IN THE COURT OF APPEALS OF IOWA

No. 6-303 / 5-0565
Filed June 28, 2006

FAIRBANK STATE BANK,
Plaintiff-Appellee,

vs.

ME'LISA A. DELANEY,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Thomas N. Bower, Judge.

Me'Lisa Delaney appeals from the district court order granting summary judgment in favor of Fairbank State Bank on its foreclosure action. **AFFIRMED.**

Connie L. Diekma and Thomas J. Joensen of Finley, Alt, Smith, Scharnberg, Craig, Hilmes & Gaffney, P.C., Des Moines, and Sreenu P. Raju of Law Offices of Sreenu P. Raju, Esq. P.L.C., West Des Moines, for appellant.

H. Raymond Terpstra II of Terpstra, Epping, & Willett, Cedar Rapids, for appellee.

Considered by Huitink, P.J., and Vaitheswaran and Eisenhauer, JJ.

EISENHAUER, J.

Me'Lisa Delaney appeals from the district court order granting summary judgment in favor of Fairbank State Bank (the Bank) on its foreclosure action. We review rulings on motions for summary judgment for errors at law. *Sain v. Cedar Rapids Cmty. Sch. Dist.,* 626 N.W.2d 115, 121 (Iowa 2001). The record before the district court is reviewed to determine whether a genuine issue of material fact existed and whether the district court correctly applied the law. *Id.* We review the facts in the light most favorable to the party resisting the motion. *McIlravy v. North River Ins. Co.,* 653 N.W.2d 323, 328 (Iowa 2002). The resisting party has the burden of showing a material issue of fact is in dispute. *Id.*

Although the appellant devotes most of her brief and argument to the procedural aspects of the summary judgment proceeding, the issue before us is whether Delaney established a material issue of fact in dispute to prevent summary judgment. We conclude she did not.

The trial court initially ruled on the motion for summary judgment assuming there was no resistance supported by a statement of disputed facts or any memorandum of law filed by Delaney. The court was made aware of a resistance and two documents labeled as affidavits and a "supplemental affidavit" filed after the grant of summary judgment.[1] It then ruled that the "affidavits and resistance do not change the court's belief that there was no genuine issue of material facts in dispute." Because the trial court considered her response, we will also. Delaney's argument is that she did not understand the documents she

[1] This court doubts the attempts by Delaney to respond to the motion for summary judgment adequately complied with rule 1.981 of the Iowa Rules of Civil Procedure. She filed documents captioned as affidavits with no indication they were signed and sworn to before an official authorized to administer oaths.

was signing which give rise to this action. She claims she did not have the mental capacity to understand the contract or to execute it and that the Bank did not inform her of the contents of the contract.

A contract cannot be set aside on the ground of a person's incompetency to enter into it unless the evidence shows the person lacked sufficient mental capacity to understand it. *In re Guardianship of Collins*, 327 N.W.2d 230, 233 (Iowa 1982). Mere mental weakness falling short of an incapacity to understand the force and effect of the contract will not invalidate it. *In re Faris' Estate*, 159 N.W.2d 417, 420 (Iowa 1968). Delaney's "affidavit" states she can understand with assistance. Nowhere is it alleged that Delaney lacks sufficient mental capacity to understand and therefore a genuine issue of material fact has not been created.

Delaney also alleges misrepresentation by the Bank. It is a well settled principle of equity that misrepresentations amounting to fraud in the inducement of a contract, whether innocent or not, give rise to a right of avoidance on the part of the defrauded party. *First Nat. Bank v. Brown*, 181 N.W.2d 178, 182 (Iowa 1970). To prevail on a rescission theory based on misrepresentation, the party requesting relief must prove (1) a representation, (2) falsity, (3) materiality, (4) an intent to induce the other to act or refrain from acting, and (5) justifiable reliance. *City of Ottumwa v. Poole*, 687 N.W.2d 266, 269 (Iowa 2004).

Here, the only misrepresentation alleged is that the Bank's president did not tell her what she was signing. Ordinarily, mere silence on the part of one party, in an arms length transaction, as to material facts discoverable by the other does not serve to create actionable fraud. *First Nat. Bank*, 181 N.W.2d at

181. If a party is able to read a contract and has the opportunity to do so, but omits this precaution, even because of false statements by the adversary as to the contents of the instrument, his negligence in failing to read the instrument will estop him from claiming that the instrument is not binding. *Crum v. McCollum*, 211 Iowa 319, 328-29, 233 N.W. 678, 679-80 (1930).

Finally, Delaney contends the court erred in requiring her to utilize an annuity to satisfy any deficiency from the sheriff's sale of the property. The court's summary judgment order simply states Delaney's agreement with the Bank regarding the structured settlement payments (approved by the district court on June 24, 2004) was unaffected by the summary judgment. We conclude there was no error.

AFFIRMED.