IN THE COURT OF APPEALS OF IOWA

No. 3-646 / 12-1952
Filed October 2, 2013

SUSAN STIENEKE and DARREL TODD,
Plaintiffs-Appellants,

vs.

UNITED BANK OF IOWA,
Defendant-Appellee.

Appeal from the Iowa District Court for Ida County, Jeffrey A. Neary, Judge.

The plaintiffs appeal the ruling of the district court entering summary judgment in favor of the defendant. **AFFIRMED.**

Ilisja J. Moreland, Sioux City, for appellant.

Donald H. Molstad of Molstad Law Firm, Sioux City, for appellee.

Considered by Vaitheswaran, P.J., and Doyle, J., and Goodhue, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

DOYLE, J.

Susan Stieneke and Darrel Todd appeal the ruling of the district court entering summary judgment in favor of United Bank of Iowa. They contend the district court erred in finding the parties' 1996 agreement was not supported by consideration and therefore could not be the basis for their breach of contract action against the bank. Finding no error, we affirm.

I. Background Facts and Proceedings

For purposes of our review of this summary judgment ruling, we find the relevant undisputed facts to be as follows.

In 1996, Susan Stieneke, Jeff Stieneke, Pauline Schoer, and Carl Schoer were the stockholders and principals of Stieneke Ford, Inc. in Holstein. Around March of that year, Heritage Bank informed the stockholders it would no longer finance their dealership. Jeff Stieneke and Darrel Todd (Susan and Pauline's father) met with Robert Butcher (president of United Bank of Iowa) to discuss whether United Bank of Iowa would finance the dealership.[1] At some point Jeff left the meeting, leaving Darrel and Robert to discuss potential financing for the dealership.

Robert told Darrel the bank would be willing to refinance the Heritage Bank loans if Darrel contributed $50,000 in capital to the dealership. Darrel wrote a check to the bank in the amount of $50,000 and gave it to Robert that day. According to Darrel, he did not expect to be repaid the $50,000.

[1] Prior to the merger of the entities in 2010, United Bank of Iowa was known as American National Bank. For sake of simplicity, we will refer to United Bank of Iowa by its present name or "the bank."

The bank accepted the dealership as a customer, and a few days after Darrel and Robert's meeting, the stockholders signed an agreement with the bank (the lending agreement). Per the lending agreement, the stockholders pledged certain collateral for the bank's extension of credit to the dealership, including a blanket security agreement, personal guaranties, real estate, and an assignment of the proceeds of a $250,000 life insurance policy owned by Jeff. The dealership also pledged certain collateral to the bank as part of the same transaction.

Approximately one month after the lending agreement was entered, Robert told Susan the shareholders "need[ed] to do something to protect [Darrel's $50,000 contribution]." Robert told Susan to draft a stipulation concerning how the bank should dispose of the life insurance policy's proceeds.[2] Robert suggested the language of the stipulation and Susan typed it on Stieneke Ford letterhead. The stipulation ("the 1996 agreement") provided:

> In the event that when we recieve [sic] life insurance check from life insurance policy No. [ ] on Jeff Stieneke we will pay off the following:
>
> (1) Jeff and Susan Stieneke mortgage on their house 204 South Main Holstein, IA
>
> (2) Darrel Todd repayment of remaining balance of $50,000.00
>
> (3) The remainder of life insurance goes toward the purchase of Stieneke Fords used vehicle inventory barrowed [sic] at [United Bank of Iowa] Holstein, IA
>
> As per conversation with Robert Butcher. Pres. [United Bank of Iowa] in Holstein, IA

Robert and the four stockholders signed the 1996 agreement. Darrel, who was not present at the time the agreement was executed, did not sign it.

[2] At that time, Jeff had been told by health care professionals that he had only a few months to live.

Jeff died in 2001. The proceeds of the life insurance policy were paid to the bank in accordance with the lending agreement. Robert subsequently met with the surviving stockholders to discuss the distribution of the policy's proceeds. Darrel attended only part of the meeting. Darrel did not know why the bank had the insurance policy proceeds because he was unaware of the 1996 agreement, but he expressed his opinion that Susan's mortgage should be satisfied. Robert asked, "What about your $50,000?" to which Darrel replied that he only wanted Susan's mortgage to be satisfied.[3] Darrel then left the meeting. Over Susan's protest, Robert, Pauline, and Carl agreed to apply all the proceeds to the dealership's debt.

A few years later, Susan sold her share in the dealership to Pauline and Carl. In 2009, the dealership was liquidated.

In 2011, Susan and Darrel[4] filed suit against the bank, alleging breach of contract and tortious interference with the 1996 agreement. The bank filed a motion for summary judgment, alleging in relevant part, the 1996 agreement lacked consideration because "[b]y signing [the 1996 agreement] which provided that the insurance proceeds could be used on Stieneke's house and repay [Darrell] Todd $50,000 there was no benefit to the bank nor was there any detriment to the Schoers or Stieneke."

Following a hearing, the district court entered an order granting summary judgment in favor of the bank, observing that before the 1996 agreement was

[3] By that time, Susan had a mortgage on a different house at 515 South Main. The mortgage on the house at 204 South Main was paid off when the house was sold in 1999.

[4] Darrel's claim stemmed from his rights as an "intended third-party beneficiary" to the 1996 agreement. He became aware of the existence of the 1996 agreement in 2008.

entered, "[t]he owners of the dealership had already executed [a lending] agreement that provided the bank with the sole right to receive funds from the life insurance policy"; therefore, "[t]he bank was already due to receive the proceeds" and "the 1996 agreement must be supported by separate consideration." Upon its consideration of the facts, the court determined "the bank never sought anything in exchange for its promise to apply the proceeds in the manner provided within the 1996 agreement," and "neither of the parties bargained for a return promise or performance." The court therefore concluded, "As a result of its determination that there is no consideration to support the 1996 agreement, the Court concludes that the plaintiffs cannot maintain a breach of contract suit against the defendants."

Susan and Darrel appeal.

II. Scope and Standard of Review

We review the district court's grant of summary judgment for correction of errors at law. *Sallee v. Stewart*, 827 N.W.2d 128, 132 (Iowa 2013). A party is entitled to summary judgment when the record shows no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 1.981(3). The burden is on the moving party to demonstrate it is entitled to judgment as a matter of law, and we view the evidence in the light most favorable to the nonmoving party. *Sallee*, 827 N.W.2d at 132.

III. Discussion

"It is fundamental that a valid contract must consist of an offer, acceptance, and consideration." *Margeson v. Artis*, 776 N.W.2d 652, 655 (Iowa 2009). The element of consideration, in particular, "ensures the promise sought

to be enforced was bargained for and given in exchange for a reciprocal promise or an act." *Id.*; *see Meincke v. Nw. Bank & Trust Co.*, 756 N.W.2d 223, 227 (Iowa 2008) ("Consideration can be either a legal benefit to the promisor, or a legal detriment to the promisee."). Consideration is "an essential part [in] the traditional notion that contract law exists to enforce mutual bargains, not gratuitous promises." *Margeson*, 776 N.W.2d at 655. In other words, "if the promisor did not seek anything in exchange for the promise made or if the promisor sought something the law does not value as consideration, the promise made by the promisor is unenforceable due to the absence of consideration." *Id.* at 655-56.

We presume a written and signed agreement is supported by consideration. *See* Iowa Code § 537A.2 (2011). Accordingly, here, the bank has the burden to establish its lack-of-consideration defense. *See Margeson*, 776 N.W.2d at 656. We look for consideration from the language in the contract and by "what the parties contemplated at the time the instrument was executed." *Meincke*, 756 N.W.2d at 227.

In this case, there is no dispute the assignment of the life insurance policy, per the lending agreement between the dealership stockholders and United Bank of Iowa, was supported by consideration. *See*, *e.g.*, *id.* (finding subordination agreement supported by adequate consideration where a bank suffered a detriment by loaning a plumbing business additional funding). There is also no dispute the language of the 1996 agreement providing for the application of the

policy proceeds, in and of itself, lacked consideration.[5] *See*, *e.g.*, *Margeson*, 776 N.W.2d at 656 (stating that "a promise to perform a preexisting duty does not constitute consideration"); *Meincke*, 756 N.W.2d at 227 (observing consideration must be bargained for—*i.e.*, a promise to perform an act not obligated to perform in exchange for the promise); *Ins. Agents, Inc. v. Abel*, 338 N.W.2d 531, 535 (Iowa Ct. App. 1983) (finding a promise of "continuing employment" did not provide consideration for an additional agreement between the parties).

The primary contention raised by Susan and Darrel, however, is that the 1996 agreement "is one and the same with the contract for the assignment of insurance proceeds so that when the two writings are read together, they result in one indivisible contract."[6] For that reason, they contend the district court erred in concluding the 1996 agreement lacked consideration, because the 1996 agreement only "further clarif[ied] the distribution of life insurance proceeds" and "is not a modification of the original assignment for which additional consideration is required."

Indeed, "one consideration stated in a contract may support any number of promises." *In re Estate of Claussen*, 482 N.W.2d 381, 383 (Iowa 1992). This notion, however, is premised upon a finding that the contract is a single agreement. *Id.* "The question of whether a given contract is to be considered as a single agreement or several, separable agreements is largely one of the parties' intent, which is to be determined from the language the parties have

[5] Specifically, Susan and Darrel do not claim the bank promised to give up something new in entering the 1996 agreement.

[6] In an alternative argument, Susan and Darrel allege the "circumstances" surrounding the 1996 agreement "under which it was signed" gave rise to consideration for the agreement.

used and the subject matter of the contract." *See id.* (describing a real estate contract that included a purchase agreement and an option clause as having "several distinct items" that "were interdependent and supported by a common consideration," and finding the contract was intended to constitute a single agreement supported by a single consideration).

Accordingly, we turn to whether the 1996 agreement was merely an extension of the lending agreement and assignment (*i.e.*, the two agreements constituted a single, non-severable agreement), or whether the 1996 agreement was a separate and distinct agreement between the parties. In general, "a contract constitutes a single agreement when, by its terms, nature, and purpose, it contemplates that each and all of its parts and the consideration stated shall be common each to the other and interdependent." *Id.*; 17A Am.Jur.2d *Contracts* § 390, at 416 (1991).

Here, upon learning Heritage Bank would no longer finance the dealership, the stockholders sought financing from United Bank. United Bank agreed to extend a loan to the dealership and the stockholders signed a lending agreement with the bank. The stockholders pledged certain collateral for the bank's extension of credit to the dealership, including an assignment of the proceeds of a $250,000 life insurance policy. As the district court observed,

> [p]ursuant to its negotiations as a result of the beginning of their lending relationship, Jeff Stieneke assigned his life insurance policy, which was one of many other items given to the bank as collateral for the extension of credit to the dealership. Therefore, upon Jeff Stieneke's death, the bank was due to receive $250,000 in life insurance proceeds.

In sum, as the court found, "the bank promised to lend money to the dealership in exchange [in part] for receiving the life insurance policy as collateral. There was consideration for that agreement." Moreover, it is clear the parties did not intend a provision requiring a specific application of the policy proceeds to be part of the lending agreement and assignment.

Upon our review of the testimony and undisputed facts of this case, we find the lending agreement and assignment entered between the stockholders and the bank was intended by the parties to be a final and complete expression of their agreement. *See Ins. Agents, Inc.*, 338 N.W.2d at 534 (observing the stock purchase plan with an additional agreement not to compete was not intended by the parties to be part of the initial agreement for the sale of defendant's business); *see also Whalen v*. *Connelly*, 545 N.W.2d 284, 290 (Iowa 1996) ("An agreement is fully integrated when the parties involved adopt a writing or writings as the final and complete expression of the agreement."). There is no evidence in the record that either party anticipated or believed, at the time the lending agreement and assignment were entered, that a separate agreement or addendum would be entered at some later date providing for a required application of the insurance policy proceeds. *See Margeson*, 776 N.W.2d at 658 (finding an addendum to business sales agreement, which included "nothing more than a unilateral price hike" where the buyer promised additional compensation for the same performance by the seller, did not reflect additional consideration; and approving the rule that "a promise of additional performance for the same compensation or to pay additional compensation for the same

performance is invalid for want of sufficient consideration") (citing 1A *Corbin on Contracts* § 175, at 114 (1963)).

Accordingly, the 1996 agreement constituted a modification of the lending agreement and assignment that required new consideration. *See id.* at 657 ("Our law clearly requires some new consideration to support the modification of a contract."); *Heggen v*. *Clover Leaf Coal & Mining Co*., 253 N.W. 140, 142 (Iowa 1934) (holding that to establish modification of existing contract, it must appear that some consideration passed between parties). Susan and Darrel claim "the circumstances under which [the 1996 agreement] were signed" give rise to consideration. The district court was not persuaded by this contention and neither are we. As the district court observed:

> The owners of the dealership had already executed an agreement that provided the bank with the sole right to receive funds from the life insurance policy. While the bank certainly altered its rights to keep all of the proceeds as collateral, the 1996 agreement does not indicate the dealership's owners offered anything in addition to or different from that which they had already promised to give to the bank. . . .
>
> From a consideration of the situation of the parties, however, it appears more apparent that the bank never sought anything in exchange for its promise to apply the proceeds in the manner provided within the 1996 agreement. Further examination also reveals that neither of the parties bargained for a return promise or performance. Therefore, the Court concludes that the 1996 agreement was not an extension of the assignment and was not supported by consideration.

A mutual modification of a previous contract that operates "to the exclusive benefit of one of the parties" is not supported by the same consideration as the original contract. *See Commercial Nat'l. Bank v*. *May*, 174 N.W. 646, 649 (Iowa 1919). Here, although the bank agreed to apply a portion of its collateral from the insurance policy proceeds back to the stockholders

(namely, Darrel and Susan), the stockholders did not provide a return promise or performance in exchange for the bank's promise to accept less collateral. The 1996 agreement does not reflect independent consideration. *See Margeson*, 776 N.W.2d at 656 ("No consideration exists when the promisee has a preexisting duty to perform because a promisor is already entitled to receive the promise made by the promisee and the promisee has only made what amounts to a gratuitous promise."); *Ins. Agents, Inc.*, 338 N.W.2d at 534 ("A promise to do that which one is already obligated to do will not suffice as consideration.").

A lack of consideration renders the 1996 agreement unenforceable.[7] We therefore affirm the district court's entry of summary judgment in favor of the defendant.

AFFIRMED.

[7] Our resolution of this issue disposes of the appellants' remaining claim regarding Darrel's rights as a third-party beneficiary.