

IN THE COURT OF APPEALS OF IOWA

No. 6-384 / 05-1630
Filed June 28, 2006

C AND J VANTAGE LEASING CO.,
Plaintiff-Appellee,

vs.

HILLCREST COUNTRY CLUB, INC.
Defendant-Appellant.

HILLCREST COUNTRY CLUB, INC.,
Counterclaim-Appellant,

vs.

C AND J VANTAGE LEASING CO.,
Defendant to Counterclaim-Appellee.

Appeal from the Iowa District Court for Polk County, Michael D. Huppert,
Judge.

Hillcrest Country Club, Inc. appeals from an order dismissing its
counterclaim. **REVERSED AND REMANDED.**

Guy Booth of Fisher, Ehrhart & McCright, Cedar Rapids, for appellant.

Edward McConnell, West Des Moines, for appellee.

Considered by Vogel, P.J., and Zimmer and Vaitheswaran, JJ.

ZIMMER, J.

Hillcrest Country Club, Inc. (Hillcrest) appeals from a ruling that dismissed its counterclaim against C and J Vantage Leasing Co. (C and J). Upon our review for correction of errors at law, we reverse and remand.

C and J sued Hillcrest to recover sums owed under a commercial lease. Hillcrest responded with an answer and counterclaim. C and J then filed a written motion for summary judgment pursuant to Iowa Rule of Civil Procedure 1.981 (2005) and requested an oral hearing. Hillcrest filed a resistance to the motion, and it was set for hearing.

Following a contested hearing,¹ the district court entered a written ruling granting summary judgment in favor of C and J. The court entered a money judgment against Hillcrest and awarded C and J interest, costs, and attorney fees. As part of its ruling on C and J's motion for summary judgment, the district court dismissed Hillcrest's counterclaim with prejudice.

Hillcrest has not appealed from the district court's entry of summary judgment in favor of C and J. The country club's contention on appeal is that the court erred in dismissing its counterclaim because the procedures of Iowa Rule of Civil Procedure 1.431 governing motion practice were not followed in this case. C and J has not filed an appellee's brief. Accordingly, we limit our consideration to the issue raised in appellant's brief. See *State ex rel. Buechler v. Vinsand*, 318 N.W.2d 208, 209 (Iowa 1982). Upon review of the record, we conclude Hillcrest's claim has merit.

¹ The hearing on the summary judgment motion was not reported.

The counterclaim filed by Hillcrest sought damages based on allegations of fraud and misrepresentation. C and J denied the allegations in the counterclaim in a responsive pleading that also asserted several affirmative defenses. Rule 1.431 establishes the procedures which must be followed when a party makes a motion in a pending case. Among other things, the rule sets forth the specific procedures for filing and responding to motions. In this case, the record reveals C and J did not file or serve a written motion seeking dismissal of Hillcrest's counterclaim, and no hearing had been scheduled on such a motion. In addition, C and J's motion for summary judgment was not directed to the defendant's counterclaim.

Under the circumstances presented here, we conclude the trial court erred when it dismissed the defendant's counterclaim upon oral motion of the plaintiff's counsel as part of its order granting summary judgment on the plaintiff's petition. In reaching this conclusion, we offer no opinion regarding the merits of the counterclaim or the district court's analysis of its viability.

We reverse the district court dismissal of the defendant's counterclaim and remand for further proceeding not inconsistent with this opinion.

REVERSED AND REMANDED.