IN THE COURT OF APPEALS OF IOWA

No. 9-626 / 08-1321
Filed November 12, 2009

ARTHUR W. RENANDER and
ZARA RENANDER,
Plaintiffs-Appellants,

vs.

GARY AAMODT,
Defendant-Appellee.

Appeal from the Iowa District Court for Johnson County, Fae Hoover-Grinde, Judge.

The plaintiffs appeal a district court's dismissal of their fraudulent misrepresentation claim against a defendant, contending that the court incorrectly determined two alleged representations were not actionable. **AFFIRMED.**

Davis Foster of Foster Law Office, Iowa City, for appellant.

Thomas Hobart and Peter Gardner of Meardon, Sueppel & Downer, P.L.C., Coralville, for appellee.

Heard by Vaitheswaran, P.J., and Mansfield, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

VAITHESWARAN, P.J.

Arthur and Zara Renander appeal the district court's dismissal of their claim of fraudulent misrepresentation against Gary Aamodt.

I. Background Facts and Proceedings

Arthur Renander acquired eighteen acres of land near Coralville, Iowa, that abutted 100 acres of land owned by a partnership known as High Country. To facilitate the development of a golf course by High Country, Renander agreed to exchange his eighteen acres for nine acres of High County land that had better access and zoning. When development of the golf course did not go as Renander expected, Renander sued High Country. After extensive litigation, Renander and High Country reached a settlement under which High Country agreed to sell its 100 acres to Renander, subject to certain outstanding claims.

As Renander did not have sufficient funds to purchase the 100 acres, he approached his friend Gary Aamodt about joining the enterprise. Renander was aware that Aamodt recently sold certain real estate for a net gain of close to one million dollars. He was also aware that Aamodt could defer taxation on those gains under Internal Revenue Code section 1031 if he designated a similar property for purchase within forty-five days of this sale and followed through with the purchase within 180 days of the sale.[1]

Aamodt designated the Coralville property along with two other properties as potential 1031 purchases. Meanwhile, Renander agreed to pay High Country

[1] No gain or loss is recognized for tax purposes if property is exchanged for like property; such like property must be identified within forty-five days of the sale of the original property and must be received by the taxpayer within 180 days of the transfer of property relinquished in the exchange. 26 U.S.C. § 1031.

1.2 million dollars for the 100 acres. Under the verbal agreement with High Country, he would make one $600,000 payment at the time of closing and another $600,000 payment at a later date.

Renander and Aamodt exchanged documents in an attempt to solidify an agreement between them. Negotiations broke down for a period, and, during that time, Renander solicited and obtained a commitment of $250,000 from a third party. Shortly before the 1031 purchase deadline, Renander and Aamodt revived their negotiations and verbally agreed to close on the 100 acres by March 19, 2001.

The closing took place as scheduled, with Aamodt contributing $340,000 and Renander and third parties contributing the balance. After the closing, Renander and Aamodt memorialized their contributions, noted that Aamodt's investment entitled him to a 50% interest in the property, and agreed that "a definitive agreement" would be reached by May 31, 2001. They further agreed that either could withdraw from the transaction and, if Aamodt withdrew, Renander would have the right to buy out his interest. Both parties eventually exercised this withdrawal/buyout option. However, Renander was unable to obtain funding for the buyout.

Renander and his wife sued Aamodt, alleging Aamodt made fraudulent misrepresentations. They sought rescission and damages. Following trial, the district court essentially adopted Aamodt's proposed findings of fact and conclusions of law and dismissed the action. This appeal followed.

II. Scope of Review

The parties disagree on the scope of our review, with Renander asserting that we must review the record de novo and Aamodt contending our review is for errors of law. If review is for errors of law, the district court's fact-findings are binding on us if supported by substantial evidence. *Ernst v. Johnson County*, 522 N.W.2d 599, 602 (Iowa 1994).

The record on this issue is mixed. During trial, the district court ruled on objections, which is a hallmark of a law action. *See id.* ("Where there is uncertainty about the nature of a case, a litmus test we use in making this determination is whether the trial court ruled on evidentiary objections."); *In re Mt. Pleasant Bank & Trust Co.*, 426 N.W.2d 126, 129 (Iowa 1988) (stating that although a case was filed in equity, the scope of review is governed by how the case was tried). However, the lawsuit was filed in equity, the court stated the case was being heard in equity, the court expressed an intent to receive evidence subject to the objections of the opposing party, and the final ruling was titled a "decree," all hallmarks of an equity action. *Mt. Pleasant*, 426 N.W.2d at 129. Therefore, our review is de novo. *Id.*

III. Fraudulent Misrepresentation

Fraudulent misrepresentation requires proof of the following: "(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). Proof must be established by "a clear and convincing preponderance of the evidence." *Lockard v. Carson*, 287 N.W.2d

871, 874 (Iowa 1980) (quoting *Mills County State Bank v. Fisher*, 282 N.W.2d 712, 715 (Iowa 1979)).

Renander relies on two representations claimed to have been made by Aamodt. First, he contends that Aamodt represented his $340,000 investment came from the 1031 exchange proceeds. Second, he contends that Aamodt represented he would be the sole financial contributor in the joint venture.

A. 1031 Proceeds

The first three elements of a fraudulent misrepresentation claim are usually considered together. *Arthur*, 565 N.W.2d at 625. With respect to these elements, Renander testified as follows. First, he said that Aamodt told him he had between $300,000 and $350,000 of 1031 funds to invest in the Coralville property. Second, he stated this representation was false because Aamodt later acknowledged that at the time of the 100-acre transaction he only had $12,905.09 in 1031 funds remaining. Third, Renander testified that the source of Aamodt's funds was material

> [b]ecause it meant [Aamodt] had $340,000 of liquid cash or thereabouts, between 300 and 350 and, therefore, all he needed to close with High Country was another 300 and maybe some change. So we were—we were halfway or more there and without that money it might be a problem. And so—and it proved absolutely accurate that without that, he couldn't perform and put up with all the money.

Aamodt provided some indications that his contribution at the time of closing came from a 1031 exchange. Specifically, his attorney delivered a check to High Country which stated that it was "in the amount of three hundred forty thousand dollars ($340,000), representing Northern's IRC § 1031 exchange proceeds." Additionally, Aamodt subsequently wrote a letter to Renander stating:

> You were aware that we had 1031 money of approximately $340,000 from the sale of property in Madison. You said that there would be no problem in making up the difference (which I thought at the time would be $10,000) from "family sources".

However, regardless of whether Aamodt made a representation that his contribution had come from 1031 proceeds, we find that Renander failed to establish the materiality element of a misrepresentation claim.

"Materiality has been found where a fact influences a person to enter into a transaction, where it deceives him or induces him to act, or where the transaction would not have occurred without it." *Smith v. Peterson*, 282 N.W.2d 761, 765 (Iowa Ct. App. 1979). Renander testified that without the requisite amount of 1031 exchange proceeds, "it was really a question mark as to whether [Aamodt] had the resources to perform in this deal." But this begs the question of whether the "deal" required Aamodt to commit more than the initial $340,000. Clearly, Aamodt had the resources to pay $340,000, because he did so. Thus, without the second alleged misrepresentation, the first misrepresentation is immaterial.

In any event, Renander's assertion that he needed to know the source of the $340,000 to assure himself of Aamodt's ability to pay additional, future amounts is contradicted by his testimony about their prior financial dealings. Renander testified that Aamodt had been a "very, very close friend" of his since 1998 and, in that capacity, he assisted Aamodt with a business in which Aamodt owned a one-third interest. When Aamodt was elected chairman of the business, Renander became its director. He also became treasurer of another company Aamodt owned. Renander testified that Aamodt eventually sold out one of these

businesses for "[r]oughly a million dollars." Renander was also aware that Aamodt owned two homes in Nantucket, Massachusetts, which he rented to vacationers, and owned a building in Madison, which he later sold. Additionally, Renander knew that Aamodt had significant sums of ready cash, as Renander obtained close to a $50,000 loan from him a year before the closing on the 100 acres, a loan that he never repaid. In short, even if Aamodt had committed himself to continue funding the acquisition by himself, the evidence does not support Renander's claim that the source of Aamodt's $340,000 contribution was material.

B. Sole Financial Contributor

According to Renander, Aamodt also represented that he would be the sole financial contributor to the 100-acre project. The evidence relating to this representation is sparse at best. While Renander testified to the financial commitment he believed Aamodt would make, the suggestion that Aamodt said he would be the "sole financial contributor" came from Renander, and Aamodt roundly rejected this suggestion. For example, Renander testified that he initially discussed this deal with Aamodt and indicated that he was seeking "between 900,000 and a million dollars to complete this transaction." He memorialized this conversation in memos prepared by him, but there is no evidence that Aamodt agreed to the content of these memos. Indeed, after the memos were prepared, negotiations between the two broke down. Talks resumed only after Renander secured the third-party commitment of $250,000. This commitment alone belies Renander's assertion that Aamodt said he would be the sole financial contributor.

When talks resumed, there was, by all accounts, a flurry of activity and communication, but no statement from Aamodt that he would contribute all the funds necessary to complete the transaction and all the expenses associated with the transaction. To the contrary, Aamodt testified that he believed he was holding a fifty percent interest in the venture, which would obligate him to pay only fifty percent of the expenses associated with the venture. Aamodt strongly objected to Renander's proposed language that Aamodt would contribute "approximately $1 million in new capital to this transaction." In fact, when Aamodt sent written proposals to Renander (none of which Renander accepted), they specifically allowed for the possibility that Aamodt's total contribution to the project would be less than $500,000.

On our de novo review, we are convinced Aamodt did not represent that he would serve as sole financial contributor to the project. For this reason, we conclude Renander's fraudulent misrepresentation claim premised on this statement also must fail.

In light of our conclusion, we find it unnecessary to address the remaining grounds for affirmance raised by Aamodt.

We affirm the district court's dismissal of Renander's lawsuit.

AFFIRMED.