2016 IL App (5th) 150165-U

NO. 5-15-0165

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

PEOPLES NATIONAL BANK, Plaintiff-Appellee, v. RICK J. LANE, Defendant-Appellant.	)	Appeal from the Circuit Court of Saline County. Nos. 12-L-40 & 12-L-41
RICK J. LANE, Plaintiff-Appellant, v. PEOPLES NATIONAL BANK, Defendant-Appellee.	)	Honorable Mark H. Clarke, Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Schwarm and Justice Cates concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in finding that the Illinois Credit Agreements Act had a preclusive effect on the claims of a debtor against his creditor.

¶ 2 This case involves two lawsuits. On August 27, 2012, case number 12-L-40 (the collection action) was brought by appellee Peoples National Bank (PNB) to collect on

promissory notes signed by appellant Rick Lane (Lane). PNB attached as exhibits two promissory notes executed by the parties on March 26, 2010, in the principal amounts of $250,000 and $2,225,000, as well as three change in terms agreements, signed by the parties on March 24, 2011, on April 26, 2011, and on June 24, 2011.

¶ 3 On August 28, 2012, case number 12-L-41 (the recoupment action) was filed by Lane against PNB to enforce his rights as an alleged agent for PNB in the sale of large machinery that PNB had acquired as collateral after a loan default by S-Coal, a bankrupt customer. Lane stated that he agreed to help PNB sell the machinery in order to reduce the impact of the large loss from PNB's end of first quarter reporting period. Lane sought a declaratory judgment to establish that on March 19, 2010, under an alleged oral agreement or "side deal" made with Bill Bonan II (Bonan), an officer of PNB, he signed the promissory notes and the renewal notes on the balance of the indebtedness in a representative capacity. Lane stated that he was assured by Bonan that he "would not get hurt in the deal," and because he was acting as PNB's agent for the sale of PNB's secured collateral, he incurred no individual liability for the indebtedness. Lane also sought indemnification for $77,704 of his own funds that he expended to maintain the collateral and effectuate the sale.

¶ 4 On September 25, 2012, PNB filed a motion to dismiss Lane's recoupment action pursuant to section 2-619 of the Illinois Code of Civil Procedure (the Code) (735 ILCS 5/2-619 (West 2012)). PNB asserted that because the Illinois Credit Agreements Act (the Act) (815 ILCS 160/0.01 *et seq.* (West 2012)) requires that a debtor may not maintain an action related to a credit agreement unless the credit agreement is in writing, the claim

asserted by Lane is barred by an affirmative matter. On September 26, 2012, Lane filed a section 2-619 motion to dismiss the collection action (735 ILCS 5/2-619 (West 2012)), stating that he signed the notes and loan documents at the request of PNB in a representative capacity. The motion was supported by an affidavit reiterating the statements averred in his recoupment action.

¶ 5 On February 20, 2013, PNB filed a motion for judgment on the pleadings (735 ILCS 5/2-615(e) (West 2012)), asserting that because Lane did not dispute the authenticity of the notes or that PNB was the holder of the notes, and because Lane had no viable defense under Illinois law, "the facts contained in Lane's affidavit and those alleged in 12-L-41 are not sufficient to defeat judgment on the pleadings." On December 17, 2014, Lane filed a motion to amend his complaint to additionally allege fraud against Bonan for convincing him to enter into the alleged side deal.

¶ 6 In an April 8, 2015, combined order resolving all the pending motions, the circuit court entered judgment for PNB in the collection action and dismissed the recoupment action, founding both rulings on the Act. The court summarized Lane's argument:

> "Lane asserts that the agency relationship alleged in both the damage count and the fraud count in the proposed Amended Complaint predates the loan agreement which is the subject matter of 12-L-40, and, therefore, no proof of an oral credit agreement is pled or need be proved for Lane to obtain a judgment against PNB under the counts of the amended complaint because his claims rely on PNB's breach of fiduciary duties owed by a principal.

> Lane argues that *** the allegations are not barred by the Illinois Credit Agreements Act, because '…Lane's agency relationship and the bank's concomitant duties existed before and independent of the creditor/debtor relationship PNB has asserted.' "

¶ 7 The court found that the issue was whether the relationship between PNB and Lane was "in any way related to a credit agreement" so as to fall within the scope of the Act. The court noted that Lane's statement in his motion to dismiss the collection action that "[t]he notes and loan documents were signed by Defendant at request of Plaintiff in a representative capacity for [PNB] for the use and benefit of [PNB]" was a matter relating to a credit agreement, and the conduct alleged by Lane in his recoupment action was also related to the credit agreement reflected in the "notes and loan documents" referenced in Lane's motion to dismiss. The court found that the relationship between Lane and PNB fell within the scope of the Act, stating that it "finds itself bound by the cases cited by PNB, notwithstanding Lane's attempts to distinguish those cases from the facts in this case," and was required to find that "Lane's asserted defenses in [the collection action] and asserted claims in [the recoupment action], including those found in his proposed amended complaint, are barred by [the Act]." The court also denied Lane's request to amend his complaint, as the proposed amendment would not enable Lane to sustain the claim for which it was intended.

¶ 8 Lane appeals both cases, seeking reversal of the judgment on the pleadings entered against him in the collection action and reversal of the dismissal of his request for

declaratory judgment and indemnification against PNB in the recoupment action, along with the denial of his request for leave to add a fraud action in that case.

¶ 9 A motion brought pursuant to section 2-619(a)(9) seeks involuntary dismissal by arguing that the claims are barred "by other affirmative matter avoiding the legal effect of or defeating the claim[s]." 735 ILCS 5/2-619(a)(9) (West 2012). An "affirmative matter" in this context is something in the nature of a defense which negates the cause of action completely. *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367 (2003). We review an appeal from a section 2-619 dismissal *de novo*. *Id*. For the following reasons, we affirm the judgment of the circuit court.

¶ 10 Section 2 of the Act provides that "[a] debtor may not maintain an action on or in any way related to a credit agreement unless the credit agreement is in writing, *** sets forth the relevant terms and conditions, and is signed by the creditor and the debtor." 815 ILCS 160/2 (West 2012). The Act defines a "credit agreement" as:

> "an agreement or commitment by a creditor to lend money or extend credit or delay or forbear repayment of money not primarily for personal, family or household purposes, and not in connection with the issuance of credit cards." 815 ILCS 160/1(1) (West 2012).

Section 3(3) of the Act provides:

> "The following actions do not give rise to a claim, counter-claim, or defense by a debtor that a new credit agreement is created, unless the agreement satisfies the requirements of Section 2:

(3) the agreement by a creditor to modify or amend an existing credit agreement or to otherwise take certain actions, such as entering into a new credit agreement, forbearing from exercising remedies in connection with an existing credit agreement, or rescheduling or extending installments due under an existing credit agreement." 815 ILCS 160/3(3) (West 2012).

¶ 11 There is no limitation as to the type of actions by a debtor which are barred by the Act so long as the action is in any way related to a credit agreement. *First National Bank in Staunton v. McBride Chevrolet, Inc.*, 267 Ill. App. 3d 367, 372 (1994). Our courts have determined that the broad language of the Act was intended to extend beyond the existing Frauds Act, reasoning that by creating a new statute rather than amending the Frauds Act to include credit agreements, our legislature intended that the Act bar the traditional exceptions to the application of the statute of frauds. *McAloon v. Northwest Bancorp, Inc.*, 274 Ill. App. 3d 758, 1095 (1995); *Teachers Insurance & Annuity Ass'n of America v. LaSalle National Bank*, 295 Ill. App. 3d 61, 68 (1998).

¶ 12 The promissory notes at issue in this case are "credit agreements" pursuant to the Act. 815 ILCS 160/1(1) (West 2012). Lane maintains that because his action for indemnification of expenses incurred as PNB's sales agent is not based on or related to enforcement of an oral credit agreement as defined by the Act, the Act is not applicable and has no preclusive effect. PNB responds that because the "side deal" was "in any way related" to the credit agreement that he signed, the Act is invoked. PNB cites to the abundant case law strictly construing the broadly-worded statute, despite the sometimes unfair or unscrupulous results. See, *e.g.*, *First National Bank in Staunton v. McBride*

Chevrolet, Inc., 267 Ill. App. 3d 367, 372 (1994) (breach of oral promise nonwithstanding, the Act barred all of the defendants' counterclaims including breach of contract, breach of implied covenant of good faith and fair dealing, and violation of the Consumer Fraud Act); *Nordstrom v. Wauconda National Bank*, 282 Ill. App. 3d 142, 145 (1996) (when fire destroyed equipment that was to serve as collateral for which the bank had orally promised to obtain insurance, the Act bars a promissory estoppel claim because the oral agreement purported to modify an integral part of the credit agreement); *Machinery Transports of Illinois v. Morton Community Bank*, 293 Ill. App. 3d 207, 209-10 (1997) (finding that even claims based on oral credit agreements under which one party has fully performed are barred by the Act); *Bank One, Springfield v. Roscetti*, 309 Ill. App. 3d 1048, 1056 (1999) (finding that because a guaranty together with a note and other documents constituted a "credit agreement" under the Act, enforcement of a promise from the lender to the guarantor that the lender would monitor the borrower "like a hawk" was barred).

¶ 13 In accordance with the case law, our determination of whether the Act bars Lane's claims and defenses consists of two inquiries: (1) whether the "side deal" whereby Bonan and Lane agreed that Lane was acting as an agent constitutes one of the oral agreements governed by the Act and (2) if it does, whether Lane's claims and defenses are based on the oral promise. See *Bank One, Springfield v. Roscetti*, 309 Ill. App. 3d 1048, 1057 (1999).

¶ 14 Lane contends that his case is distinguishable from the above cases and likens it instead to *Schafer v. UnionBank/Central*, 2012 IL App (3d) 110008. In *Schafer*, a debtor

brought a conversion action against a bank, contending that the bank officer had mistakenly checked a box on his commercial security agreement indicating that it secured all outstanding debts that he owed the bank, rather than the particular loan that gave rise to the execution of the security agreement. *Id*. ¶ 7. Schafer claimed that the bank's interest in the equipment pledged as collateral for the loan was extinguished when the loan was paid off and the equipment should not have been sold to satisfy the indebtedness to the bank that was in default. *Id*. ¶ 5. Schafer's claim of mutual mistake of fact was supported by the affidavit of the bank's loan officer confirming the wrong box had been "checked." *Id*. ¶¶ 7-8. The court found that the Act did not warrant summary judgment for the bank (based on the preclusive effect of the Act) because Shafer's action for conversion against the bank was not raised under the credit agreement; the validity of the credit agreement was only addressed when it was raised by the creditor as its defense. *Id.* ¶ 27. The court concluded that Schafer was not precluded from raising the validity of the credit agreement. *Id*. ¶ 31.

¶ 15 However, we disagree with Lane's comparison. *Schafer* does not involve the existence of an oral agreement that altered a written agreement, but a mutual mistake between a creditor and debtor that resulted in a credit agreement whose terms did not reflect the terms that the parties intended. This is distinguishable from the case at bar, where despite the terms of the credit agreement that Lane signed, he orally agreed with PNB to alter the conditions of the parties' liability while never intending to include such agreements in the written document. This is the type of claim that the Act was designed to prohibit.

¶ 16 In keeping with our courts' expansive reading of the Act, we find that the "side deal" purportedly creating an agency relationship between the parties, the effect of which is that Lane is not liable on the notes he signed, is an oral agreement that falls under the Act. Only by being declared an agent of the bank can Lane seek reimbursement for his expenditures in selling the equipment and avoid responsibility for the promissory notes. The oral agreement to act as an agent for PNB relates to the credit agreement because it transforms the parties' obligations on the notes.

¶ 17 Despite Lane's arguments to the contrary, each cause of action depends for its existence on the March 19 oral "side deal" he entered with Bonan. Without the oral agreement that Lane was acting in a representative capacity for the bank, there could be no actionable cause for either his recoupment claims or the allegations of fraud in his amended claim, as well as no basis for a defense in his motion to dismiss PNB's collection action. To put it succinctly, the Act seeks to bar actions that arise from or are related to verbal promises (*Westinghouse Electric Corp. v. McLean*, 938 F. Supp. 487, 492 (N.D. Ill. 1996)), and we do not think a party may nullify its effects by filing pleadings asserting an agency relationship, even where, as Lane correctly points out, an agency relationship generally is not required to be in writing to be enforceable. 805 ILCS 206/101(g) ("Partnership agreement means the agreements, whether written, oral, or implied among the partners concerning the partnership."). Lane's assertions in his recoupment action and in his motion to dismiss the collection action rest on proving that the "true" credit agreement entered into by the parties was not reduced to writing. In light of the broad language of the Act and in keeping with our courts' interpretation of the Act,

Lane is barred from these assertions because they are based on oral statements related to a credit agreement.

¶ 18 For these same reasons, the trial court did not err in denying Lane's motion to amend his complaint, as it is a decision within the trial court's discretion whether allowing the amendment would further the ends of justice. *Weidner v. Midcon Corp.*, 328 Ill. App. 3d 1056, 1059 (2002). In light of the fact that Lane's attempted amendment did not cure his cause of action, the court properly exercised its discretion.

¶ 19 Finally, we note that a motion was taken under consideration with this case. On December 14, 2015, Lane filed a motion to strike portions of PNB's brief, arguing that it contains argument and documents in support of PNB's assertion that Lane was not acting as its agent in the sale of the collateral. These documents, which have no bearing on our decision in this case, are presented in the index to PNB's brief and appear to be an attempt to refute some of Lane's factual allegations. We deny Lane's motion to strike portions of PNB's brief.

¶ 20 We affirm the judgment of the circuit court of Saline County.

¶ 21 Affirmed.