney fees. Ahrens appeals the decision of the district court.

II. Standard of Review.

This case was tried in equity, and our review is de novo. Iowa R. App. P. 6.907. We examine the entire record and adjudicate anew on the issues properly presented. *Mitchell v. Daniels*, 509 N.W.2d 497, 499 (Iowa Ct. App. 1993). In cases in equity, we give weight to the fact findings of the district court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.904(3)(g).

III. Promissory Note.

The promissory note is a contract. This case involves the interpretation of a contract, that is, the determination of the meaning of the words of a contract. *See Fashion Fabrics of Iowa, Inc. v. Retail Investors Corp.*, 266 N.W.2d 22, 25 (Iowa 1978). “The cardinal rule of contract interpretation is to determine the intent of the parties at the time they entered into the contract.” *Peak v. Adams*,

799 N.W.2d 535, 544 (Iowa 2011). The most important evidence of the parties' intent is the language of the contract. *Id.* "When the interpretation of a contract depends on the credibility of extrinsic evidence or on a choice among reasonable inferences that can be drawn from the extrinsic evidence, the question of interpretation is determined by the finder of fact." *Pillsbury Co. v. Wells Dairy, Inc.*, 752 N.W.2d 430, 436 (Iowa 2008).

In looking at the words of the contract, it is clear the parties intended both R & C and Ahrens would be liable for the debt. Ahrens signed the document twice, once as president of R & C and once individually. Generally, a party is bound by a document he signs. *Joseph L. Wilmotte & Co. v. Rosenman Bros.*, 258 N.W.2d 317, 323 (Iowa 1977). In another case, *Kuehl v. Freeman Bros. Agency, Inc.*, 521 N.W.2d 714, 720 (Iowa 1994), the Iowa Supreme Court found a party was personally liable when he signed a document as president of a company and he signed individually. Additionally, here, the contract included within the term "Borrower" each party who signed the note.

Because we find the contract unambiguous, we do not need to resort to consideration of extrinsic evidence. See Iowa R. App. P. 6.904(3)(n) ("In the construction of written contracts, the cardinal principle is that the intent of the parties must control, and except in cases of ambiguity, this is determined by what the contract itself says."). We note that if we were to consider extrinsic evidence, the district court clearly found Ahrens's statement that he signed as an individual only to show he approved of the loan as the sole shareholder was not credible. We give weight to the credibility findings of the district court. See Iowa R. App. P. 6.904(3)(g).

We concur in the district court's conclusion that at the time the parties signed the promissory note they intended Ahrens would be personally liable for the debt.

IV. Fraudulent Inducement—Affirmative Defense.

Ahrens claims the district court should have found he sufficiently proved his affirmative defense of fraudulent inducement to sign the contract. He claimed he signed only because Happe assured him by signing as an individual he was showing he approved of the loan as the sole shareholder of the company. As a contractual defense, a party must show either intentional concealment or misrepresentation. *Holliday v. Rain & Hail, L.L.C.*, 690 N.W.2d 59, 64 (Iowa 2004). The affirmative defense must be proven by a preponderance of the evidence. *Id.* at 64-65.

The district court denied Ahrens's claim of fraudulent inducement, as follows:

The facts in this case do not support Ahrens's proposition that his personal debtor-creditor relationship with Patriot Bank was improperly induced. He is an astute and experienced businessman who recognized the issue of personal liability when he broke rank with Wells Fargo and approached Patriot Bank hoping to negotiate a different outcome. He was unsuccessful in doing that, as his individual signature on the resultant note demonstrates. There is no credible proof that the parties ever believed that R & C was solely responsible for repayment of the \$900,000 that was borrowed.

We agree with the district court's conclusions and determine Ahrens has failed to prove his affirmative defense of fraudulent inducement.

V. Fraudulent Inducement—Counterclaim.

Ahrens claims the district court should have granted his counterclaim based on a theory of fraudulent inducement.¹ For the same reasons discussed above regarding Ahrens's affirmative defense of fraudulent inducement, we also conclude he has not sufficiently proven his counterclaim of fraudulent inducement. Ahrens's claims of a misrepresentation by Happe are not credible. Also, we do not credit Ahrens's assertion he believed, as an experienced businessman, that by signing the promissory note as an individual he was merely indicating he approved of the loan as the sole shareholder of R & C. The evidence does not support a finding that Ahrens signed the contract based upon misrepresentations by Happe.

We affirm the decision of the district court.

AFFIRMED.

¹ To establish a claim of fraudulent inducement, a party must show by clear and convincing evidence: (1) representation; (2) falsity; (3) materiality; (4) scienter; (5) intent to deceive; (6) reliance; and (7) resulting injury and damage. *Whalen v. Connelly*, 545 N.W.2d 284, 294 (Iowa 1996).