

IN THE COURT OF APPEALS OF IOWA

No. 9-735 / 08-1461
Filed December 30, 2009

MAURICE D. MITCHELL, SR.,
Plaintiff-Appellant,

vs.

DOUGLAS HOLLIDAY, JODIE HOLLIDAY,
WENDEL HOLLIDAY and JANET HOLLIDAY,
Defendants-Appellees.

Appeal from the Iowa District Court for Adair County, Darrell J. Goodhue,
Judge.

The plaintiff appeals from the district court's order dismissing his case
against the defendants. **AFFIRMED.**

Peter C. Riley of Tom Riley Law Firm, P.L.C., Cedar Rapids, for appellant.

Larry J. Handley of Handley Law Firm, P.C., Ankeny, for appellees.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

VOGEL, P.J.

Maurice D. Mitchell Sr. appeals from the district court order dismissing his action against Douglas Holliday, Jodie Holliday, Wendel Holliday, and Janet Holliday in an action seeking damages based upon the lease of farmland. We affirm.

I. Background Facts and Proceedings

On February 9, 2005, Mitchell entered into two separate lease agreements; one with Wendel and Janet Holliday, and one with their son and daughter-in-law, Douglas and Jodi Holliday (collectively, the Hollidays). According to the leases, Mitchell was to rent 1000 acres of farmland from the Hollidays for a period of five years.

At the time the leases were executed, the Hollidays were in default on the notes executed in favor of First National Bank in Creston (Bank) on the farmland. The Bank had made a “final” settlement offer to the Hollidays, which had an acceptance deadline of February 9, 2005, at 5:00 p.m. Unable to reach an agreement, the Bank and the Hollidays continued to negotiate. On March 9, 2005, the Hollidays entered into a settlement agreement with the Bank. According to that agreement, the Hollidays were to receive two ten-acre tracts of land that included each of their homesteads, which were to be secured by mortgages. The remainder of the farmland was to be sold at a public auction, with the entire proceeds of the sale being paid to the Bank, after which the Bank would release its mortgages on the farmland. However, the Hollidays failed to disclose the lease agreements with Mitchell to the Bank. Additionally, the

Hollidays subsequently platted two ten-acre tracts of land, but did so in a manner that would decrease the value of the agricultural land to be sold at the auction.

On March 24, 2005, after the Bank discovered the lease agreements, which were below market value, and the manner of platting the homesteads, which reduced the value of the agricultural land, the Bank brought a foreclosure action naming the Hollidays as defendants and joined Mitchell as a defendant. On March 29, 2005, the public auction was held, at which Mitchell was the high bidder. He then entered into contracts for the purchase the parcels of land. On May 6, 2005, Mitchell filed an answer and asserted a counterclaim against the Bank seeking specific performance of the settlement agreement between the Bank and the Hollidays and asserted a crossclaim against the Hollidays seeking specific performance of the contracts to purchase the farmland. The Hollidays also asserted a counterclaim against the Bank seeking specific performance of the settlement agreement.¹ The Bank filed a counterclaim seeking rescission of the settlement agreement.²

A jury trial was held on July 11 to 25, 2006. The legal issues were tried to the jury and the equitable issues were tried to the court. The jury found that Mitchell and Douglas Holliday entered into a conspiracy to defraud the Bank. The jury found that as a result of the conspiracy the Bank had incurred attorney

¹ The Hollidays filed a separate suit seeking specific performance of the settlement agreement. That suit was consolidated with the foreclosure action.

² On May 2, 2005, the district court appointed a receiver to take, keep, and preserve the parcels subject to the action. Because Mitchell's lease agreements were inferior to the Bank's interest, the receiver terminated Mitchell's leases. Subsequently, Mitchell re-rented the farmland for the 2005 term at a significantly higher rate than required under the February 9 leases. This was in part because he had already planted a crop and as the district court found, Mitchell effectively "ended up paying for his own inputs in the second lease." The receiver later rented the farmland to a third party for the 2006 crop year.

fees and legal expenses, and awarded the Bank punitive damages in the amount of \$140,000 against Douglas Holliday. On February 16, 2007, the district court issued its ruling, stating:

The Court finds that the Hollidays and Mitchell entered into these leases for two reasons. First, because of the terms of the leases, it was meant to discourage bidding at an auction and would result in the parcels drawing a fair market value, which the Bank was hopeful of receiving in satisfaction of the Hollidays' indebtedness. Especially since the Hollidays had already discharged any personal obligations through the bankruptcy. Second, the leases to Mitchell gave him an advantage in the auction bidding process, since he had the tracts tied up for the first five years, discouraging other bidders, and allowing him to win the bid at a greatly reduced price. Not only were the Hollidays able to get back at the Bank by reducing the amount the Bank was able to obtain at the auction, but the Hollidays were able to facilitate the sale to Mitchell, who assisted them with the leases, at a reduced price. As did the jury, the Court finds that there was a conspiracy between the Hollidays and Mitchell to cause damage to the Bank. Further, the Court finds that the Hollidays fraudulently induced the Bank to enter into the March 9, 2005 Settlement Agreement.

....

... [T]he Hollidays and Mitchell have together conspired to defraud the Bank of the value of the parcels at auction and the Court finds equity requires it to deny both [the Hollidays' and Mitchell's] claims for specific performance of the March 9, 2005 Settlement Agreement.

....

... In addition to failing to disclose the Mitchell Leases, the Hollidays deliberately platted one of the homesteads in the shape of an "L" to intrude upon one of the Auction Parcels, made statements at the auction to discourage interest in the land, specifically told auction participants not to bid, and refused to release FSA information concerning the parcels. . . .

It is clear to this Court that the Bank is entitled to its equitable remedy of rescission of the March 9, 2005 Settlement Agreement and all other obligations, such as those to Mitchell, which flow from it.

The district court denied Mitchell's counterclaim against the Bank (seeking specific performance of the settlement agreement), denied Mitchell's crossclaim against the Hollidays (seeking specific performance of the contracts to purchase

the farmland), and also denied the Hollidays' counterclaim against the Bank (seeking specific performance of the settlement agreement). The district court granted the Bank's claim for rescission of the March 9, 2005 settlement agreement, declaring it rescinded and unenforceable. The district court also granted a judgment and decree of foreclosure.³

On June 21, 2007, Mitchell brought the present action against the Hollidays seeking damages for breach of the lease agreements.⁴ On November 26, 2007, the Hollidays filed an answer and asserted that Mitchell's claims were barred by the doctrines of *in pari delicto*, *res judicata*, estoppel, and the compulsory counterclaim rule. The parties submitted the Hollidays' defenses to the court prior to a jury trial. On August 12, 2008, the district court dismissed Mitchell's claims finding that they were barred pursuant to the doctrines of *in pari delicto* and claim preclusion.⁵ Mitchell appeals and asserts that the district court erred in dismissing his claims.

³ The pending receivership was closed. On June 29, 2007, Mitchell withdrew all his claims in the receivership.

⁴ Mitchell had never paid rent to the Hollidays under the February 9, 2005 leases. He sought damages for (1) the difference of the amount of rent to be paid under the leases and the amount of rent paid to the receiver for the rental year of 2005 and (2) for the denial of his right to the farmland for the years 2006 to 2010. Subsequently, Mitchell amended his petition to request specific performance if the Hollidays redeemed the farmland in the foreclosure action.

⁵ The district court discussed Mitchell's crossclaim against the Hollidays seeking specific performance of the contracts to purchase the farmland. We also agree with the district court that, "If [Mitchell] had been successful in his specific performance action and a conveyance had been made, his interest in the lease and the deed would have merged, if they had not already merged in the contract, and he would have no right of action against the [Hollidays]."

II. Standard of Review

The Hollidays' defenses were submitted to the district court as legal issues and tried at law. Therefore, our review is for correction of errors at law. Iowa R. App. P. 6.4.

III. Analysis

Mitchell first asserts that the district court erred in finding he was barred from recovering damages pursuant to the doctrine of in pari delicto.

The doctrine of in pari delicto provides that, as between parties who are equally in the wrong, the law will not lend itself to afford relief to one as against the other, but will leave them as it finds them.

1A C.J.S. *Actions* § 69, at 279 (2005); *see also Gen. Car & Truck Leasing Sys., Inc. v. Lane & Waterman*, 557 N.W.2d 274, 279 (Iowa 1996) (“The purpose of the in pari delicto doctrine is to deter future misconduct by denying relief to one whose losses were substantially caused by his own fraud or illegal conduct.”). A plaintiff’s recovery is barred where (1) the plaintiff was guilty of illegal or fraudulent conduct and (2) the plaintiff was “equally or more culpable than the defendant or acted with the same or greater knowledge as to the illegality or wrongfulness of the transaction.” *Gen. Car & Truck Leasing Sys., Inc.*, 557 N.W.2d at 279. The district court found that both requirements were met from the previous litigation, in which Mitchell was found to have conspired with Douglas Holliday to defraud the Bank, and that issue preclusion prohibited Mitchell from relitigating this finding. On appeal, Mitchell essentially argues that neither prong of in pari delicto doctrine was met because he was not assessed punitive damages in the previous litigation. As to the first prong, he argues that because the jury failed to assess punitive damages against him, the finding that

he entered into a conspiracy was not a necessary finding and issue preclusion does not apply. As to the second prong, he argues that even if issue preclusion does apply, because the jury failed to assess punitive damages against him, he was not as culpable as Douglas Holliday.

We first examine whether the doctrine of issue preclusion prohibited Mitchell from relitigating whether he engaged in illegal or fraudulent conduct.

Issue preclusion applies when four prerequisites have been established: (1) the issue concluded must be identical; (2) the issue must have been raised and litigated in the prior action; (3) the issue must have been material and relevant to the disposition of the prior action; and (4) the determination made of the issue in the prior action must have been necessary and essential to the resulting judgment.

Id. at 281; see *Westendorf v. Wehling*, 611 N.W.2d 512, 514 (Iowa 2000). The only element of issue preclusion that Mitchell challenges is whether the determination that he conspired with Douglas Holliday was “necessary and essential” to the resulting judgment. He argues that because he was not assessed punitive damages, the finding that he conspired with the Hollidays was unnecessary. We disagree.

This finding of conspiracy was necessary and essential to the resulting judgment insofar as it provided the grounds upon which punitive damages were assessed against Douglas Holliday, who could not have conspired to defraud the Bank without Mitchell’s participation. Further, the district court found Mitchell and the Hollidays entered into a conspiracy to defraud the Bank, which was necessary and essential to the district court’s denial of Mitchell’s requested equitable relief and the grant of the Bank’s requested relief. We find that all prerequisites of issue preclusion were met here so that Mitchell cannot relitigate

whether he entered into the leases with the Hollidays in a conspiracy to defraud the Bank.

We next examine whether Mitchell was equally or more culpable than the Hollidays or acted with the same or greater knowledge as to the illegality or wrongfulness of the transaction. See *Gen. Car & Truck Leasing Sys., Inc.*, 557 N.W.2d at 281. Mitchell argues that he was not assessed punitive damages and therefore, was not as guilty as Douglas Holliday who was assessed punitive damages. We find his argument unpersuasive. “Conspiracy is a combination of two or more persons through concerted action to accomplish an unlawful end or to accomplish a lawful end by unlawful means.” *Countryman v. Mt. Pleasant Bank & Trust Co.*, 357 N.W.2d 599, 602 (Iowa 1984). A member of a conspiracy must have actual knowledge of and the intent to bring about the object of the conspiracy. 15A C.J.S. *Conspiracy* § 17, at 354-55 (2002 & Supp. 2009). The jury was instructed in accordance with those principles, including that “a person participates in a conspiracy when the person joins the agreement with the intent to accomplish the wrongful act. One who innocently furthers wrongful conduct by another does not participate in a conspiracy.”

The jury found that Mitchell entered into a conspiracy with Douglas Holliday with the intent to defraud the Bank. The agreement between the members of the conspiracy leads to a finding of equal knowledge among them. See 15A C.J.S. *Conspiracy* §§ 18, at 356, 135 at 448 (2002 & Supp. 2009) (stating that each member of a conspiracy is accountable or liable for the acts or declarations of the co-conspirators committed in furtherance of the conspiracy). The fact that punitive damages were not assessed against Mitchell (as well as

three members of the Holliday family), does not make him any less of a member of the conspiracy. Rather, Mitchell had equal knowledge of the conspiracy and his participation was vital.

We find the district court correctly found that Mitchell and the Hollidays acted in *pari delicto* and as a result, Mitchell was barred from recovery in the present action. Because the doctrine of *in pari delicto* barred Mitchell's recovery, we need not reach his arguments that his recovery was not barred by the doctrine of issue preclusion and the compulsory counterclaim rule. We affirm.

AFFIRMED.