IN THE COURT OF APPEALS OF IOWA

No. 6-901 / 05-1769
Filed January 18, 2007

KEVIN A. CEURVORST,
Plaintiff-Appellant,

vs.

PRINCIPAL LIFE INSURANCE COMPANY and PRINCIPAL GLOBAL INVESTORS,
Defendants-Appellees.

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

The plaintiff appeals from a district court order granting summary judgment in favor of the defendants. **AFFIRMED.**

Michael J. Carroll of Babich, Goldman, Cashatt & Renzo, P.C., Des Moines, for appellant.

Michael A. Guidicessi and Angela Morales of Faegre & Benson, L.L.P., Des Moines, for appellees.

Heard by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

EISENHAUER, J.

Kevin Ceurvorst appeals from a district court order granting summary judgment in favor of Principal Life Insurance Co. and Principal Global Investors on his claims of breach of contract, tortuous breach of employment contract, fraudulent misrepresentation, and promissory estoppel. He contends the district court erred in concluding there was not a genuine issue of material fact as to the issues of apparent authority and fraudulent misrepresentation. He also contends the court misapplied the law of fraudulent nondisclosure. We affirm.

I. Background Facts and Proceedings. In June 1999, Ceurvorst was contacted by Richard Waugh, Executive Vice President of Principal Capital Management, about an opening for a position at Principal Capital Management. At the time, Ceurvorst was employed by Duff & Phelps Credit Rating Company as a Group Vice President. He was also an officer of the company.

That same month, Ceurvorst interviewed in Des Moines for the position. He completed and signed an application that included the following provision:

> I also understand that nothing contained in this employment application or in the granting of an interview is intended to create any employment contract between The Principal and myself for either employment or benefit. No promises regarding employment have been made to me, and I understand that no promise or guarantee is binding upon The Principal unless made in writing signed by a vice president or higher level officer. . . . I understand that I am an at-will employee, and can terminate my employment at any time, and The Principal also has this right.

Ceurvorst was told he would be a vice president of Principal Capital Management.

On July 1, 1999, Chris Wolfgram, a human resources employee, offered Ceurvorst the position of Vice-President—Fixed Income Securities. Wolfgram

told Ceurvorst the position was an officer position. Cuevorst requested a confirmation letter, which was sent by Wolfgram the same day. It states, "This letter confirms our employment offer to you as a Vice-President—Fixed Income Securities." Ceurvorst accepted the position and began working on September 7, 1999.

In October of 1999, the Fixed Income Securities department underwent a reorganization, which required the affected department members to apply for newly-created positions. Ceurvorst applied for three positions, two of which were non-officer positions. He received the position of Senior Fixed Income Research Analyst, a non-officer position. His business cards continued to use the title of vice president.

In September 2000, Ceurvorst began questioning his assumption that his prior position was a corporate officer position. He inquired as to what was required to obtain an officer position in the company. On October 25, 2000, Ceurvorst wrote that in accepting employment with Principal he took "a leap of faith that the position of Vice-President—Senior Analyst was an officer position, which would qualify me for a meaningful participation in any future stock option programs if they were to materialize." Ceurvorst stopped working for Principal on May 31, 2002, and resigned effective July 2002.

On August 30, 2002, Ceurvorst and his wife, Barbara, filed an eleven count lawsuit against Principal Financial Group, Principal Capital Income Investors, L.L.C., and seven current and former employees of Principal. By July 2005, Barbara Ceurvost and the individual defendants had been dismissed as parties to the case, and Principal Life Insurance Company and Principal Global

Investors, L.L.C had been substituted as the corporate defendants. Four counts remained: breach of contract, tortuous breach of employment contract, fraudulent misrepresentation, and promissory estoppel. The basis for the suit is an alleged agreement with the defendants that Ceurvorst would be an officer within the corporation, that he relied on this agreement in leaving his job at Duff & Phelp, and that the agreement was breached. The suit also claims the defendants fraudulently misrepresented what his position would be within the company.

The defendants filed a motion for summary judgment, seeking dismissal of all four counts. Following a September 16, 2005 hearing, the district court found, based on the undisputed facts, the defendants were entitled to judgment as a matter of law and dismissed the remaining counts.

II. Scope and Standard of Review. We review a summary judgment ruling for corrections of errors at law. *Benavides v. J.C. Penney Life Ins. Co.,* 539 N.W.2d 352, 354 (Iowa 1995). Summary judgment is appropriately entered if the record shows "no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." Iowa R. Civ. P. 1.981(3). We examine the record before the district court to decide whether a genuine issue of material facts exists and whether the court correctly applied the law. *Benavides,* 539 N.W.2d at 354. We view the facts in a light most favorable to the party opposing the summary judgment motion. *Gerst v. Marshall,* 549 N.W.2d 810, 812 (Iowa 1996).

III. Apparent Authority. Ceurvorst first contends the district court erred in finding insufficient evidence to create a factual issue regarding whether Wolfgram had the apparent authority to bind principal. Ceurvorst does not state

how error was preserved on this issue. The district court never addressed the issue of apparent authority in its ruling. Even if Ceurvorst presented the issue of apparent authority to the court, the rules of error preservation require that he call to the attention of the district court its failure to decide the issue. *Meier v. Senecaut*, 641 N.W.2d 532, 540 (Iowa 2002). The issue did not actually need to be used as the basis for the court's decision to be preserved, but the record must at least reveal the court was aware of the claim or issue and litigated it. *Id.* Because the record does not so reflect, the issue has not been preserved and we will not address it on appeal.

IV. Fraudulent Misrepresentation. Ceurvorst next contends the district court erred in finding insufficient evidence to raise a genuine issue of material fact on his fraudulent misrepresentation claim.

There are seven elements that must be proven to succeed on a claim of fraudulent misrepresentation: (1) representation; (2) falsity; (3) materiality; (4) scienter; (5) intent to deceive; (6) reliance; and (7) resulting injury and damage. *Arthur v. Brick*, 565 N.W.2d 623, 625 (Iowa Ct. App. 1997). The court found "the express representation attributed to Wolfgram cannot form the basis for a fraud claim, as the plaintiff was not in a position to justifiably rely upon them." The court so found based on the acknowledgment in Cervorst's signed employment application stating he was not entitled to rely on any verbal statements or on any written statements not signed by a vice president or higher level officer.

Reliance is justified when a reasonably careful person would be justified in relying on the information supplied. *Pollmann v. Livestock Auction, Inc.*, 567 N.W.2d 405, 410 (Iowa 1997). Reliance is not justified if the person receiving the

information knows or in the exercise of ordinary care should know that the information is false. *Id.* Reliance upon the information is justifiable if a person acting with reasonable and ordinary prudence and caution would have a right to rely on the representations. *Id.*

Ceurvorst was not justified in relying on a verbal statement regarding his status as an officer within the company. Ceurvorst signed an acknowledgment stating he understood no promise was binding unless made in writing by a vice-president or higher level officer. In regard to his signing of the employment application and its acknowledgment, Ceurvorst testified, "This document was signed with the intent that what was stated in here was my responsibility." After Wolfgram made the verbal offer of employment to Ceurvorst, he then requested it in writing. The written letter makes no mention of an officer position.

Ceurvorst also complains that the district court failed to consider other representations made to him concerning his position as an officer within the company. These representations were also verbal, and therefore Ceurvorst was not justified in relying on these representations either. Accordingly, summary judgment was proper on the fraudulent misrepresentation claim.

V. Fraudulent Nondisclosure. Finally, Ceurvorst contends the district court erred in requiring him to prove the defendants knew he was unaware of his true status in the company.

In its ruling, the district court stated:

> Under the undisputed facts of this case, the plaintiff has failed to offer any fact or circumstance that would allow this court to conclude either that the defendants knew the plaintiff was unaware of the actual status of the vice president position offered, or that the plaintiff's misunderstanding on this issue was not resolvable with a simple inquiry directed to any of the numerous persons connected

> with the defendants he was dealing with prior to accepting the position. It is not enough, as the plaintiff alleges, that his understanding be reasonable; he must do something to communicate that understanding in order to trigger any possible duty on the part of the defendants to disclose the true nature of the position.

We conclude the district court was not in error.

Under Iowa law, the failure to disclose material information can constitute fraud if the concealment is made "by a party under a duty to communicate the concealed fact." *Wright v. Brooke Group Ltd.*, 652 N.W.2d 159, 174 (Iowa 2002). Where the parties are involved in a business transaction, an actionable misrepresentation may occur when one with superior knowledge purposely suppresses the truth respecting a material fact involved in the transaction. *Id.*

> (2) One party to a business transaction is under a duty to exercise reasonable care to disclose to the other before the transaction is consummated,
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> . . . .
>
> (e) facts basic to the transaction, *if he knows that the other is about to enter into it under a mistake as to them*, and that the other, because of the relationship between them, the customs of the trade or other objective circumstances, would reasonably expect a disclosure of those facts.

Restatement (Second) of Torts § 551(2)(e), at 119 (1977) (emphasis added). We conclude Ceurvorst is required to show the defendants knew he mistakenly believed he would be an officer in the company. Because the facts do not show the defendants had this knowledge, the district court did not err in granting summary judgment in favor of the defendants.

We affirm the order of the district court.

AFFIRMED.