

LANEY-PAYNE FARM LOAN COMPANY v. GREENHAW.

Opinion delivered June 18, 1928.

1. APPEAL AND ERROR—CHANCELLOR'S FINDINGS.—Findings of fact of a chancellor will not be set aside on appeal unless clearly against the preponderance of the testimony.
2. FRAUD—FALSE REPRESENTATION.—If an untrue representation is made by a seller of the nature of which he had no knowledge or which he knows to be false, it will constitute fraud.
3. FRAUD—FALSE REPRESENTATIONS.—In an action for damages for breach of a contract pursuant to which the plaintiff purchased certain bank stock, evidence *held* to justify a finding that false representations made by defendant induced plaintiff to make the purchase, *held* sustained by the evidence.

4. FRAUD—FALSE REPRESENTATIONS—DAMAGES.—Where plaintiff entered into a contract with defendants to represent them in soliciting farm loans, and was induced to purchase stock in a bank on defendants' false representation that the bank was solvent, *held* that plaintiff, in an action for damages by reason of such false representation, was not entitled to recover alleged expenses of advertising and traveling, since at the same time he was soliciting insurance, and did not itemize his expenses.

Appeal from Boone Chancery Court; *Sam Williams*, Chancellor; judgment modified.

STATEMENT OF FACTS.

Appellee instituted this action in the circuit court to recover damages for an alleged breach of contract which he was induced to enter into by false representations of appellants. On motion of appellants the case was transferred to the chancery court and tried there.

F. P. Greenhaw, appellee, was the principal witness for himself. According to his testimony, he had been engaged in securing farm loans and in the insurance business for the past ten years. During the month of August, 1923, the pictures of W. H. Laney and M. T. Payne appeared in a daily Arkansas paper with an article announcing them as representatives of a joint stock land bank for thirty counties in the State of Arkansas, with office at Little Rock. The firm was called the Laney-Payne Farm Loan Company, and the firm advertised itself as representing the Bankers' Joint Stock Land Bank of Booneville, Missouri, which had money to loan on farms. Desiring to represent them, Greenhaw went from his home at Harrison, Arkansas, to Little Rock, Arkansas, and became acquainted with W. H. Laney. They began negotiations for Greenhaw to represent the firm in eight counties in Northwest Arkansas. Laney told Greenhaw that they could not enter into a contract with him unless he would agree to purchase \$3,000 worth of stock in the Bankers' Joint Stock Land Bank of Booneville, Missouri. Laney represented that the stock was good, and that he had been to Booneville and made an investigation of the affairs of said bank. Laney then introduced Greenhaw to A. J. Blakey, who was

vice president of said bank, and Blakey also represented that the bank was solvent. Greenhaw then entered into a written contract with the Laney-Payne Farm Loan Company on the 27th day of August, 1923. In this contract he agreed to solicit loans in certain designated counties in the State of Arkansas and to bear his own office, traveling and other expenses incident to securing application for loans, and in closing up loans if made. Appellants were to furnish blank forms which had been prepared by the Bankers' Joint Stock Land Bank to be used by its representatives in securing applications for loans. The contract further provided that appellee was to receive one-half of one per cent. commission on all loans accepted. Appellee agreed to buy \$3,000 worth of stock in the Bankers' Joint Stock Land Bank of Booneville, Missouri, through the Laney-Payne Farm Loan Company, paying therefor \$1,000 in cash and giving two notes for the balance of the purchase money of said stock. Greenhaw did not desire to invest in said stock, and only did so because this was the only way he could secure an agency to solicit farm loans under appellants. Laney expressly stated to Greenhaw that he had been to Booneville and made an investigation of the affairs of said bank, and that its stock was good. Greenhaw relied on these representations. He entered upon the discharge of his duties as such agent, and secured applications for loans aggregating over \$75,000, on which the title to the lands were examined and approved. Appellants did not secure the money on any of these loans, and the bank which was to make the loans in Booneville, Missouri, went out of business in May or June, 1924. The bank turned out to be insolvent, and its stock was disposed of at considerably less than par, instead of being worth more than par, as represented.

W. H. Laney was the principal witness for appellant, and denied having represented to Greenhaw that he had made a personal examination of the affairs of the Booneville Bank, and knew the value of its stock. Laney testified that Greenhaw talked with an officer of the bank,

and relied on his representations as to the value of the stock, and that he was not induced to purchase said stock or to enter into the contract sued on by reason of any representations made by Laney as to the value of the stock of the Booneville Bank or its ability to produce purchasers for farm loans. Other facts will be stated or referred to in the opinion.

The chancellor found the issues in favor of appellee, and rendered judgment in his favor against Laney for the sum of \$1,000, which he had paid on the purchase price of the stock in said Booneville Bank, and for the further sum of \$500 for money paid out by Greenhaw for traveling expenses and advertising his agency business. Appellants were also enjoined from maintaining any action on the notes given by appellee to them for the balance of the purchase price of said \$3,000 of stock in said Booneville Bank. W. H. Laney has duly prosecuted an appeal to this court.

John E. Miller and Charles W. Mehaffy, for appellant.

Woods & Greenhaw, for appellee.

HART, C. J., (after stating the facts). This court has steadily adhered to the rule that the findings of fact made by a chancellor will not be set aside on appeal unless they are clearly against the preponderance of the evidence. Tested by this rule, it cannot be said that the decree of the chancery court is erroneous because the finding of fact made by the chancellor is clearly against the weight of the evidence.

According to the testimony of appellee, W. H. Laney, one of the appellants, induced him to purchase the stock in the Booneville bank upon the false representation that said bank was solvent, when in fact it was not. If the testimony of Greenhaw was true, the chancellor was justified in finding that Laney made statements to him of the value of the stock in the Booneville bank, based on his own knowledge of fact and not upon information received from third persons. If a person makes an assertion of facts of which he is ignorant, whether such

assertion is true or false, he becomes responsible in a civil action as if he had asserted to be true that which he knew to be untrue. The value of the stock was a material fact which induced appellee Greenhaw to enter into the contract which is the basis of this action; and if Laney represented as of his own knowledge that the stock of the Bankers' Joint Stock Land Bank was worth above par, when in fact he had no such knowledge, then he would be responsible in damages. In other words, it is the settled rule of this court that, if a representation is made by the seller of the nature of which he had no knowledge, or which he knows to be false, it will constitute fraud. *Hunt v. Davis*, 98 Ark. 44, 135 S. W. 458; *Bell v. Fritts*, 161 Ark. 371, 256 S. W. 53; *Myers v. Martin*, 168 Ark. 1028, 272 S. W. 856; *Stroud v. Henderson*, 171 Ark. 338, 284 S. W. 45; and *Joyce v. McCord*, 123 Ark. 492, 185 S. W. 775.

In discussing alleged false representations to induce a person to buy stock in a bank, in the case last cited, the court said:

"These representations were evidently made to assure the buyers of the value of the stock and induce them to purchase without any further investigation of the matter. If the representations were false, and knowingly made by the seller to induce the purchaser to rely thereon to his injury, and such was their effect, then they were fraudulent, and the seller could be required to answer in damages for the injury to the buyer by reason thereof."

It is true that Laney denied having made the representations to Greenhaw; but the chancellor found that he did make such representations, and it cannot be said that his finding is against the clear preponderance of the evidence. If he did make them, he either knew them to be false, or made them recklessly without knowing the facts in the case, and in any event, under the authorities above cited, would be liable in damages.

It is claimed that the representations were not false, and that there is no proof in the record tending to show

that the bank was insolvent in August, 1923, at the time when the representations about the value of the stock were made. The bank went into liquidation in May or June, 1924, and was never able at any time after the contract was entered into to furnish the money on any of the loans applied for through Greenhaw. Therefore the chancellor was justified in finding that the bank was insolvent at the time the representations were made. Greenhaw testified that he relied on the representations of Laney as to the value of the stock, and that this induced him to enter into the contract in question and to pay the \$1,000 in cash for said stock, and to give Laney two notes for the balance of the purchase money thereof; therefore the court rightly rendered judgment for Greenhaw against Laney in this sum.

We are of the opinion, however, that the court erred in rendering judgment in favor of Greenhaw against Laney for \$500, claimed to have been expended by him in advertising and traveling expenses. According to the testimony of Greenhaw, he worked throughout a period of eight months in securing applications for loans, and claimed expenses in the sum aggregating \$500. He admits that during this time he was also soliciting insurance for his insurance company, and makes no attempt whatever to give an itemized statement of the money paid out by him in securing farm loans under the contract sued on. If Greenhaw intended to recover his expenses as a part of his damages for an alleged breach of the contract, it was his duty to have rendered an itemized statement of his expenses, and he is not entitled to recover by just stating a lump sum extending over a period of eight months. Therefore we are of the opinion that he failed to establish his claim of \$500 for expenses, and that the court incorrectly allowed the same.

It follows that the court erred in rendering a decree in appellee's favor against appellants for the sum of \$500, and in this respect the decree will be reversed and appellee's cause of action dismissed. In other respects the decree of the chancellor was correct, and it will be affirmed.