

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 RESISTANCE TO APPLICATION FOR
FURTHER REVIEW**

(Date of filing Court of Appeals Decision: June 19, 2024)

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QUESTIONS PRESENTED FOR REVIEW

- I. WHETHER THE COURT OF APPEALS MAJORITY OPINION ERRED IN CONCLUDING THAT THE IOWA CODE SECTION 535.17 CREDIT AGREEMENT STATUTE OF FRAUDS BARS TORT CLAIMS?
- II. WHETHER THE COURT OF APPEALS ERRED IN ITS RULINGS REGARDING THE DISCOVERY DEADLINE AT ISSUE?
- III. WHETHER THE COURT OF APPEALS ERRED IN HOLDING COUNTY BANK WAS NOT LIABLE FOR GOERDT'S CONDUCT AT ISSUE?

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW2

TABLE OF CONTENTS3

RESISTANCE TO REQUEST FOR FURTHER REVIEW5

BRIEF AND ARGUMENT7

PROCEDURAL HISTORY.....7

STATEMENT OF FACTS.....8

ARGUMENT 14

I. COUNTY BANK TAKES NO POSITION ON WHETHER THE COURT OF APPEALS ERRED IN ITS RULING REGARDING SHALLAS’ NON-CONTRACT CLAIMS BASED UPON IOWA CODE SECTION 535.17 CREDIT AGREEMENT STATUTE OF FRAUDS.....14

II. THE COURT OF APPEALS RULED CORRECTLY IN AFFIRMING THE DISTRICT COURT REGARDING THE ISSUE OF RESETTING OF DISCOVERY DEADLINES.....14

III. THE COURT OF APPEALS RULED CORRECTLY IN AFFIRMING THE DISTRICT COURT REGARDING THE ISSUE OF VICARIOUS LIABILITY/RESPONDEAT SUPERIOR OF COUNTY BANK BASED ON THE ACTIONS OF GOERDT 17

IV. COUNTY BANK SHOULD BE AWARDED FURTHER APPELLATE ATTORNEY FEES.....21

CONCLUSION21

COST CERTIFICATE22

CERTIFICATE OF FILING AND SERVICE23

CERTIFICATE OF COMPLIANCE 24

RESPONSE TO APPELLEES' STATEMENT SUPPORTING FURTHER REVIEW

COMES NOW Appellant County Bank and responds to Appellants the Shallas' request for review of the June 19, 2024, decision of the Court of Appeals as follows.

1. The Shallas' counterclaims against County Bank were as follows:
Counterclaims I (Fraudulent Misrepresentation and Nondisclosure) and II (Conversion).
2. County Bank takes no position regarding the Shallas' statements regarding negligence claims.
3. County Bank takes no position regarding Goerdt's conduct prior to his employment with County Bank.
4. County Bank takes no position regarding allegations that Goerdt failed to give timely notice of the exercise of the option as these allegations concern Goerdt's conduct predating his employment by County Bank.
5. County Bank takes no position regarding application of Iowa Code Section 535.17 as the issues concerning County Bank did not invoke this Code Section or *Geiger v. Peoples Bank and Trust*, 940 N.W.2d (Table) 2019 WL 4678179 (Iowa Ct. App. 2019).
6. Agreed that Judge Showers ruled consistent with rulings of Judge Schilling.

7. Denied that the Shallas were unable to submit their primary claims against County Bank.

8. – 11. County Bank takes no position on (8) through (11).

12. The discovery deadline issue should not be considered in any remand of this case as it was correctly decided by the Court of Appeals. Moreover, the Shallas recite no rationale under Iowa R. App. 6.1103 to support that this particular issue warrants further review.

13. The extent of County Bank's liability for the actions of Goerdts should not be considered in any remand of this matter as it was correctly decided by the Court of Appeals. Moreover, the Shallas recite no rationale under Iowa R. App. 6.1103 to support that this particular issue warrants further review.

WHEREFORE, Appellee County Bank resists the Shallas' Application for Further Review, prays that the Court deny the same, prays that the issue of County Bank's attorney fees necessitated in making this resistance be considered at hearing of the issue of appellate attorney fees in this matter, and seek such further relief as the Court deems just.

BRIEF AND ARGUMENT

Procedural History

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. 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 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 August 31, 2021, the Shallas filed a Motion for Discovery Conference. Motion for Discovery Conference, X600-611. 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 November 7, 2021, the Court entered its Order re Pretrial Deadlines denying the Shallas’ request to extend pretrial deadlines. Order, X645-646. 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 Goerdts 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. On June 19, 2024, the Court of Appeals ruled affirming the trial court.

Statement of Facts

County Bank was established in 1884. Trial Transcript Volume I, page 52, l. 1-3, (hereafter TI __, l.__), X1307. At the time of trial, the CEO of County Bank was Daniel O’Rourke (hereafter “Dan”). Goerdts began his employment with County

Bank on January 18, 2016. X1414, l.19- X1415, l. 2, Depo. Goerd 99, l. 20-23, X1268. 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 Shalla had walked out of People's Trust with 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 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 Goerd came to have the Shallas complete loan documents, Goerd also had a roughly \$30,000 check for the Shallas to sign,

which Goerdt 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 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. While the Shallas assert that they gave the \$25,000 to Goerdt, Goerdt asserts 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. 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 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. Depo. Goerdt 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 Goerdts 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 Goerdts operated was not within the normal scheme of banking. X1529, l. 1-5. Related thereto, Clint testified that in regard to other meetings with Goerdts, Goerdts 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. Goerdt 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. Goerdt 111, l. 15- p. 112, l. 2, p. 122, l. 6-25, X1271, 1274. Goerdt additionally admitted that he also hid his fraudulent conduct predating his hire

with County Bank from County Bank. Depo. Goerd 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.

Ultimately, on April 7, 2016, Goerdts 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 Goerdts' employment on May 18, 2016. Ex. 26, X1009-1019; X1374, l. 20-25; Depo. Goerdts 106, l. 12-15, X1270. Dan testified clearly at trial that Goerdts' rogue conduct as described above was not at any point authorized by County Bank. X1376, l. 14 – X1377, l. 12. Goerdts 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. Goerdts 7-8, X1245.

In regard to the issue of 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 Shallas'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 ruling in favor of County Bank was entered based upon Iowa Code Section 535.17.

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

A request for further review is not granted in normal circumstances, and the grounds normally (although not exclusively) justifying such review are set forth in Iowa R. App. P. 6.1103 (b). Iowa R. App. P. 6.1103(b). The Shallas do not expressly apply *any* of these grounds to this issue. 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). The District Court ruled correctly declining to extend discovery deadlines in this matter as requested by

the Shallas and the Court of Appeals ruled correctly in affirming the same. County Bank's foreclosure petition initiating this case was filed back on March 28, 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 *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 Goerdts'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 seemed to be seeking to extend the discovery deadline so that they could depose an officer of Peoples Trust. 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. 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.

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 and the Court of Appeals correctly affirmed that ruling. For these reasons, the Shallas' request for further review and remand of this issue should be denied.

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

A request for further review is not granted in normal circumstances, and the grounds normally (although not exclusively) justifying such review are set forth in Iowa R. App. P. 6.1103 (b). Iowa R. App. P. 6.1103(b). The Shallas do not

expressly apply *any* of these grounds to this issue. The Shallas argue that the trial court failed to properly consider the fraud claim against County Bank. This is simply false.

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). 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 alleged that Goerd was acting within the scope of his authority at County Bank. 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't'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't because he worked at County Bank and County Bank was negligent in hiring Goerd't 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't 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't 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. Goerd't 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. Goerd't'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 Goerdts 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, 1. 24- X1636, 1. 2. The Court of Appeals correctly and unanimously affirmed this ruling. County Bank has no vicarious liability via Respondeat Superior for the acts of Goerdts on either count alleged against County Bank.

The Shallas argue that the trial court and the Court of Appeals erred in finding that County Bank lacked vicarious liability for fraud perpetrated by Goerdts and that they did not properly consider the issue. This is false. The issue of vicarious liability via Respondeat Superior was thoroughly considered by the trial court and Court of Appeals and both rulings are fully consistent with the law promulgated by Godar, 588 N.W.2d at 705–06 (Iowa 1999) outlining the parameters by which to analyze vicarious liability. The Shallas offer nothing to controvert the apt application of Godar in this regard. As the Court of Appeals rightly states, referencing Biddle v. Sartori Mem'l Hosp., 518 N.W.2d 795, 797 (Iowa 1994) and Sandman v. Hagan, 261 Iowa 560, 567, 154 N.W.2d 113, 117 (1967), first, “County Bank cannot be held liable for Goerdts's actions when those actions are clearly outside the scope of

his employment” and, second, “[w]hile bankers deal in money, that does not mean Goerdt’s efforts to steal money from the bank’s customers are of that same general nature or within the scope of his employment”. Court of Appeals Ruling, p. 14-15. For these reasons, the Shallas’ request for further review and remand of this issue should be denied.

IV. COUNTY BANK SHOULD BE AWARDED APPELLATE ATTORNEY FEES RELATED TO THIS RESISTANCE.

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 related to defending the Application for Further Review to be added to hearing on attorney fees when the same is set in district court.

CONCLUSION

For the reasons argued above, including the fact that the Shallas decline to expressly recite or invoke any grounds under Iowa R. App. P. 6.1103, the Shallas’ Application for Further Review should be denied.

Respectfully submitted,

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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 24 pages was \$ 0.

/s/ John C. Wagner

JOHN C. WAGNER AT0008238

PROOF OF ELECTRONIC SERVICE AND CERTIFICATE OF
ELECTRONIC FILING

I certify that on the 18th day of July, 2024, 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 document complies with the type-volume limitation of Iowa R. App. P. 6.1103(5)(a) and 6.903(1)(g)(1) or (2) because it contains 4,464 words, excluding the parts of the document exempted by Iowa R. App. P. 6.903(1)(g)(1).
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