

**IN THE SUPREME COURT OF IOWA
NO. 22-1865
Washington County Case No. EQEQ006467**

**COUNTY BANK,
Plaintiff-Appellee,**

vs.

**CLINTON ALLAN SHALLA AND MICHELLE LYNN SHALLA,
Defendants-Appellants.**

**CLINTON ALLAN SHALLA AND MICHELLE LYNN SHALLA,
Counterclaim Plaintiffs-Appellants,**

vs.

**COUNTY BANK,
Counterclaim Defendant-Appellee.**

**CLINTON ALLAN SHALLA AND MICHELLE LYNN SHALLA,
Third Party Plaintiffs-Appellees,**

vs.

**CHRIS GOERDT AND PEOPLES TRUST AND SAVINGS BANK,
Third Party Defendants-Appellees.**

APPEAL FROM THE IOWA DISTRICT COURT IN AND FOR WASHINGTON
COUNTY
THE HONORABLE MICHAEL SHILLING AND SHAWN SHOWERS,
JUDGES

APPELLEE COUNTY BANK'S FINAL BRIEF

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ATTORNEY FOR APPELLEE COUNTY BANK

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ISSUES PRESENTED

I. WHETHER THE DISTRICT COURT ERRED IN GRANTING A DIRECTED VERDICT ON THE SHALLAS' NON-CONTRACT CLAIMS BASED UPON IOWA CODE SECTION 535.17 CREDIT AGREEMENT STATUTE OF FRAUDS

Code Sections:

Iowa Code Section 535.17.

II. WHETHER THE DISTRICT COURT ERRED IN DENYING THE SHALLAS THE OPPORTUNITY TO RESET DISCOVERY DEADLINES

Cases:

Hantsbarger v. Coffin, 501 N.W.2d 501, 506 (Iowa 1993).

Intriligator v. Rafoth, 898 N.W.2d 203 (Iowa Ct. App. 2017)

III. WHETHER THE DISTRICT COURT RULED CORRECTLY IN ITS APPLICATION OF THE PRINCIPLES OF VICARIOUS LIABILITY/RESPONDEAT SUPERIOR TO COUNTY BANK BASED ON THE ACTIONS OF GOERDT

Cases:

Godar v. Edwards, 588 N.W.2d 701, 705 (Iowa 1999)

Giudicessi v. State, 868 N.W.2d 418, 421 (Iowa Ct. App. 2015)

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IV. WHETHER A NEW TRIAL SHOULD BE GRANTED SO THE VERDICT EFFECTUATES SUBSTANTIAL JUSTICE.

Cases:

Foggia v. Des Moines Bowl-O-Mat, Inc., 543 N.W.2d 889, 891 (Iowa 1996)

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V. WHETHER COUNTY BANK SHOULD BE AWARDED APPELLATE ATTORNEY FEES.

Cases:

GreenState Credit Union v. Prop. Holders, Ltd., 986 N.W.2d 128 (Iowa Ct. App. 2022).

Code Sections:

Iowa Code Section 625.22

ROUTING STATEMENT

This case should be transferred to the Iowa Court of Appeals pursuant to Iowa Rule of Appellate Procedure 6.1101(3)(a), as this matter involves application of existing legal principles.

STATEMENT OF THE CASE

Nature of the Case:

This case involves an appeal by Appellants Clinton Allan Shalla and Michelle Lynn Shalla (hereafter collectively, “the Shallas”) from the August 25, 2021, Ruling and Order Granting in Part and Denying in Part Third-Party Defendants’ and Counterclaim-Defendant’s Motion for Partial Summary Judgment, the November 7, 2021, Order re Pretrial Deadlines denying the Shalla’s request to extend pretrial deadlines, the December 9, 2021 Order Granting Peoples Trust’s 1.904 Motion, the September 21, 2022 Order granting directed verdict to County Bank and dismissing the Shallas’ Counterclaims I (Fraudulent Misrepresentation and Nondisclosure) and II (Conversion) against County Bank, the September 22, 2022 Trial Order & Decree re: Equitable Proceedings, entering judgment in County Bank’s favor in regard to its Foreclosure Petition, and from adverse rulings and orders inhering therein, subsequent to trial held in Washington County District Court commencing September 13, 2022, the Honorable Shawn Showers presiding.

Statement of Facts:

Background information

On March 28, 2018, County Bank filed its Foreclosure Petition seeking foreclosure in accordance with Iowa Code Section 654. Foreclosure Petition, Appendix, page(s) (hereafter “X”), 81-143. On May 3, 2018, the Shallas filed their Answer to Plaintiff’s Foreclosure Petition, asserting the affirmative defenses of fraud and equitable estoppel. Answer, X144-150. On July 25, 2018, the Shallas filed their Motion to Amend to Assert Counterclaims and Third Party claims. Motion to Amend, X153-167. Therein, they sought to amend their Answer to include the following claims against County Bank: (1) Fraudulent Misrepresentation and Nondisclosure, and (2) Conversion. They further sought to add third-party claims in the form of a cross-petition against Chris Goerd (hereafter “Goerd”) and Peoples Trust and Savings Bank (hereafter “Peoples Trust”). These third-party claims against Goerd and Peoples Trust included: (1) a claim for cross-petition liability against Goerd and Peoples Trust, (2) Negligence, (3) Fraudulent Misrepresentation, (4) Conversion, and (5) Aiding and Abetting (applicable to Peoples Trust only). On August 15, 2018, the Court entered an Order Granting Motion to Amend to Assert Counterclaims and Third Party Claims. Order Granting Motion to Amend, X151-152. On September 21, 2018, County Bank filed its Answer to Counterclaim, generally denying the

counterclaims, and raising affirmative defenses. Answer to Counterclaim, X168-171. On October 1, 2018, Peoples Trust filed its Answer to Counterclaims and raised its affirmative defenses. Answer, X172-192. On October 2, 2018, Goerdts filed his Answer, Defenses, and Jury Demand to Counterclaims and Third-Party Claims of Clint Allan Shalla and Michelle Lynn Shalla. Answer, X193-212. On October 5, 2018, the Shallas dismissed without prejudice their counterclaims against County Bank. On November 27, 2018, the Shallas filed their Motion for Leave to Amend to Assert Counterclaim seeking to assert counterclaims against County Bank (the two counterclaims were (1) Fraudulent Misrepresentation and Nondisclosure and (2) Conversion). On November 30, 2018, the Court entered an Order Granting Leave to Amend. On June 25, 2019, Peoples Trust filed a Motion for Partial Summary Judgment and supporting filings seeking to dismiss several of the Shallas' claims against Peoples Trust. Motion for Summary Judgment, X213-330. On July 29, 2019, County Bank filed its Joinder of Motion for Partial Summary Judgment and supportive filings. Joinder of Motion for Partial Summary Judgment, X345-352. On June 21, 2021, the Shallas filed their Resistance to Motion for Summary Judgment and supportive filings. On July 1, 2021, the Shallas filed their Supplement to the Record for Summary Judgment and supportive filings. On July 2, 2021, the Shallas filed their Supplement to Defendants' Response to Statement of Facts and State of Additional Facts. On

August 25, 2021, the Court entered its Ruling and Order Granting in Part and Denying in Part Third Party Defendants' and Counterclaim Defendant's Motion for Partial Summary Judgment. Ruling and Order, X576-599. Specifically, the Court therein granted summary judgment in regard to and dismissed the following claims: Count III (Shallas' claim against Goerdts and Peoples Trust alleging "cross-petition liability"), Count V (Shallas' fraudulent misrepresentation claim against Peoples Trust and Goerdts) as to Michelle Shalla's claim in connection with the options, Count VI (Shallas' conversion claim) only as to the claim of conversion against Peoples Trust in the \$25,000 transaction and Count VII (Shallas' claim against Peoples Trust for aiding and abetting Goerdts in committing fraud). On August 31, 2021, the Shallas filed a Motion for Discovery Conference. Motion for Discovery Conference, X600-611. On September 9, 2021, Peoples Trust filed its Rule 1.904 Motion to Reconsider, Amend or Enlarge. On September 10, 2021, Peoples Trust filed its Response and Resistance to the Shalla's Motion for Discovery Conference. Response and Resistance, X614-624. On September 24, 2021, the Shallas filed their Resistance to Peoples Trust's 1.904 Motion. Resistance, X625-632. On October 1, 2021, Peoples Trust filed its Reply to the Shallas' Resistance. Reply, X633-638. On November 7, 2021, the Court entered its Order re Pretrial Deadlines denying the Shallas' request to extend pretrial deadlines. Order, X645-646. On December 9, 2021, the Court entered its Order

Granting Peoples Trust's 1.904 Motion. Order, X647-655. The December 9, 2021, Order granted Peoples Trust's 1.904 motion in regard to Counts IV (negligence) and V (fraudulent misrepresentation) of the Shallas' Third-Party Petition and thereby dismissed those counts against Peoples Trust. Order granting 1.904 motion, X647-655. Trial of this matter began on September 13, 2022. On September 21, 2022 the Court entered its Order granting directed verdict to County Bank and dismissing the Shallas' Counterclaims I (Fraudulent Misrepresentation and Nondisclosure) and II (Conversion) against County Bank. Order, X813. The jury verdict found that Goerdt converted \$5,800 of the Shallas property and did not commit any of the other acts of conversion alleged by the Shallas. Civil Verdict, X806-809. On September 22, 2022, the Court entered its Trial Order & Decree re: Equitable Proceedings, entering judgment in County Bank's favor in regard to its Foreclosure Petition. Trial Order & Decree, X815-822.

Underlying Facts

COUNTY BANK BACKGROUND INFORMATION

County Bank was established in 1884. Trial Transcript Volume I, page 52, l. 1-3, (hereafter TI __, l. __), X1307. It has branches in several small communities and focuses on small Ag, small commercial loans, and home loans. X1307, l. 12-22. County Bank had 36 employees. X1308, l. 1-3.

At the time of trial, the CEO of County Bank was Daniel O'Rourke (hereafter "Dan"). Dan had worked at County Bank for 38 years. X1306, l. 5-8. Dan began in the role of Ag representative, progressed to Ag loan office, in 1999 became a senior lender, and in 2019 became CEO/President of County Bank. X1306, l. 5-13. Dan served on the bank's board of directors since being a senior lender. X1306, l. 16-21. Dan was 65-year-old at the time of trial. TI 49, l.15- 17.

In terms of education, Dan had extensive education and experience in his field. After graduating from high school, he received a B.S. in Business Administration from Creighton University. X1305, l. 4-6. He began working at the bank in 1984. X1305, l. 6. He obtained further education including the Colorado School of Banking and various other types of education to further his knowledge related to banking. X1305, l. 6-14. At the time of trial, Amy Wilcox was the CFO of County Bank. X1359, l. 6-8.

COUNTY BANK PROCESS FOR HIRING GOERDT

Dan was involved in the hiring of roughly two-thirds of County Bank's 36 employees. X1308, l. 4-5. CFO Amy Wilcox was also involved in HR and hiring for County Bank. X1411, l. 22- X1412, l. 25. One main way County Bank found new employees was through referrals, i.e., word of mouth or identification by current County Bank employees. X1308, l. 10-18. County Bank often trained its own employees. X1308, l. 16-25. Dan explained how there is no registry or bank

licensure online website or index that would “tell you whether there is somebody that would be a bad idea to hire as a banker”. X1309, l. 1-5.

Goerdt first came into contact with County Bank by making contact with Tom Bates, the president of the bank at the time, and with Dan. X1309, l. 6-11. The three of them were on a conference call together wherein Goerdt advised that he would like to come over to talk with them about whether they had a job opening. X1309, l. 12-15. Exhibit 26 reflects Goerdt’s employee file with County Bank. Exhibit (hereafter “Ex,”) 26, X1009-1019; X1310, l. 16-20. Goerdt provided Dan a resume. Ex. 26, X1010. Goerdt’s resume reflected his extensive skills in bank management, lending, compliance, IT, and HR over different years. Ex. 26, X1010; X1310, l. 13-16. Goerdt’s resume also set forth his educational background, including his Bachelor’s degree in accounting from Wartburg College, training in consumer and commercial banking, and IT education. Ex. 26, X1010; X1310, l. 17-21. Goerdt confirmed his extensive qualifications, education, training, and experience in banking at the time of his deposition. Deposition of Goerdt, (hereafter “Depo. Goerdt”), p.106, l. 18- p. 109, l. 8, X1270-1271. Goerdt’s qualifications described in his resume were both attractive to Dan and typical for a bank industry resume. X1310, l. 21-24. Goerdt’s resume also set forth his bank industry work experience, including employment at Wells Fargo, Leighton Bank in Pella, Ag Star Financial and Peoples Trust. X1310, l. 25-1311,

1. 3. Goerdt listed his current position as President and CEO of People's Trust. Ex. 26, X1010; X1311, l. 4-6. Dan also confirmed that there were public sites where he could confirm Goerdt's position with People's Trust. X1318, l. 7-10.

County Bank went through an extensive process prior in hiring Goerdt. Amy Wilcox detailed County Bank's hiring process as set forth below and confirmed that the bank followed all steps in this protocol for Goerdt's hire. X1413, l. 4-21; X1414, l. 3-13.

A. Yep, so we start out by interviewing normally multiple interviews before we decide to move forward, but before we even consider making an offer, we do a background check, and then we also run the potential hire's name through several sites to see if they are allowed to work in banking. So one is FDIC to see if there's any enforcement actions against them. We also run the name through OCC website, which is the Office of the Comptroller of Currency, and then we also run the name through SEC, Security -- sorry -- Securities and Exchange Commission, and then the NCUA, National Credit Union Administration, just to make sure there is no enforcement actions against the person to make sure that they can continue working in banking.

Q. You made reference to the FDIC, the OCC, the SEC, and the NCUA. Is it fair to say that those are all searches that can be performed online based upon public data that is available?

A. Yes.

X1413, l. 4-21.

Goerdt also completed an employment application tendered to County Bank on December 5, 2015, and listed banking references (Dennis Hansen and Jeff Burris). Ex. 26, X1011-1013; X1311, l. 14-19; X1312, l. 15-18. County Bank

contacted both references listed on the application and no concerns were raised regarding Goerd. X1311, l. 20-22; X1326, l. 3-25. Dan confirmed at trial that the handwriting in the application was consistent with Goerd's handwriting as Dan now knew it. X1312, l. 20 - X1313, l. 1. As Dan testified, County Bank would not have hired Goerd if any of his references turned out to provide negative information regarding Goerd. X1312, l. 12-14.

The bank also performed a background check on Goerd enlisting Per Mar Security Services, a service available for banks to perform background checks on potential employees. Ex. 26, X1016; X1313, l. 2-13. County Bank used Per Mar Security for all hires during Dan's tenure there. X1313, l. 14-23. Exhibit 44a reflects Goerd's personnel file with County Bank. Ex. 44a, X1055-1065; X1305, l. 24 - X1306, l. 3. Dan ordered the background check report on Goerd on January 8, 2016, and received it on January 11, 2016. Ex. 44a, X1055-1065; X1314, l. 16-23. Goerd's start date with County Bank did not occur until a week after Dan received the Per Mar report. X1315, l. 1-9. The report showed addresses where Goerd had resided over time and showed that he had one delinquency in his adult life. Exhibit 44a, X1055-1065; X1315, l. 10-20. The report also reflected Goerd's credit status, including what he had for credit and credit bureau reports and it contained no high risk fraud alert whatsoever regarding Goerd. Ex. 44a, X1055-1065; X1316, l. 21- X1317, l. 13. None of the employees Dan hired had

a high-risk fraud alert on their reports. X1317, l. 14-16. The information on the report was consistent with what Dan additionally learned from Trans Union in this regard. X1317, l. 17-23. The report also contained a criminal background record and sex offender records search and showed only an open container charge in 2011 and a \$75 registration problem, which raised no red flags with hiring Goerd. Ex. 44a, X1055-1065; X1318, l. 2-17; X1329, l. 16- 19. There was nothing whatsoever in the entire report to give Dan any cause for concern. Ex. 44a, X1055-1065; X1318, l. 21-24. Dan testified that he did not additionally contact People's Trust in regard to Goerd's employment there as there can be criminal penalties for contacting the prospective employee's past bank employer seeking employment information. X1318, l. 25- X1320, l. 23.

Goerd went through two substantive interviews for his position at County Bank, one with Dan and Tom Bates and one by the full board of directors, which includes Dan and is comprised of experienced business people. X1327, l. 6-24. Goerd presented positively at his interviews, revealing positive aspects of his life outside work such as community involvement with church and girls' softball. X1328, l. 21- X1329, l. 15. Prior to hiring Goerd, Dan and others at County Bank also "put out feelers" in the local area (particularly to other local bankers) seeking impressions of Goerd. X1328, l. 3-14. Dan even spoke with a college peer of Goerd's (Lucas Meier) who raised no concerns about Goerd. X1329, l.

6-15. It is worth noting that County Bank has never had any other employee misappropriate funds. X1328, l. 18-20. Overall, nothing in any part of the extensive application and hiring process described above raised any concerns about Goerd. X1327, l. 1-5, l. 25 – X1328, l. 2. Goerd began his employment with County Bank on January 18, 2016. X1414, l.19- X1415, l. 2, Depo. Goerd 99, l. 20-23, X1268.

ISSUES WITH GOERDT SURFACE

On February 3, 2016, Dan for the first time became concerned with Goerd, when Dan received a phone call from Ron Kerr, who identified himself as the CFO of People's Trust. X1338, l. 8-15; X1339, l. 1-3. Kerr advised Dan that Clint had walked out of People's Trust with a basically a handful of cash and was a little upset with County Bank. X1339, l. 5-9. The incident involved a check in the rough amount of \$30,000 made out to People's Trust from County Bank to the benefit of the Shallas. X1339, l. 14-17. Of the \$30,000 for the County Bank check cashed by People's Trust, \$5,000 went into an account at County Bank for the Shallas, and \$25,000 went out the door with Clint (one of the Shallas texted Dan a picture of the bag of cash lying in Clint's truck). Ex. 30, X1026; X1339, l. 18- X1340, l. 18. Peoples Trust employee (at the time at issue) Kelly Klein testified noting that the payee on the County Bank cashier's check at issue was Peoples Trust and that the Shallas endorsed the check, with \$25,000 coming back in cash

and a net deposit of \$5,405.80. Ex. 53; X1461, l. 25 – X1464, l. 20; X1471, l. 11-24. In terms of the process, on January 25, 2016, Clint Shalla had called and talked to Kelly at Peoples Trust about withdrawing a large amount of cash (\$25,000 or \$35,000) and upon his visit to Peoples Trust, the cash was removed from the vault. X1465, l. 8-21; X1469, l. 14-17. Clint himself testified that when Goerdts came to have the Shallas complete loan documents, Goerdts also had a roughly \$30,000 check for the Shallas to sign, which Goerdts directed Clint to take to Kelly Klein at Peoples Trust to withdraw cash, with the balance of the check going to County Bank to open an account. X1506, l. 23. Clint verified leaving Peoples Trust with a bag containing \$25,000 in cash. X1507, l. 10-14. Clint verified that he took a picture of the bag of cash in the truck he was driving that day. Ex. S21, X1130; X1508, l. 2-4. Clint testified that Goerdts directed him that they then meet at Subway east of Riverside, where they had apparently met in the past. X1507, l. 15- X1508, l. 4. Clint further testified that while in the Subway parking lot area, he gave the bag of cash to Goerdts, and Goerdts then took the cash. X1511, l. 8-X1512, l. 5. While the Shallas assert that they gave the \$25,000 to Goerdts, Goerdts asserts that the Shallas kept the \$25,000. X1340, l. 19-24; X1375, l. 18-25; X1564, l. 16-23; Depo. Goerdts 117, l. 11-25, X1273. Clint admitted that he never reported anything to County Bank officials in regard to any concern he had that the transaction regarding the \$25,000 was suspicious even though Clint did have such

concerns. X1526, l. 18 -X1527, l. 9. Clint also testified that he believed that no one at County Bank knew anything about the \$25,000 except for Goerd. X1528, l. 18-21. Goerd also verified that he did not know of anyone at County Bank who knew about or benefitted from the transaction regarding the \$25,000. Depo. Goerd 132, l. 11, X1276. Per Dan's understanding at trial, no one had ever asserted that County Bank retained the \$25,000. X1340, l. 25- X1341, l. 3. Kelly Klein confirmed that breaches of bank protocol occurred at Peoples Trust in dispensing the cash at issue and that the breaches had absolutely nothing to do with County Bank. X1470, l. 16-17. At trial, Clint did not know of any breach in protocol or failure made by County Bank. X1536, l. 6-9.

Once Dan became aware that there was an allegation that the \$25,000 went missing while Goerd was an employee of County Bank, County Bank then took various actions. X1341, l. 19-24. It did an investigation through legal counsel looking into the matter. X1341, l. 13- X1342, l. 1. After the investigation, County Bank wrote off the \$25,000, wiping it off the books such that it was no longer owing from the Shallas. Ex. 43, X1049-1054; X1342, l. 2-14. County Bank credited the Shallas for the \$25,000 amount, reducing their \$1.3 million loan amount by \$25,000. Ex. 43, X1049-1054; X1342, l. 18 – X1343, l. 4, 13-17. Thus, the Shallas have already received full faith and credit for the \$25,000 amount. X1343, l. 18-23. The Shallas made a counterclaim against County Bank for the

\$25,000; however, as described above, this amount was already applied against their amounts owing and was written off by County Bank and to award the Shallas the funds again would create a double recovery for them. X1378, l. 1-8.

Clint acknowledged that he knew that the way Goerdt operated was not within the normal scheme of banking. X1529, l. 1-5. Related thereto, Clint testified that in regard to other meetings with Goerdt, Goerdt would have Clint meet with him not only in the Subway parking lot, but also at parking lots at A& W and at the 218 exchange, which Clint admitted was unusual. X1528, l. 22-25; X1554, l. 8-11; X1566, l. 19-21. Goerdt confirmed that he and Clint “had many opportunities to meet at Subways and Kum & Go’s and Casey’s throughout the time...[he]...met Clint”. Depo. Goerdt 58, l. 21-23, X1258.

After learning of the issue with the \$25,000, Dan inquired regarding any other irregularities in regard to the Shallas accounts. X1336, l. 10-15.

Regarding the Shallas, nearly two years later, in January of 2018, Michelle Shalla reported to him an irregularity that she discovered in regard to a check to the Benton County Treasurer in the amount of \$2,218 that she did not recognize. X1344, l. 16-25, X1345, l. 8-12; X1555, l. 3- X1556, l. 15. After further investigation, Dan learned that the check was to benefit Goerdt’s in-laws in paying their real estate taxes. Ex. S15, X1124-1127; X1345, l. 4-7. Clint admitted at trial that the Shallas did not know about or alert anyone of

this issue for a long time. X1549, l. 8-12. Goerdts stated at deposition that nobody else at County Bank had any knowledge of what was going on in regard to the transactions related to the \$2,218, that a significant amount of the transactions were not even conducted in the bank itself, and he to some extent tried to keep aspects of the transaction secret from others at the bank. Depo. Goerdts 111, l. 15- p. 112, l. 2, p. 122, l. 6-25, X1271, 1274. Goerdts additionally admitted that he also hid his fraudulent conduct predating his hire with County Bank from County Bank. Depo. Goerdts p. 124, l. 21- p. 125, l. 12, X1274-1275. On March 31, 2018, County Bank credited the \$2,218 directly back to the Shallas. Ex. 42, X1043-1048; X1343, l. 1-12; X1345, l. 8-18; X1575, l. 22-24. Dan also explained that the practice regarding customers' checks was that banks do not go through every check of each client, explaining why County Bank would not have known of this until Michelle Shalla reported it. X1346, l. 3-10. Neither Goerdts nor his in-laws paid back County Bank the \$2,218. X1346, l. 23- X1347, l. 1. No other irregularities were brought to the attention of County Bank/Dan by the Shallas. X1346, l. 15-19. The Shallas made a counterclaim against County Bank for the \$2,218; however, as described above, the Shallas already received these funds back as a direct credit and to award them the funds again would create a double recovery for them. X1378, l. 1-8.

On or about March 23, 2016, further issues with Goerdt arose when Ben Sweeting called Dan and raised concerns about Goerdt. X1347, l. 17-22; X1356, l. 6-20; X1422, l. 3-17. This prompted Dan to immediately drive to have an in-person visit with Ben to discuss the concerns which are jotted down in Exhibit 29 (along with notes from interviews of other Goerdt customers). Ex. 29, X1020-1024; X1347, l. 23- X1348, l. 14; X1423, l. 3-18. Ben raised concerns having to do with Goerdt's conduct with People's Trust and not with County Bank. X1424, l. 10-20. Ben spoke with Dan and showed him paperwork expressing concern that somebody may have forged financial documents ultimately noting that People's Trust employee Goerdt was involved and it caused significant financial harm to Ben. X1426, l. 4-20.

Essentially, while employed at People's Trust, in around June of 2015, Goerdt called Ben and told him Goerdt had a client who needed to borrow some money and suggested the client borrow through Ben with Ben setting his own interest rate higher while Ben himself borrowed the money at a lower interest rate. X1428, l. 12-25; X1429, l. 4-14. Ben and his wife signed papers to this end. X1428, l. 23-25. Goerdt orchestrated that Ben would sign two checks from People's Trust, leaving Goerdt to fill out the rest of the checks. X1430, l. 3-10. Ben later discovered from People's Trust that the actual transaction that occurred was not what Ben and his wife originally agreed to/signed off on as the interest rates in the paperwork were changed and Goerdt signed Ben's name to the changed papers. X1430, l. 11-21; X1431, l. 6-

13.

In terms of Dan's handling of Ben's concerns, Ben noted the seriousness and diligence with which Dan responded to his concerns about Goerd't's conduct while employed with People's Trust. X1424, l. 1- X1427, l. 14. After hearing Ben's alarming concerns, within 24 hours, Dan launched an investigation regarding what Ben reported including consulting with the FDIC and consulting with County Bank's Human Resources attorneys about what to do in regard to Goerd't's employment with County Bank. X1348, l. 23- X1341, l. 11. Counsel advised that County Bank suspend Goerd't with pay, pending further investigation. X1350, l. 8-13. *On April 7, 2016, Goerd't was suspended and directed to and did turn over his bank-owned computer and phone and files.* Exhibit 26, X1009-1019; X1351, l. 22-X1352, l. 7. *Not long after, following further investigation, County Bank terminated Goerd't's employment on May 18, 2016.* Ex. 26, X1009-1019; X1374, l. 20-25; Depo. Goerd't 106, l. 12-15, X1270.

Also in late March of 2016, County Bank's loan administrator, Charlene Doehrmann, contacted Dan raising another concern regarding Goerd't, in that one of his client's mortgages (Art Sweeting) had never been filed at the courthouse with the Washington County Recorder, leaving the note unsecured and leaving a gap in collateral. Ex. 54, X1076-1077; X1350, l.14 – X1343, l. 8; X1401, l. 14- X1404, l.12; X1405, l. 7-12. Within a few weeks, Goerd't was suspended from

further actions until he perfected the problematic loan by properly recording the mortgage and Dan began to take a hard look at all the files Goerdt initiated or brought to County Bank and interviewed customers related thereto. Ex. 29, X1020-1025; X1351, l. 9-16; X1354, l. 8-X1355, l. 25; X1404, l. 9-12. Exhibit 29 contains Dan's notes from many of these interviews. X1357, l. 24- X1358, l. 17.

One customer interviewed as reflected by the notes in Exhibit 29 was County Bank customer Art Sweeting (and his wife). Art raised concerns to Dan regarding Goerdt. Ex. 29, X1024; X1357, l. 11-23. Art knew Goerdt beginning back when Goerdt was employed by People's Trust. X1434, l. 16-21. At the time Goerdt worked for County Bank, Art had a line of credit with County Bank in the amount of \$250,000. X1434, l. 22- X1435, l. 3. At least two of the advances on that line of credit were made without the knowledge or authorization of Art or his wife, apparently orchestrated by Goerdt to benefit someone other than Art and his wife. X1435, l. 7-18. Goerdt took the money from those advances. X1441, l. 22-25. Goerdt also made an inaccurate financial statement regarding Art that concerned Art. X1442, l. 21- X1443, l. 2. Art brought this to Dan's attention and by Art's description, Dan diligently addressed the matter and ultimately County Bank wrote off the debits at issue. X1435, l. 20 – X1437, l. 16.

Overall, Dan confirmed that he performed the investigations and responded to the concerns regarding Goerdt as quickly as possible through the entire process. X1353, l. 22- X1354, l. 7. County Bank could not just haul off and terminate Goerdt without following proper protocols due to the possibility of lawsuit for wrongful termination and thus had to follow protocols in handling Goerdt's departure. Ex. 44a, X1055-1065; X1352, l. 21- X1353, l. 6; X1397, l. 25-X1398, l. 10. Notwithstanding these limitations, *Goerdt worked for County Bank for roughly only 81 days in total.* X1353, l. 7-10. While a 16-count indictment was ultimately filed against Goerdt, only one of the charges was attributable to the period of time he worked at County Bank. X1353, l. 11-17. Goerdt confirmed that County Bank and its employees were completely unaware of any matters related to his conduct that led to his indictment. Depo. Goerdt 134, l. 2-11, X1277. For ease of reference, Exhibit 54 contains a timeline of the events leading to Goerdt's termination. Ex. 54, X1076-1077. Dan/County Bank also fully cooperated with the FDIC and the FBI regarding investigation of Goerdt. X1399, l. 2 – X1400, l. 25.

Dan testified clearly at trial that Goerdt's rogue conduct as described above was not at any point authorized by County Bank.

Q. (BY MR. WAGNER) This may go without saying, but was Goerdt authorized by County Bank or by you or by any superior -- persons superior to him at County Bank to take \$25,000 or direct \$25,000 in cash to be taken out of that 30,000-plus cashier's check that was made out to Peoples?

A. Absolutely not.

Q. Was Goerdt at any point in time authorized by you or anybody senior to him at County Bank to remove \$2,218 from the Shallas' account to pay his in-laws' real estate taxes in Benton County?

A. No.

Q. Again, that may go without saying, but is that anything that anybody would come close to? For instance, have you ever said, yeah, take a few thousand dollars out to a loan officer for incidentals or to pay some bills later?

A. No.

Q. Would that be anything that would be within the realm of banking at County Bank?

A. Absolutely not.

Q. Would it be anything that would be within the realm of banking in any bank that you know of?

A. Not that I know of.

Q. Is it your position that Goerdt did this by himself?

A. Yes, it is.

X1376, l. 14 – X1377, l. 12.

Goerdt was indicted in federal court for crimes related to the matters at issue herein and other matters and pled guilty to all but one count in the indictment. Ex. S24, X1157-1164; Depo. Goerdt 7-8, X1245.

THE SHALLAS' LOANS AND FORECLOSURE ACTION

In April of 2014, Clint and Michelle Shalla made an agreement whereby Greg and Heather Koch would pay off Washington State Bank for a loan on the land at issue herein and the Shallas would then be allowed to purchase the real property back from the Kochs (the "debt settlement agreement"). Ex. 39, X1036-1042; X1482, l. 1-7; X1543, l. 20-24. The Shallas were thus seeking the necessary financing to buy out the Kochs. X1483, l. 6-8. Clint acknowledged that the

Shallas had no written contract with Goerdts securing that he was going to act as their representative in dealing with the Kochs in regard to the original debt settlement agreement. X1542, l. 3-14. Clint talked to Goerdts (in roughly spring or summer of 2015) after the debt settlement agreement with the Kochs was in place. Depo. Goerdts 104, l. 13-25, X1269; X1483, l. 17-X1484, l. 5. Ultimately, the Shallas missed the deadline (the deadline to give notice of exercising the buyback option was August 15, 2015, and the deadline to exercise the option was October 15, 2015) under their original buyback option with the Kochs, which they learned when Goerdts called the Shallas on October 8, 2015, telling them they had missed the deadline and the original buyback amount was off the table. X1489, l. 3-25; X1493, l. 1-23; X1535, l. 1-4; X1543, l. 9-24. *Clint acknowledged that Goerdts did not work for County Bank at the time these deadlines were missed.* X1535, l. 13-17. *Michelle acknowledged that the failure to exercise the original option with the Kochs had nothing to do with County Bank.* X1576, l. 1-9. Thus, it is uncontroverted that nothing about the exercise of the original option with the Kochs, missing the deadline to exercise the option, or Goerdts's conduct related to that issue involves County Bank.

In the latter part of 2015, Goerdts then arranged for the Shallas to buy back the land from the Kochs for the higher amount of \$1.25 million (losing about \$700,000 due to failure to exercise the original option). Ex. S9, X1114-1119;

X1493, l. 3-15; X1535, l. 5-8. At the beginning of this process, Goerdt was employed by Peoples Trust. X1499, l. 19-25. By December 1, 2015, a proposed purchase agreement had been prepared and Goerdt brought it to the Shallas to sign. X1488, l. 1-14. Ultimately, the Shallas learned in a call with Goerdt that he had gone to work for County Bank, and the Shallas then procured the loan from County Bank, with the funds approved and funded on January 25, 2016. X1500, l. 1-13. During the transactions at issue in this matter, Clint was 48-years-old or more and by his own agreement was an experienced farmer and businessman. X1537, l. 16-23.

The \$1.3 million loan

At some point, Dan learned that Goerdt had been dealing with the Shallas at People's Trust and spoke with Goerdt about taking over a Peoples Trust loan. X1330, l. 9-16. Dan testified that there appeared to be sufficient collateral for County Bank to entertain such a loan to the Shallas. X1330, l. 17-19. In terms of approval process for the loan, County Bank had a 12-person loan committee to thoroughly review the matter, and it was deemed that there was sufficient collateral and cash flow to make the loan to the Shallas. X1330, l. 20 – X1331, l. 18. The collateral included 304.9 acres of farm ground, including a house and outbuildings. X1331, l. 19-21. Goerdt represented the cash flow situation to the committee including financial documents. X1331, l. 22- X1332, l. 4. The cash flow statements provided by the Shallas and Goerdt contained significant

misrepresentations particularly in regard to the Shallas ability to pay. X1332, l. 5-9. Goerdt testified that he was not aware of the Shallas meeting with anyone at County Bank before the day this loan closed (only Goerdt, who was about to be employed by County Bank, had met with them about it). Depo. Goerdt 102, l. 9-17, X1269. At the time of making the loan, the Shallas were current on their taxes except for the 2015 tax year; however, as part of the loan approval, County Bank required the Shallas to stipulate that the 2015 return be completed and put into the file and documented. X1332, l. 10-18. The Shallas never followed through and did this. X1332, l. 17-18. Ultimately, the loan committee recommended approval to the Board for a loan of 1.3 million dollars and the Board approved the same. X1332, l. 19-25. County Bank did then make the \$1.3 million loan to the Shallas. X1333, l. 1-3. Exhibits 1 and 3 show the loan and mortgage. Ex. 1, 3, X873-883, 896-898. Legal descriptions of the relevant property are reflected in Exhibits 20a and 22. Ex. 20a, 22, X985, 1004-1008; X1457, l. 10-14. This loan (\$1.25 million of it) was for the purpose of buying out the Kochs. X1503, l. 2-17. In executing the paperwork, Goerdt brought the paperwork to the Shallas' home for them to sign. X1505, l. 12-21.

Ultimately, the Shallas defaulted on the loans at issue herein and a foreclosure action was filed. Clint Shalla acknowledged that the last conventional loan payment they made thereon occurred in 2016 and that they had also paid

some rents, but nothing owed was paid on the loan beyond that. X1526, l. 1-11. Michelle Shalla did not dispute that the Shallas had not paid a dime on the two mortgages at issue (the \$1.3 million and \$155,000 mortgages discussed below) since the partial payment in 2016 that was finished up in the early part of 2017. X1574, l. 13-16. Related to the default, Michelle Shalla acknowledged receipt of the notice to cure letter from County Bank dated February 27, 2018, and noted that when she called Dan O'Rourke about it, he was very nice, explained the process, and told her it would be a good idea to obtain an attorney. X1569, l. 20 – X1562, l. 16. As shown at paragraph 18 of Exhibit 1, County Bank is entitled to attorney fee reimbursement necessitated to address the Shallas' default.

The \$2 million loan

The Shallas took out a \$2 million loan with County Bank for the purpose of closing with the Kochs. X1337, l. 25. This loan predated the \$1.3 million loan and was based upon the same collateral as the \$1.3 million loan. X1338, l. 3-7. Exhibit 2 shows the mortgage. Ex. 2, X884-895.

The \$150,000 Peters Loan and \$155,330.18 Shallas loan

The Shallas were also involved with an additional mortgage loan in the amount of \$150,000 at a later point. Ex. 9, 10, X899-916; X1333, l. 4-8. This loan did not go before the County Bank loan committee as the amount was below the threshold per County Bank's loan policies. X1333, l. 16-22; X1334,

l. 1-10. County Bank discovered this loan's logistics only after it suspended Goerdt. X1325, l. 20-25. In regard to this loan, on February 5, 2016, Candyce and Rick Peters (Candyce is Clint's sister) had taken a note out secured by cattle (cattle they did not actually have) and had told Dan that it was for the benefit of the Shallas for their farming operation. Ex. 38, X1033-1035; X1333, l. 12-15; X1396, l. 1-15; X1597, l. 11-12; Depo. Goerdt, 29, l. 15- p. 30, l. 12, X1251. In executing this loan, the Peters and the Shallas met Goerdt at a bar in Iowa City, Carl and Ernie's, to discuss and execute the loan and checks related thereto (Goerdt had told them he had no office because he was switching to working at County Bank from Peoples Trust at the time). TV 86, l. 4-8, p. 87, l. 16-18; X1614, l. 14- X1616, l. 14. Goerdt apparently had the Peters sign documents at the bar meeting, although Goerdt stated that they signed documents at the Peters' home. Ex. 38, X1033-1035; TV 88, l. 12-19; Depo. Goerdt 33, l. 1-7, X1252. Goerdt stated that the Peters knowingly entered into the transaction to borrow \$150,000 from County Bank and that the parties were aware that the purpose of the loan was to assist the Shallas. Depo. Goerdt 41, l. 17-22, X1252; p. 113, l. 23 – p. 114, l. 23, X1272. Once County Bank realized there were problems with the Shallas, on May 9, 2016, Dan went out to the Peters' property to look for cattle, expecting to see 100-200 cattle given the size of the note, and finding that there were in actuality no cattle there at all. Ex. 29, X1020; X1334, l.

11-23; TV 95, l. 7-11, X1610, l. 3-6. After interviewing the Peters, Dan learned that the loan was for the benefit of the Shallas' farming operation. X1335, l. 1-4. Ms. Peters admitted that she was concerned about the loan and that she had taken it to help her brother. X1337, l. 12-16. The Shallas knew and acknowledged that these funds procured by the Peters were actually for use by the Shallas. X1335, l. 5-9; X1336, l. 3-8; X1538, l. 4-5. The Peters did not at first appear to understand that the loan was tied to cattle on their property and other items. TV 121, l. 1-24.

Candyce Peters testified that she did not realize the loan was a mortgage against their property until Dan came out and spoke with them. TV 92, l. 4-8. After discovering the logistics of this loan, County Bank righted the situation by paying off the Peters' loan and securing the debt to the Shallas' collateral (Exhibit 9 and 10), discharging the Peters from the loan, with Rick Peters confirming that the Peters were not out any money due to the loan. X1336, l. 13- 15; X1617, l. 8-10; X1618, l. 7-9. As shown at paragraph 18 of Exhibit 9, County Bank is entitled to attorney fee reimbursement necessitated to address the Shalla's default on the \$155,330.18 loan.

In regard to all of the loans above, *there is nothing at all in the record that states that or supports that Goerdt received any percentage of loans that he procured or to support that such incentivizing is the practice at either of the banks involved in this matter.* Any suggestion that this is a common practice by all such

banks is controverted by Goerdts's testimony that he did not receive any type of percentage or incentive to write a loan at Peoples Trust. Goerdts Depo. 142, l. 15-17, X1279.

County Bank's Request for Equitable Relief and Second Amended Request for Equitable Relief indicated the relief sought regarding foreclosure. Request for Relief, Amended Request for Relief, X755-759; X1359, l. 20-X1360, l. 14. Dan and experienced bank CFO Amy Wilcox confirmed the accuracy of the calculations performed therein by Amy and confirmed that the bank gave the Shallas all debits and credits due, in reference to the calculations contained within County Bank's Amended Requested Relief. Amended Requested Relief, X1361, l. 4-16; X1411, l. 1-24; X1415, l. 14- X1418, l. 4. Clint Shalla acknowledged at trial that he had reviewed the debits and credits and did not see any errors.

X1532, l. 1-7. The bank sought foreclosure against the Shallas based upon the \$1.3 million mortgage and the \$155,330.16 due based upon the Peters' mortgage that was transferred to the Shallas, real estate taxes advanced by the bank, interest, and attorney fees (this did not even include all amounts the Shallas had borrowed and not repaid from County Bank for other items such as financing a tractor), with the calculations including credits (such as for farm rent and a partial farm payment) explained in detail by Dan and with a final amount owing of \$2,351,872.35 plus interest. Amended Requested Relief, Ex. 1-15, X1360, l. 19 -

X1370, l. 20; X1378, l.11- X1391, l. 11. County Bank sought judgment in rem against the real estate described at Exhibits 20a and 22 and a writ of possession returning the real property to County Bank. Amended Requested Relief, X755-759. Clint's balance sheet signed by him in 2017 confirmed his acknowledgement that at the time he owed County Bank \$1.287 million and Dan testified that Clint never asserted that he did not get the money out of that loan (except for discrepancies in regard to disposition of the \$25,000 bag of cash as they relate to the loan amount due). X1374, l. 1-14.

The Shallas' financial situation

In regard to the Shallas' financial situation, Dan noted several ways in which they were financially irresponsible and in which Clint was particularly dishonest.

(1) When Dan went out to the Shallas farm in 2017, he found the crops in a state of ruin too late to rescue, with the corn tasseling and weeds ear high on the stalks. X1365, l. 4-10. (2) Clint had represented to Dan (and to Michelle) that crop insurance proceeds in the amount of \$112,000 were forthcoming when in fact Clint did not even make such a crop insurance claim, X1366, l. 8 – X1367, l. 19; X1530, l. 1-3. Clint Shalla's crop insurance agent in 2017, Jared Walters, verified that in regard to the 2017 crop year, the Shallas did not file any crop insurance claim and there was neither a \$112,000 payment nor any other crop insurance payment made. X1448, l. 1-6; X1449, l. 11-19; TIII, p. 93, l. 21-25; X1450, l. 22-X1451, l. 1. (3)

As reflected in the County Bank balance sheet executed by Clint on March 17, 2017, Clint owed money to his CPA which likely interfered with his ability to get his taxes done (see Exhibit 8). X1372, l. 3 – X1373, l. 13. (4) County Bank had to respond to other creditors regarding the Shallas' inability to pay out of their account with County Bank. Ex, 31, X1027; X1392, l. 9-17. (5) The Shallas had a federal tax lien filed against them in 2018 related to the 2014 tax year which they still had not made payments on as of the time of trial and they had a federal tax lien total in the amount of \$86,626.42 attributable to 2014 and earlier as of the time of trial. Ex. 33, X1028-1032; X1393, l. 12-20; X1525, l. 3-16; X1573, l. 1-10. (6) As of the time of trial, the Shallas had declined to file taxes for 2015, 2016, 2017 and 2018 and after extensive questioning about this issue, Clint Shalla specifically testified that he had no good reason for why he had not yet filed them (his answer after repeated inquiry was that he did not file them, "Because I haven't filed them"). X1394, l. 1-6; X1523, l. 19-X1524, l. 23. (7) Several other creditors have filed suits against the Shallas over the years. X1394, l. 23- X1395, l. 14; X1532, l. 8 –X1534, l. 7, Ex. 27 at p. 6(H); X1419, l. 25-X1420, l. 25; X1421, l. 22-25. (8) Notwithstanding their financial problems, Clint and Michelle admitted at the time of trial that he and Michelle had spent roughly \$164,000 on home improvements that were completed by the end of 2015. Ex. 19, X917-984; X1531, l. 4-19; X1571, l. 10-15.

TRIAL MOTIONS, ORDERS AND THE VERDICT

At the close of trial, based on a summary of the evidence and the fact that County Bank's requested equitable relief was uncontroverted at trial, County Bank moved for directed verdict on its equitable proceedings. X1620, l. 8- X1623, l. 15. County Bank also moved for directed verdict in regard to the Shallas' counterclaims against County Bank, noting that the Shallas did not even plead vicarious liability until about the time of submitting jury instructions and noting the evidence submitted at trial and the evidence and law related to the counterclaims. X1623, l. 16 – X1624, l. 12.

Within the Shallas' Statement of Facts, they purport to summarize some of County Bank's rationale underlying its request for directed verdict. For clarity, County Bank now summarizes several points covered in its closing, as follows: (1) the relief sought in its requested relief remained uncontroverted, (2) the \$2,218 amount was credited back to the Shallas as a credit on their mortgage balance and Clint Shalla acknowledged being made whole in this regard, (3) County Bank wrote off the \$25,000 loan transaction and Clint acknowledged that the Shallas were made whole, (4) Goerdts denied taking the \$25,000 in cash even though he pled guilty to 15 counts against him, lending some credibility to his denial regarding this issue, (5) County Bank referenced the correct standard to measure damages, if any, (6) vicarious liability was not raised in pleadings by the Shallas

until and in the jury instructions, and (7) the facts in this matter and particularly Goerdt's criminal conduct do not support a theory of vicarious liability. X1620, l.8 – X1624, l. 12.

In regard to the counterclaims against County Bank for fraudulent misrepresentation and nondisclosure and for conversion, the Court provided extensive reasoning stating that there was not substantive evidence that County Bank caused harm or damages to the Shallas. X1632-1634. The Court further clarified that its rationale granting County Bank's Motion for Directed Verdict applied to both counterclaims against County Bank. X1635, l. 24- X1636, l. 2.

On September 21, 2022, the Court entered its Order Granting Directed Verdict to County Bank on Counterclaims I & II, dismissing both of the Shallas' counterclaims against County Bank. Order, X813-814.

In the Shallas' Statement of Facts, they appear to set forth argument in regard to the Court's ruling dismissing these counterclaims, as set forth below:

The Trial Court indicated had County raised its directed verdict arguments sooner, the Trial Court would have dismissed the Shallas claims against County, which is consistent with the Trial Court's September 12, 2022 Order wherein the Trial Court acknowledged it was tempted to dismiss the Shallas' claims against County and the only reason it didn't was the timing of County's Motion. (Transcript-Day-5 pg. 143, App. __) The Trial Court's September 12, 2022 Order along with the basis provided in granting County's directed verdict suggest the Trial Court did not adequately consider the evidence at trial and the Trial Court's decision was already made before

opening statements and therefore any evidence presented at trial would not be considered.

Shallas' Proof Brief, p. 53. The Shallas' statements here are pure speculation about the Court's machinations in coming to its conclusions, and as such, should not be construed as any statement of fact. Moreover, just because the Court noted rationale existed early on to justify dismissing the counterclaims, that certainly does not imply that the Court declined to properly consider the counterclaims at trial.

The Shallas' Proof Brief's "facts" also include:

...the Trial Court ruled Goerdt was not acting under the scope of his employment with County in regards to the \$25,000 because the Trial Judge has never personally met a banker that committed acts that Goerdt committed specifically stating "bankers don't operate in that way." (Transcript-Day-5 pg. 144, App. ___) The Trial Judge's anecdotal basis for this finding is inconsistent with Iowa authorities regarding employer liability. Because of news coverage, there have been plenty of examples known by the general public where bankers have committed similar acts. The fact there are regulatory and statutory provisions addressing these specific acts is indicative Goerdt's acts have occurred often enough that legislative action was necessary to address the matter.

The Trial Court found Goerdt's acts were grossly outside the scope of his employment pointing out O'Rourke notified authorities of Goerdt's acts when discovered. (Transcript-Day-5 pg. 144-145, App. __) Although not expressly stated by the Trial Court, this particular finding appears to suggest an employer is not civilly liable for any criminal acts committed by an employee or officer so long as the employer reports the acts to the proper authorities.

Shallas Proof Brief, p. 53-54. First, the Shallas here inject facts not in the record alluding to events in the media and to unspecified regulatory and statutory

provisions. Reference to “facts” outside of the record should not be considered whatsoever. Second, the Shallas speculate and draw inferences about the Court’s reasoning that are simply not in the record and that are certainly not statements of fact from the record. The Court did not state that the fact that bankers do not act in a particular way was the only reason for its ruling on the \$25,000. Nor did the Court state that no employer is ever liable for criminal acts by an employee under certain conditions. The Shallas confuse a probative condition for a universally sufficient condition.

On September 21, 2022, a Judgment Entry was filed noting that the jury returned its verdict finding (in part) that Goerdts did not commit conversion related to the \$25,000 of the Shallas’ loan proceeds or to the \$2,218 allegedly misappropriated from the Shallas’ bank account. The jury also found that Goerdts’ conduct did not constitute willful and wanton disregard for the rights or safety of another. Judgment Entry, X810-812.

On September 22, 2022, the Court entered its Trial Order & Decree re: Equitable Proceedings, granting County Bank’s requested relief in the foreclosure action. Trial Order & Decree, X815-822.

DISCOVERY DEADLINES

On August 31, 2021, the Shallas filed a Motion for Discovery Conference. Motion for Discovery Conference, X600-611. On November 7, 2021, the Court

entered its Order re Pretrial Deadlines denying the Shalla's request to extend pretrial deadlines. Order, X645-646.

ARGUMENT

I. COUNTY BANK TAKES NO POSITION REGARDING DIRECTED VERDICT ON THE SHALLAS' NON-CONTRACT CLAIMS BASED UPON IOWA CODE SECTION 535.17 CREDIT AGREEMENT STATUTE OF FRAUDS

County Bank takes no position on this issue. No summary judgment and no directed verdict or other ruling in favor of County Bank was entered based upon Iowa Code Section 535.17.

II. THE DISTRICT COURT RULED CORRECTLY IN DENYING THE SHALLAS THE OPPORTUNITY TO TO RESET DISCOVERY DEADLINES

i. Standard of Review

The standard of review for district court rulings concerning pretrial deadlines is for an abuse of discretion. Hantsbarger v. Coffin, 501 N.W.2d 501, 506 (Iowa 1993).

ii. Preservation of Error

County Bank does not dispute that the Shallas preserved error on the issue of preserving the discovery deadline to seek a deposition of an officer of Peoples Trust per the Shallas' Motion for Discovery Conference. The Shallas' motion did

not describe with any particularity that it needed an extension in regard to any specific issues that pertain to County Bank.

ARGUMENT

The District Court ruled correctly declining to extend discovery deadlines in this matter as requested by the Shallas. County Bank's foreclosure petition initiating this case was filed back on March 28, 2018. The Shallas originally filed their counterclaims against County Bank back on July 25, 2018 (they later dismissed them but then reasserted them on November 27, 2018). Per the Court's December 4, 2018, Order Resetting Trial and Pre-Trial Deadlines, the previously set trial in this matter was continued and reset to begin on February 25, 2020. Further, the Order further *specifically stated* that, "It is further ordered that all of the pretrial deadlines set forth in the Trial Scheduling Order, dated July 18, 2018, shall be reset based on the new trial date". Order Resetting Trial and Pre-trial Deadlines. Thus, the deadline to serve discovery fell 90 days before the February 25, 2020, trial date, and *discovery was to be completed no later than 60 days before trial, i.e., to be completed by December 27, 2019.*

On July 25, 2019, the Shallas applied to suspend the summary judgment proceedings only. On December 20, 2019, the Court entered its Order Staying Proceedings, wherein it found that Goerdt's deposition should be taken prior to the

case proceeding and further found that the trial date should be continued to allow for the same. The Court specifically authorized that the parties obtain new dates from Court Administration for a summary judgment hearing and for trial. *The Order did not continue pretrial deadlines.* Order Staying Proceedings; Order Nunc Pro Tunc, X377-378.

On August 31, 2021, over one year and one-half after the December 27, 2019, close of discovery deadline which had not been further extended by any order, the Shallas filed a Motion for Discovery Conference seeking to extend the discovery deadline. Motion for Discovery Conference, X600-611. The Shallas therein essentially seem to be seeking to extend the discovery deadline so that they could depose an officer of Peoples Trust.

On September 10, 2021, Peoples Trust filed its Response and Resistance to the Motion for Discovery Conference. As noted in its resistance, the Shallas did not timely request to extend deadlines in this case, except for their limited request to suspend summary judgment proceedings until the deposition of Goerdts could be taken. As noted in their resistance, resetting a discovery deadline nearly two years after it expired reopens portions of the case and is prejudicial to the other parties who conducted matters in conformity with the deadlines long established. Its resistance describes the Shallas' motivations underlying their request to extend discovery deadlines and notes that the person the Shallas sought to now depose,

Ronald Kerr, was a former Vice President at Peoples Trust and (1) had already been made available for depositions previously cancelled by the Shallas, and (2) Mr. Kerr was no longer even an employee of Peoples Trust.

The Shallas, in their Proof Brief, now argue that their ability to make arguments about vicarious liability was inhibited by their inability to conduct additional discovery. Proof Brief, p. 73. The Shallas never made this specific argument in the motion seeking to extend deadlines and there is no explanation for why they could not have sought the relevant discovery related to these issues prior to the set discovery deadline which fell long after the case was filed and already included one extension. The Shallas had well over a year to perform discovery related to vicarious liability.

The circumstances herein are somewhat similar to those in Intriligator v. Rafoth, 898 N.W.2d 203 (Iowa Ct. App. 2017). In that case, trial had been reset in and the order resetting trial did not reset the discovery deadlines, although it indicated that they “may be amended, without further leave of court, by filing a Stipulated Amendment to Scheduling Order. Id. at *1. One party had missed the deadline to file an expert designation with reference to the original trial order. That party thus used the continuance as an opportunity to request an extension of the expert deadline and filed a motion to extend the deadline almost four months after the deadline had passed, and the Court denied the motion. Id. The Court of

Appeals ruled:

The district court properly exercised its discretion in excluding the expert witnesses. The Intriligators missed the May 2015 deadline to designate their expert witnesses.

Their motion to extend the deadline, filed almost four months after the deadline had passed, was denied. The Intriligators then moved to designate expert witnesses in December 2015—nearly a month after the date on which they sought to move the deadline to designate their expert witnesses and just one month before trial was scheduled to begin. The court's concerns about the untimely designation causing additional delays were not untenable or unreasonable.

Id., 898 N.W.2d 203 at *2 (Iowa Ct. App. 2017). This same rationale and concern with dragging out matters applies in the instant case.

On November 7, 2021, the Court entered its Order re Pretrial Deadlines denying the Shallas' request to extend pretrial deadlines. Order, X645-646. The Court stated, "The request to extend established pretrial deadlines is DENIED for the reasons recited in the Plaintiff's Resistance, and because this case has been on file for an extended time period. The interests of justice are not served by further extending deadlines." Order, X645. The Court's ruling was correct. All the reasons recited above and in Peoples Trust's resistance justified denying extension of the discovery deadline. For these reasons, the lower court should be affirmed in its denial of extending the discovery deadline as there was no abuse of discretion.

III. THE DISTRICT COURT RULED CORRECTLY IN ITS APPLICATION OF THE PRINCIPLES OF VICARIOUS LIABILITY/RESPONDEAT SUPERIOR TO COUNTY BANK BASED ON THE ACTIONS OF GOERDT

i. Standard of Review

County Bank rejects the Shallas' standard of review as stated in their Proof Brief as it appears to pertain to review of a discovery decision. The standard of review for district court rulings on directed verdict is set forth below.

Our standard of review concerning appeal from the grant of a motion for directed verdict involves looking for substantial evidence. Thus, where no substantial evidence exists to support each element of a plaintiff's claim, the court may sustain a motion for directed verdict. *See Stover v. Lakeland Square Owners Assn.*, 434 N.W.2d 866, 873 (Iowa 1989). "Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion." *Johnson v. Dodgen*, 451 N.W.2d 168, 171 (Iowa 1990). In reviewing the district court's decision, we view the evidence as the trial court did in ruling on the motion, that is, in the light most favorable to the party against whom the motion was directed. *Id.*

Godar v. Edwards, 588 N.W.2d 701, 705 (Iowa 1999).

ii. Preservation of Error

County Bank does not dispute that the Shallas preserved error on the issue of vicarious liability.

ARGUMENT

Upon County Bank's motion for directed verdict, the District Court dismissed both of the Shallas counterclaims against County Bank: (1) fraudulent misrepresentation and nondisclosure and (2) conversion, based upon the conduct of

County Bank employee Goerd. In terms of these claims, within both counts, the Shallas allege that (a) Goerd was acting within the scope of his authority at County Bank, and (b) County Bank was negligent in hiring Goerd. They did not specifically plead Respondeat Superior. In dismissing the claims, the Court ruled as follows:

THE COURT: I think I need to tell you what I have observed and read and what I believe the law is that applies to this evidence regarding Counts I and II, and then the foreclosure decree is a matter I'll also address. But in order for the counterclaim-plaintiffs to establish a claim against County Bank, they have to assert with Count I that Mr. Goerd was acting within the scope of his employment. They have to also prove Mr. Goerd's conduct and that can be connected to County Bank, and then for punitive damages they have got to prove County Bank is liable for the punitive damages for wrongful conduct of Goerd because he worked at County Bank and County Bank was negligent in hiring Goerd and ratified his conduct.

What the evidence shows is procedurally if this had been done sooner, these counts would have been dismissed. Substantial evidence does not show that County Bank caused any damages to the Shallas. Regardless of the amounts being reimbursed or credited to the mortgage, *Mr. Goerd clearly was not performing within the scope of his employment when he directed Clinton Shalla to take cash out of Peoples Bank and deliver it to him at a Riverside Kum & Go, assuming that's true, and I'm reviewing this in the light most favorable to the counterclaim-plaintiff. Godar versus Edwards and Marion Independent School District is the case where respondeat superior is cited authored by our former Chief Justice Art McGiverin discussed, as well in the Court of Appeals' case from 2015 -- I'll just spell it for Kelly's sake -- G-i-u-d-i-c-e-s-s-i versus State, 868 N.W.2d 418, and it goes through the list, and the most important one for this analysis is probably whether or not the act is seriously criminal.*

I've got a guy that testified for over three hours from a federal prison in the United States penitentiary in Thomson, Illinois, because he did things that bankers don't do. Listening to the evidence, I have never met a banker that did what Mr. Goerd does or is alleged to have. Even -- Even the

noncriminal conduct, the bankers don't operate in that way. It's a departure from the normal method. Clearly the evidence demonstrates and the industry norms demonstrate that Mr. Goerdt was self-serving. I mean, I can only really allude to what I heard and I know that he's been convicted of various crimes, but his alleged acts -- let's just call them alleged acts -- are seriously criminal. They're a clear departure of the normal business of banking. Mr. O'Rourke notified the proper authorities when that behavior became noticed -- notified to him, and indeed there is no evidence that Mr. Goerdt's conduct was expected, foreseeable, or sanctioned by County Bank, just as in the Godar case.

So initially I was inclined or curious why the motion to dismiss or summary judgment wasn't filed before this. I don't know if it was because people didn't realize that there was -- that the money was credited to the mortgage account prior to a week before trial, but based on the evidence that's been submitted to the Court, counterclaims I and II *there is not substantial evidence that County Bank caused the harm or damages to Mr. and Mrs. Shalla.*

Chris Goerdt is a different subject, and we'll talk about that with Mr. Fisher shortly, but *there is not a scintilla of evidence of negligent hiring.* The testimony is the normal practice for doing a background check was done. It's clearly not foreseeable in the Court's view, and for those reasons, these two counts should not be submitted to the jury as a matter of law.

X1632-1634 (emphasis added). The Court further clarified that its rationale granting County Bank's Motion for Directed Verdict applied to both counterclaims against County Bank. X1635, l. 24- X1636, l. 2.

The Shallas address several issues in their Proof Brief, not all pertaining to County Bank. The first is the issue that Goerdt undertook to provide services to assist Clint/the Shallas with exercise of the Koch option and was negligent in doing so. The uncontroverted evidence at trial is that County Bank has nothing to do with this allegation. Goerdt did not start working for County Bank until January 18, 2016. X1414, l.19-X1415, l. 2; Depo. Goerdt 99, l. 20-23, X1268. The option

deadlines expired on October 15, 2015. X1489, l. 3-25; X1490, l. 1-23; X1535, l. 1-4; X1543, l. 9-24. Both of the Shallas testified that County Bank had nothing to do with their failure to timely exercise their option with the Kochs. X1535, l. 13-17; X1576, l. 1-9. Thus, County Bank will not address this allegation or the arguments related thereto concerning summary judgment and the Statute of Frauds.

The only two claims involving County Bank are the fraudulent misrepresentation and the conversion claims. The Shallas cannot prove fraudulent misrepresentation/nondisclosure or conversion. The Shallas make no argument that there was negligent hiring by County Bank.

First, in regard to the claims based on vicarious liability of County Bank for the acts of Goerdts, the Shallas need to show vicarious liability via *Respondent Superior*. The law below sets forth the test for vicarious liability via *Respondent Superior*.

The well established rule is that under the doctrine of *respondent superior*, an employer is liable for the negligence of an employee committed while the employee is acting within the scope of his or her employment. **Thus, “[a] claim of vicarious liability under the doctrine of respondent superior rests on two elements: proof of an employer/employee relationship, and proof that the injury occurred within the scope of that employment.” We have said that for an act to be within the scope of employment the conduct complained of “must be of the same general nature as that authorized or incidental to the conduct authorized.” Thus, an act is deemed to be within the scope of one's employment “where such act is necessary to accomplish the purpose of the employment and is intended for such purpose.” The question, therefore, is whether the employee's**

conduct “is so unlike that authorized that it is ‘substantially different.’” Said another way, “a deviation from the employer's business or interest to pursue the employee's own business or interest must be *substantial in nature* to relieve the employer from liability.”

Section 229(2) of the Restatement (Second) of Agency (1957) lists the following factors to be considered in determining whether conduct of an employee may be characterized as occurring within the scope of the employee's employment:

- (a) whether or not the act is one commonly done by such servants;
- (b) **the time, place and purpose of the act;**
- (c) the previous relations between the master and the servant;
- (d) the extent to which the business of the master is apportioned between different servants;
- (e) whether or not the act is outside the enterprise of the master or, if within the enterprise, has not been entrusted to any servant;
- (f) whether or not the master has reason to expect that such an act will be done;
- (g) the similarity in quality of the act done to the act authorized;
- (h) whether or not the instrumentality by which the harm is done has been furnished by the master to the servant;
- (i) **the extent of departure from the normal method of accomplishing an authorized result;** and
- (j) **whether or not the act is seriously criminal.**

Comment a, concerning subsection (2), explains that the ultimate question in determining whether an employee's conduct falls within the scope of employment is

whether or not it is just that the loss resulting from the servant's acts should be considered as one of the normal risks to be borne by the business in which the servant is employed.

Restatement (Second) of Agency § 229 cmt. a. 9 “Although the question of whether an act is within the scope of employment is ordinarily a jury question, depending on the surrounding facts and circumstances, **the question as to whether the act which departs markedly from the employer's business is still within the scope of employment may well be for the court.**”

Godar, 588 N.W.2d at 705–06 (Iowa 1999) (internal citations omitted) (emphasis

added). See also: Giudicessi v. State, 868 N.W.2d 418, 421 (Iowa Ct. App. 2015).

Goerdt's conduct at issue is documented in great detail in the Statement of Facts. These issues included, first, the \$25,000 in cash which the Shallas allege that Goerdt took and Goerdt denied taking. The evidence at trial supports that it was Clint Shalla who called and talked to Kelly at Peoples Trust about withdrawing a large amount of cash (\$25 or \$35,000) and upon his visit to Peoples Trust, the cash was removed from the vault. X1465, l. 8-21; X1469, l. 14-17. Clint verified leaving Peoples Trust with a bag containing \$25,000 in cash. X1507, l. 10-14. Clint testified that Goerdt directed him that they then meet at Subway east of Riverside, where they had apparently met in the past. X1507, l. 15- X1508, l. 4. Clint further testified that while in the Subway parking lot area, he gave the bag of cash to Goerdt, and Goerdt then took the cash. X1511, l. 8 -X1512, l. 5. Goerdt asserted that the Shallas kept the \$25,000. X1340, l. 19-24; X1375, l. 18-25; X1564, l. 16-23; Depo. Goerdt 117, l. 11-25, X1273. Ultimately, County Bank credited back these funds to the Shallas.

Applying the above law, first, Goerdt was never charged in regard to the \$25,000 even though he was indicted on many other counts. It is uncertain whether Goerdt or the Shallas retained these funds. Second, applying the law above, it is clear that if Goerdt took the funds, this did not occur in the scope of his employment. If Goerdt retained the funds, the purpose of obtaining the funds *benefitted Goerdt personally*. The *place and manner for obtaining the funds was*

highly unusual involving meeting at a Subway and a carrying a bag of cash rather than normal bank interactions. Related thereto, Clint testified that in regard to other meetings with Goerdt, Goerdt would have Clint meet with him not only in the Subway parking lot, but also at parking lots at A& W and at the 218 exchange, which Clint admitted was unusual. X1528, l. 22-25; X1554, l. 8-11; X1566, l. 19-21. Goerdt confirmed that he and Clint “had many opportunities to meet at Subways and Kum & Go’s and Casey’s throughout the time...[he]...met Clint”. Goerdt Depo. 58, l. 21-23, X1258. *This is a serious departure from the normal methods of banking.* Clint himself acknowledged that such dealings are not normal for a banker and were suspicious. X1526, l. 18–X1527, l. 9. Clint testified that he believed that no one at County Bank knew anything about the \$25,000 except for Goerdt. X1528, l. 18-21. Goerdt also verified that he did not know of anyone at County Bank who knew about or benefitted from the transaction regarding the \$25,000. Goerdt Depo. 132, l. 7-11, X1276. Per Dan’s understanding at trial, no one had ever asserted that County Bank retained the \$25,000. X1340, l. 25-X1341, l. 3. Kelly Klein confirmed that breaches of bank protocol occurred at Peoples Trust in dispensing the cash at issue and that the breaches had absolutely nothing to do with County Bank. X1470, l. 16-19. At trial, Clint did not know of any breach in protocol or failure made by County Bank. X1536, l. 6-9. As already described in detail, the Shallas were also made whole by County Bank in regard

to these funds. Ex. 43, X1049-1054; X1342, l. 18 –X1343, l. 4, 13-17.

The second issue concerns the \$2,218 sum removed from the Shallas' account. After learning of the issue with the \$25,000, Dan inquired regarding any other irregularities in regard to the Shallas' accounts. X1344, l. 10-15.

Nearly two years later, in January of 2018, Michelle Shalla reported to him an irregularity that she discovered in regard to a check to the Benton County Treasurer in the amount of \$2,218 that she did not recognize. X1344, l. 16-25; X1345, l. 8-12; X1555, l. 3- X1556, l. 15. After further investigation, Dan learned that the check was to benefit Goerd't's in-laws in paying their real estate taxes. Ex. S15, X1124-1127; X1345, l. 4-7. Clint admitted at trial that the Shallas did not know about or alert anyone of this issue for a long time. X1549, l. 8-12. Goerd't stated at deposition that nobody else at County Bank had any knowledge of what was going on in regard to the transactions related to the \$2,218, that a significant amount of the transactions were not even conducted in the bank itself, and he to some extent tried to keep aspects of the transaction secret from others at the bank. Goerd't Depo. 111, l. 15-1 p. 112, l. 2, X1271; p. 122, l. 6-25, X1274. On March 31, 2018, County Bank credited the \$2,218 directly back to the Shallas. Ex. 42, X1043-1048; X1343, l. 1-12; X1345, l. 8-18; X1575, l. 22-24. Count 16 of his Indictment, which he pled guilty to, was based upon Goerd't withdrawing the \$2,218 from the Shallas' account (without consent or knowledge of the Shallas) to benefit Geord't's

mother and father-in-law by paying their real estate tax installment. Depo. Goerd 9, l. 9- p.10, l. 24, X1246; p. 121, l. 24- p. 122, l. 5, X1274.

Again, Goerd's conduct paying his relatives' taxes with another clients' funds does not benefit County Bank and was purely for his own benefit and outside the scope of his employment. Goerd secreted this conduct from County Bank. Goerd was criminally charged for this conduct, a factor that weighs against finding his conduct within the scope of his employment per Godar. Dan's extensive and express testimony verified that Goerd's conduct in regard to both the \$25,000 and the \$2,218 was far out of the scope of authority of his position with County Bank. X1376, l. 14–X1377, l. 12.

Moreover, concerning both the \$25,000 and the \$2,218, it is appropriate for the Court (rather than the jury) to decide “the question as to whether the act which departs markedly from the employer's business is still within the scope of employment” when the conduct is so marked a departure as the acts of Goerd.

The Shallas cite to McKinley v. Chicago & N.W.R. Co., 44 Iowa 314, 315 (1876), aff'd, 99 U.S. 147, 25 L. Ed. 272 (1878) for the statement that criminal acts do not take conduct out of the scope of vicarious liability. McKinley is from 1876 and is superseded by any law to the contrary in Godar, a 1999 case. Godar expressly recognizes that criminal activity of an employee is a factor to be

considered in deciding whether employee conduct is outside the scope of employment.

The Shallas also cite to Sandman v. Hagan, 261 Iowa 560, 563, 154 N.W.2d 113, 115 (1967). Sandman looks to define “scope of employment”. “It is safe to say that ‘within the scope of the employment’ requires that the conduct complained of must be of the same general nature as that authorized or incidental to the conduct authorized”. Id., 261 Iowa at 567, 154 N.W.2d at 117. “*Generally speaking, an employer is responsible to third persons for his servants' tortious acts if committed while the servant is engaged in furthering the employer's business or interests within the scope of his employment.*” Id. (emphasis added). “[A] deviation from the employer's business or interest to pursue the employee's own business or interest must be substantial in nature to relieve the employer from liability.” Id., 261 Iowa at 568, 154 N.W.2d at 118. The Shallas argue that Goerdts actions “were committed as part of the duties of a bank, which includes exercising control over a customer’s funds” and are not a substantial enough departure from the employer’s interest to take it outside the scope of liability. Shallas’ Proof Brief, p. 78. As described in detail above, Goerdts met with the Shallas in strange places like Subway and A&W, he allegedly had Clint carrying a bag filled with cash, neither Goerdts nor the Shallas informed County Bank about the suspicious goings on while they were happening, and the funds at issue

benefited Goerdt's relatives and either Goerdt or the Shallas. They certainly did not benefit County Bank. It strains the imagination to see how Goerdt's conduct in this regard can be construed to in any way further the business interests of County Bank. The deviation in purpose from pursuing the bank's interests to pursuing Goerdt's own interests to help his family and possibly himself is substantial.

The Shallas also cite to Briner v. Hyslop, 337 N.W.2d 858, 868 (Iowa 1983) for the notion that an employee may be liable for punitive damages. Briner is easily distinguishable as Briner involved an employer who knew its employee was engaged in dangerous activities and practices and still allowed that employee to work as a driver, falling asleep at the wheel. The overwhelming evidence already set forth in detail is that County Bank was completely unaware of Goerdt's conduct at issue.

The Shallas also cite to Kimmel v. Iowa Realty Co., 339 N.W.2d 374, 383 (Iowa 1983) with no explanation of how Kimmel applies to the current matter. Kimmel involves a very different fact pattern from the current case.

The Shallas note that Goerdt obtained the Shallas' social security numbers in the course of his employment with both banks and acting under the scope of authority of his position. That, however, does not mean that his acts of possibly absconding with a sack of cash (disputed whether he did this) or of using one

clients' funds to pay his relatives' bills, the real acts at issue, are also within the scope of his authority.

The Shallas inject facts into their Proof Brief that are nowhere in the record and should not be considered. The Shallas conjecture rather extensively that bank officers receive bonuses or compensation based upon loans processed/managed. Proof Brief, p. 83-86. *Nowhere in the record* does it state that Goerdts received any kind of incentive pay, percentage, bonus or like reward for loans processed or managed. In fact, Goerdts testified that he did not receive any type of percentage or incentive to write a loan at Peoples Trust. Goerdts Depo. 142, l. 15-17, X1279. There simply was no testimony on this issue regarding County Bank. The Shallas' arguments in this regard are completely irrelevant. The Shallas' Proof Brief also contains wild speculation about Goerdts' thought-process, planning, and motives in procuring the loans that is contained nowhere in the record and should be given no weight. Proof Brief, p. 86-87.

Because Goerdts' acts at issue were not performed within the scope of his employment and were done purely to pursue his own interests, and because they were extremely unusual in protocol and hidden from County Bank, County Bank is not vicariously liable for Goerdts' conduct at issue and the District Court ruled correctly.

IV. A NEW TRIAL SHOULD NOT BE GRANTED AS THE VERDICT EFFECTUATES SUBSTANTIAL JUSTICE.

i. Standard of Review

The standard of review of a trial court's action on a motion for new trial is for abuse of discretion. Foggia v. Des Moines Bowl-O-Mat, Inc., 543 N.W.2d 889, 891 (Iowa 1996).

ii. Preservation of Error

County Bank agrees that the Shallas preserved error in regard to the issues raised in their Motion for New Trial.

ARGUMENT

Under Iowa law,

We have often said we interfere reluctantly with the grant of a new trial by the trial court. Brooks v. Brotherhood of American Yeomen, 115 Iowa 588, 88 N.W. 1089. It is also settled beyond possibility of dispute that the discretion of the trial court to order a new trial in the interest of justice is greater than that of the appellate court, and that only a clear showing of abuse of discretion will justify our interference when a new trial has been granted on this ground.

Hall v. City of W. Des Moines, 245 Iowa 458, 469, 62 N.W.2d 734, 740 (1954).

Insofar as the Shallas' arguments here focus on the summary judgment ruling, County Bank takes no position on this issue. Insofar as the Shallas argue that the Court's order declining to extend discovery deadlines inhibited the Shallas from presenting their case and caused an adverse verdict, County Bank's position

regarding the discovery deadline issue has already been argued extensively above. The evidence at trial included a lengthy recitation of issues regarding financial irresponsibility and dishonesty on the part of the Shallas, described in the factual section of this brief, which may well explain any credibility issues the jury had with the Shallas' testimony and the verdict declining to find that Goerdts converted anything other than the \$5,800 at Peoples Trust. For these reasons, County Bank absolutely denies that the verdict herein did not effectuate substantial justice. There is no clear showing of an abuse of discretion by the trial court.

V. COUNTY BANK SHOULD BE AWARDED APPELLATE ATTORNEY FEES.

Per Iowa Code Section 625.22(1), “[w]hen judgment is recovered upon a written contract containing an agreement to pay an attorney fee, the court shall allow and tax as a part of the costs a reasonable attorney fee to be determined by the court.” Further, “[w]here attorney fees are awarded under section 625.22, a party may also be awarded appellate attorney fees”. GreenState Credit Union v. Prop. Holders, Ltd., 986 N.W.2d 128 (Iowa Ct. App. 2022). Attorney fees were awarded as part of the original judgment in this matter as permitted by paragraph 18 of Exhibits 1 and 9, written contracts herein. County Bank further requests appellate attorney fees in this matter.

CONCLUSION

For the reasons argued above, the Shallas' requests on appeal should be denied in their entirety.

REQUEST FOR ORAL ARGUMENT

Notice is hereby given that Appellee County Bank wishes to have and be heard at oral argument of this matter.

Respectfully submitted,

/s/ John C. Wagner

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ATTORNEY'S COST CERTIFICATE

I, John C. Wagner, hereby certify that the actual cost of reproducing the necessary copies of this document, consisting of 61 pages was \$ 0 .

/s/ John C. Wagner
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**PROOF OF ELECTRONIC SERVICE AND CERTIFICATE OF
ELECTRONIC FILING**

I certify that on the 25th day of July, 2023, I electronically filed this document with the Clerk of the Supreme Court using the Iowa Electronic Document Management System, which will send notification of electronic filing to the following opposing counsel. Per Iowa Rule 16.317(1)(a)(2), this constitutes service of the document for the purposes of the Iowa Court Rules.

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME TYPE-FACE
REQUIREMENTS AND TYPE-STYLE REQUIREMENTS**

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because the brief contains 13,513 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).
2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because the brief has been prepared in a proportionally spaced typeface in fourteen (14) point Times New Roman font.

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