

**IN THE COURT OF APPEALS OF IOWA**

No. 1-672 / 10-2056  
Filed November 9, 2011

**PATSY RAINS, Individually as  
Surviving Spouse and Assignee, and  
as Personal Representative of the  
Estate of Roger I. Rains,**  
Plaintiff,

**vs.**

**GARY GRIEVE SR.,**  
Defendant-Appellant.

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**RBC CAPITAL MARKET CORP.  
d/b/a RBC DAN RAUSCHER  
INCORPORATED,**  
Interpleader Plaintiff-Appellee,

**vs.**

**GARY GRIEVE SR.**  
Interpleader Defendant-Appellant.

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Appeal from the Iowa District Court for Woodbury County, Edward A. Jacobson, Judge.

Gary Grieve Sr. appeals from the order granting summary judgment in favor of RBC Capital Market Corporation. **AFFIRMED.**

Robert B. Deck, Sioux City, for appellant.

Michael W. Ellwanger and Robert N. Stewart of Rawling, Neiland, Killinger, Ellwanger, Jacobs, Mohrhauser & Nelson, L.L.P., Sioux City, for appellee.

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

**EISENHAUER, J.**

Despite the somewhat unusual path this case has taken to reach our court, the question before us is simple: whether the trial court was correct when it concluded no issue of material fact exists to preclude the grant of summary judgment in favor of RBC Capital Market Corporation (RBC). Because we agree Gary Grieve Sr. has failed to show a genuine issue of material fact as to whether he was damaged by any alleged wrongful acts of RBC, we affirm the grant of summary judgment.

***I. Background Facts and Procedures.*** The undisputed facts are as follows: On October 1, 2001, Patsy Rains's husband died in Florida. The bulk of his assets passed to other parties via "payable on death" designations. Rains made an election to take a surviving spouse's elective share. On June 24, 2004, a Florida court determined her share to be "at least \$145,037." In this same ruling, the Florida court named individuals responsible for contributing to Rains's elective share. One of those individuals was Grieve, who received distributions from three Wachovia/First Union Accounts. Grieve had placed these assets in two RBC accounts: one account had an initial value of approximately \$30,995, and the other an initial value of approximately \$152,340.

On October 5, 2005, Rains filed her first action against Grieve seeking to enforce the judgment against him, in addition to interest and attorney fees. On July 22, 2008, Rains filed a second action, alleging Grieves fraudulently made distributions from his two RBC accounts for the purpose of avoiding her as a creditor. She also named RBC as a defendant, alleging it had improperly allowed Grieve to remove funds from his account, which should have been

preserved for her. RBC filed a counterclaim for interpleader, asking the court to allow it to pay the balance of all funds it had to the court. Grieve resisted the interpleader action and cross-claimed against RBC, alleging it had wrongfully and illegally seized his accounts and was withholding them from him. He also alleged RBC had converted his property.

The litigation between Rains and Grieve was settled with Grieve agreeing to pay her \$12,000 plus the balance in the account at RBC. However, Grieve continued to pursue his counter-claim against RBC, alleging he was damaged when a “legal hold” was placed on his account and he was not allowed to withdraw the funds in the account. That hold ran from approximately July 24, 2008, until November 17, 2009. Grieve claimed the hold caused him to experience a significant loss because the value of his accounts plummeted in the late summer and fall of 2008.

On August 6, 2010, RBC moved for summary judgment on the cross-claim. Grieve resisted on August 30, 2010. Following a hearing, the court entered its order on November 15, 2010, granting summary judgment in favor of RBC. Specifically, the court found Grieve offered no evidence he was damaged, other than speculation he could have avoided a decline in the value of his accounts if he had been allowed to remove the balance and invest it. The court also found Grieve could have avoided any damages if he had permitted the funds to be liquidated and paid to the court as RBC requested in its interpleader action.

Grieve filed a timely notice of appeal.

***II. Scope and Standard of Review.*** Our review of an order granting summary judgment is for the correction of errors at law. *Green v. Racing Ass’n*

of *Cent. Iowa*, 713 N.W.2d 234, 238 (Iowa 2006). We review the record “in the light most favorable to the nonmoving party.” *Id.* Summary judgment should only be granted where

the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

*Id.*

**III. Summary Judgment.** The only question before us is whether there is a genuine issue of material fact as to whether Grieve suffered any damages when RBC placed the hold on his accounts.

In its motion for summary judgment, RBC stated:

14. Based upon correspondence dated April 21, 2010, written by Grieve’s lawyer, Grieve is now trying to seek damages on the basis that Grieve “could have withdrawn his funds from the RBC account before it tanked (sic) then he would have had to come up with less cash at the time of settlement.” However, RBC’s prohibiting Grieve from withdrawing assets had no impact upon the value of the accounts.

15. The accounts with RBC were non-discretionary, so Mr. Grieve was the only person able to direct transactions within the accounts or convert securities to cash positions. Grieve never made any such request. As such, the value of the assets in the accounts was always under Mr. Grieve’s full control. RBC’s actions had no effect as to the value of the assets when they were delivered.

In its brief in support of summary judgment, RBC made the following argument with regard to Grieve’s damages:

Second, there is no damage. The Plaintiff in this case claims that he should have been permitted to take the funds out of the account. What he would have done with those funds and what kind of money he could have made by investing those funds is complete speculation. If he had anticipated that the market was going to “tank” (in the words of his lawyer), he could have converted the investments to cash.

In his resistance to summary judgment, Grieve denied he was allowed to convert the assets in his account to cash, claiming he had requested to do so. In support of his resistance, he included a letter from his attorney to RBC's counsel, in which it is states, "Obviously, if my client could have withdrawn his funds from the RBC account before it tanked then he would have had to come up with less cash at the time of settlement." He also included his affidavit, which states,

When I contacted RBC to withdraw my funds from these accounts I was requesting that all my accounts be converted to cash so it could be withdrawn as such. I did not want to withdraw or transfer any stock; rather, I wanted to cash out my accounts. Not only was I not allowed to withdraw my funds from these accounts but also RBC never converted them to cash positions as I had requested.

We agree there is a fact issue as to whether Grieve was able to convert the securities in his accounts to cash. Viewing the evidence in the light most favorable to Grieve, we assume he was unable to convert the securities; this still does not answer the question of whether he was damaged. The district court found:

Mr. Grieve offers no evidence that he was damaged. He does not tell the court what the balance of the account was when he tried to liquidate it and he does not tell the court what the decline in value was. Furthermore, it would be speculative to assume that Mr. Grieve could have removed the balance in the account and made investments which would have avoided a decline in value.

Grieve argues the court unfairly put the burden on him to show he lost value in his accounts when the burden was on RBC to show no fact dispute. We disagree. Although the moving party has the burden to show the absence of a material issue of genuine fact, when a motion for summary judgment is properly supported, the nonmoving party is required to respond with specific facts that

show a genuine issue for trial. *Id.* at 245. It is not enough for the nonmoving party to rely on the hope of the subsequent appearance of evidence generating a fact question. *Thorton v. Hubill, Inc.*, 571 N.W.2d 30, 32 (Iowa 1997). Furthermore, facts asserted in an affidavit arising from mere speculation, generalizations, or beliefs and conclusory statements are insufficient to successfully resist a motion for summary judgment. *Wemett v. Shueller*, 545 N.W.2d 1, 2-3 (Iowa Ct. App. 1995). “Speculation is not sufficient to generate a genuine issue of fact.” *Hlubek v. Pelecky*, 701 N.W.2d 93, 96 (Iowa 2005). If the nonmoving party fails to assert specific facts to support the existence of a genuine issue for trial, the court may grant the motion for summary judgment. *Thorton*, 571 N.W.2d at 32.

Grieve’s claim he was damaged was nothing more than a mere conclusory statement or speculation, which is insufficient to resist RBC’s motion for summary judgment. Accordingly, we affirm the district court’s grant of summary judgment in favor of RBC. We need not consider whether summary judgment was proper on the alternative ground found by the district court.

**AFFIRMED.**