IN THE SUPREME COURT OF IOWA

NO. 22-1865

(Washington County 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-Appellants,
vs.
CHRIS GOERDT and PEOPLES TRUST AND SAVINGS BANK,
Third-Party Defendants-Appellees.

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

THIRD-PARTY DEFENDANTS-APPELLEES' REVISED FINAL BRIEF

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ROUTING STATEMENT

Third-Party Defendant/Appellee, Peoples Trust and Savings Bank ("Peoples"), believes this case should be transferred to the Iowa Court of Appeals pursuant to Iowa Rule of Appellate Procedure 6.1101(3). This case presents the application of existing legal principles previously decided by the Iowa Court of Appeals in *Geiger v. Peoples Trust and Savings Bank*, 940 N.W.2d 46 (Table), No. 18-1428, 2019 WL 4678179 (Iowa Ct. App. Sept. 25, 2019), and presents issues that are appropriate for summary disposition.

STATEMENT OF THE CASE

On March 28, 2018, Appellee, County Bank, filed a Foreclosure Petition against Appellants, Clinton and Michelle Shalla (hereinafter collectively referred to as "Shallas," and Clinton Shalla hereinafter will be individually referred to as "Shalla"), relating to a past-due loan for farm real estate owned by Shallas in Washington County, Iowa. *(App. 81-143)*. In response, Shallas filed a number of Counterclaims against County Bank and a number of third-party claims against Appellees Peoples and Christopher Goerdt ("Goerdt") relating to alleged conduct of Goerdt while he served as president of Peoples and then vice president of County Bank. Shallas' claims against Peoples included tort claims for negligence and fraudulent misrepresentation. *(App. 153-167)*.

Shallas' tort claims against Peoples center around certain promises they claim Goerdt made to them in connection with obtaining a loan to repurchase their farm that was the subject of County Bank's foreclosure action. The District Court initially denied Peoples' Motion for Summary Judgment requesting dismissal of the tort claims, but then granted Peoples' request on a Rule 1.904 Motion to Reconsider and dismissed Shallas' tort claims against Peoples. *(App. 576-599, 647-655)*. In its Ruling granting Peoples' Rule 1.904 Motion, the District Court correctly found that the Shallas' tort claims, which were all based on alleged oral agreements with Goerdt, were unenforceable because they were not in writing under Iowa's Credit Agreement Statute of Frauds, Iowa Code Section 535.17.

The remaining claims against Peoples, relating to alleged conversion of funds by Goerdt, were severed in advance of trial, per agreement by the parties, and then later dismissed in response to Peoples' Motion to Enforce the Joint Stipulation based on the jury verdict and directed verdict entered in favor of County Bank. *(App. 773-776, 777-779, 823-830, 831-833)*. Shallas did not resist Peoples' Motion to Enforce and otherwise have not appealed the District Court's Order granting the Motion to Enforce relating to the conversion claims against Peoples.

On October 5, 2022, Shallas filed a Motion for New Trial based upon Rulings made in connection with the trial or made prior thereto, including the District Court's Ruling granting Peoples' Rule 1.904 Motion. *(App. 834-838)*. The District Court properly denied Shallas' Motion for New Trial. *(App. 860-861)*. Shallas have now appealed the Order denying their Motion for New Trial. *(App. 862-864)*.

The District Court's Ruling in this case should be upheld. The District Court correctly found that Shallas' tort claims against Peoples are barred by Iowa Code Section 535.17, consistent with the plain meaning of the statute and compelling authority addressing the very same legal issue from the Iowa Court of Appeals in *Geiger v. Peoples Trust and Savings Bank*, 940 N.W.2d 46 (Table), No. 18-1428, 2019 WL 4678179 (Iowa Ct. App. Sept. 25, 2019). While Shallas' counsel attempts to transform a banker's vague promises in connection with a loan agreement into fraudulent and negligent misrepresentation claims in order to escape the requirements of Section 535.17, Shallas' arguments are unavailing and must fail as a matter of law.

STATEMENT OF FACTS

Shallas allege numerous facts in their Brief, very few of which actually relate to the legal issues raised on appeal. While Peoples takes issue with many

of those allegations, Peoples intends to respond only to those germane to the appeal. Those facts are set forth below.

Despite Shallas' voluminous recitation, the factual allegations relating to Shallas' Section 535.17 agreement are very simple. Shalla alleges that sometime in early 2015, he approached Peoples' bank president, Goerdt, to obtain a loan to satisfy a loan agreement between Shalla and Gregory and Heather Koch, who had purchased Shallas' farm at a foreclosure sale. *(App. 295-300 at 32:3-33:4 and 45:20-46:19 (C. Shalla)).*[1] The loan agreement between Shalla and the Kochs, titled "Debt Settlement Agreement" (hereinafter referred to as the "Agreement"), provided that Shalla deliver a Deed to the Kochs in Lieu of Foreclosure for his farm in exchange for the Kochs granting Shalla an exclusive option to repurchase the farm by August 15, 2015, for the amount the Kochs paid to the foreclosing bank, $497,074.76, plus certain other costs and fees incurred by the Kochs. *(App. 265-271).* Shalla concedes that he read and signed the Agreement but inexplicably claims that he did not know that there was a deadline for the exercise of the option. *(App.*

[1] Because the Court's Ruling on Peoples' Rule 1.904 Motion is based on the factual record presented as part of the summary judgment proceeding and the Shallas' tort claims were dismissed before trial, Peoples' citations are to the Summary Judgment record.

290 at 21:17-19, 294-295 at 31:2-32:2 (C. Shalla), App. 325-326 at 8:2-9:25 (M. Koch), App. 328-330 at 13:8-15:25 (G. Koch), and App. 265-271).

When Shalla approached Goerdt in early 2015, Shalla claims Goerdt said he would try to secure financing for Shalla to repurchase the farm. *(App. 298-299 at 45:20-46:19 (C. Shalla)).* Shalla attempts to transform his vague conversation with Goerdt, made in connection with a loan agreement, into claims of fraudulent and negligent misrepresentation against Peoples and Goerdt. *(App. 153-167).* Shalla illogically blames Goerdt for Shalla missing his own contractual option deadline, while at the same time conceding that he never discussed with Goerdt the exercise of the option, which only Shalla could sign, and that Goerdt made no direct promises concerning the option itself. *(App. 298-299 at 45:3-46:19 (C. Shalla))*. Shalla further concedes any alleged agreement reached with Goerdt was oral and nothing was in writing. *(App. 300-301 at 47:18-48:14 (C. Shalla), App. 321 at 35:15-17 (M. Shalla)).* Despite these concessions, Shallas sought damages against Peoples because the Kochs required Shalla to pay a higher repurchase price for the farm after Shalla failed to meet the option deadline. *(App. 265-271, 281-284, 308-309 at 119:9-120:16 (C. Shalla)).*

All communications before the option deadline were between Goerdt and Shalla. Shalla's wife, Michelle Shalla, never met or even spoke with

Goerdt until well after the option had expired. *(App. 320-321 at 22:9-22 and 35:15-17 (M. Shalla)).* Michelle Shalla was not a titleholder to the farm when the foreclosure proceedings occurred and the Agreement was signed, and, therefore, she was not a party to the Agreement. Michelle Shalla executed the Deed in Lieu of Foreclosure solely to release her dower interest in the farm. *(App. 273-276).*

The relevant testimony in the summary judgment record is as follows:

CLINTON SHALLA DEPOSITION
4 Q. All right. Was there anything in writing that 5 required Mr. Goerdt to give notice to the Kochs? **6 A. Not that I'm aware of.** 7 Q. Okay. So based on the language of the contract 8 it was you[r], Clint Shalla's, obligation to provide written 9 notice to the Kochs by August 15th of 2015; isn't that 10 right? **11 A. I wasn't aware that I was to do that**. 12 Q. But reading the language here in paragraph 7(c) 13 that we're looking at right now, would you agree it was 14 your obligation to provide notice to the Kochs by 15 August 15th of 2015? **16 A. That's what it says, yes.** 17 Q. All right. And you didn't do that, correct? **18 A. No**. *(App. 294 at 31:4-18).* 20 Q. All right. And did you have any discussions 21 with Mr. Goerdt then about meeting that August 15th 22 deadline? **23 A. No.** 24 Q. Why not? **25 A. Wasn't aware.** *(App. 298 at 45:20-25).*

12 Q. All right. So when you say that you weren't
13 aware, what do you mean by that? Do you mean you hadn't
14 taken the time to review the document?
15 **A. When this -- When it was all turned over to**
16 **Chris, he was going to handle it.**
17 Q. When you say that Mr. Goerdt was going to handle
18 it, what did he specifically say to you?
19 A. That he would try to secure financing for me.
(App. 299 at 46:12-19).

18 Q. Did you have -- Before August 15th, 2015, did
19 you have any written agreements with Mr. Goerdt regarding
20 his assistance to you?
21 A. No.
(App. 300 at 47:18-21).

1 Q. All right. How about after August 15th of 2015,
2 did you have any written agreements with Mr. Goerdt during
3 that time period?
4 **A. After August 15th until when?**
5 Q. Through today. Have you ever had a written
6 agreement with Mr. Goerdt?
7 **A. No.**
8 Q. Have all of your agreements with Mr. Goerdt been
9 oral agreements?
10 **A. Yes.**
11 Q. All right. And do you have any evidence of your
12 agreements with Mr. Goerdt other than your testimony
13 today?
14 **A. No.**
(App. 301 at 48:1-14).

11 Q. All right. Again, you didn't have any written
12 agreement with Goerdt that he was going to act as your
13 representative in dealing with the Kochs on the option
14 agreement, correct?
15 **A. No.**
(App. 513 at 109:11-15).

MICHELLE SHALLA DEPOSITION
17 Q. If the first time that you would have had any 18 communication with Chris Goerdt been in either November or 19 December of 2015, is it fair to say then you wouldn't have 20 had any communications with him by the 21 August 15th, 2015, option deadline? **22 A. That's correct.** *(App. 320 at 22:17-22).* 15 Q. All right. So you wouldn't have any written 16 agreements of any kind with Mr. Goerdt; is that fair? **17 A. Correct.** *(App. 321 at 35:15-17).*
CHRISTOPHER GOERDT DEPOSITION
9 Q. Did you ever tell Clint Shalla that 10 you would act on their behalf in regard to the 11 exercising of the option? **12 A. No.** 13 Q. Did you ever tell Shallas that you 14 would make sure that the option was exercised? **15 A. No.** *(App. 516 at 131:9-15).*

In their appeal brief, Shallas incorrectly allege that Goerdt agreed to handle the exercise of the option, for which Shallas offer no supporting factual evidence. *(Appellants Clinton and Michelle Shalla's Proof Brief and Argument, dated March 24, 2023, hereinafter referred to as "Appellants' Proof Brief," p. 18).* Not only is there no evidence in the record to support such a claim, but the undisputed facts in the record establish the Shallas never asked and Goerdt never promised to exercise or assist in the exercise of the option on behalf of Shalla as reflected in the quoted deposition testimony

above. However, even if this factual claim was true, Shallas' tort claims are based entirely on vague alleged oral communications between Goerdt and Shalla, the purpose of which, by Shalla's own admission, was for Goerdt to "secure financing" for the farm. *(App. 298-300 at 45:20-46:19 (C. Shalla) and App. 321 at 35:15-17 (M. Shalla)).* Based on these undisputed facts alone, Shallas' tort claims are barred by Iowa Code Section 535.17 and must fail as a matter of law as further discussed below.

ARGUMENT

I. THE DISTRICT COURT DID NOT ERR IN GRANTING SUMMARY JUDGMENT IN RESPONSE TO PEOPLES' RULE 1.904 MOTION AND BARRING SHALLAS' CLAIMS BASED UPON IOWA CODE SECTION 535.17, IOWA'S CREDIT AGREEMENT STATUTE OF FRAUDS.

1. Error Preservation.

Peoples does not dispute Shalla preserved error with regard to the Court's Ruling Granting Peoples' Rule 1.904 Motion to Amend, Enlarge or Reconsider.

2. Standard of Review.

Peoples does not dispute that summary judgment rulings are reviewed for corrections of errors of law." *Geiger v. Peoples Trust and Savings Bank*, 940 N.W.2d 46 (Table), No. 18-1428, 2019 WL 4678179 (Iowa Ct. App. Sept.

25, 2019), at *2; *see also Zimmer v. Vander Waal*, 780 N.W.2d 730, 732-33 (Iowa 2010); *Baker v. City of Iowa City*, 750 N.W.2d 93, 97 (Iowa 2008).

3. Argument.

Iowa's Credit Agreement Statute of Frauds, Iowa Code Section 535.17, requires that promises made in connection with a loan agreement be in writing to be enforceable. *Id.* at § 535.17(1). While it is undisputed that no written agreement existed between Shallas and Goerdt, Shallas' counsel in this case—the same counsel who represented the plaintiffs in their unsuccessful appeal in *Geiger v. Peoples Trust and Savings Bank*, 940 N.W.2d 46 (Table), No. 18-1428, 2019 WL 4678179 (Iowa Ct. App. Sept. 25, 2019)—attempts an end run around Iowa's Credit Agreement Statute of Frauds, Iowa Code Section 535.17, by arguing that oral promises made in connection with an alleged agreement to loan money are torts, and, therefore, not barred by Section 535.17. This Court should follow the thorough, well-reasoned and well-researched opinion in *Geiger* and affirm the District Court's Ruling that Shallas' alleged tort claims are barred by Section 535.17. Shallas' argument to the contrary is unsupported by the plain language of Section 535.17, and its legislative history, and even if Section 535.17 could arguably apply, Shallas failed to establish any factual basis to support their claims. As noted in the record in this case, the appellants in *Geiger* sought further review with the

Iowa Supreme Court, advancing the same arguments made by the Shallas in this case. *(App. 525-569).* Further review was denied in *Geiger* on January 23, 2020, demonstrating the Iowa Supreme Court was satisfied with the correctness of the decision of the Iowa Court of Appeals in *Geiger.* For all of these reasons, this Court should affirm the District Court's Ruling granting Peoples' Rule 1.904 Motion.

a. The Plain Language of Section 535.17 and Iowa Court of Appeals' Opinion in *Geiger* Make Clear that Iowa's Credit Agreement Statute of Frauds Bars Shallas' Claims Against Peoples.

As the District Court correctly observed in granting Peoples' Rule 1.904 Motion, *Geiger*'s analysis is dispositive of the Section 535.17 issue in this case. The District Court correctly held that Shallas' tort claims against Peoples "are based on oral promises made in connection with the credit agreement" and "*Geiger* provides that claims in tort based upon oral promises made in connection with a credit agreement are barred under section 535.17." *(App. 650).* In *Geiger*, where the plaintiff customers had sued Peoples for alleged fraudulent conduct in inducing the plaintiffs into entering into a loan agreement, plaintiffs' counsel made a virtually identical argument that Section 535.17 only applied to breach-of-contract claims, and not tort claims. *Id.* The Iowa Court of Appeals rejected the plaintiffs' argument and upheld the District Court's ruling granting summary judgment in favor of the bank

because no written agreement existed between the parties under Section 535.17. *Id.* The court in *Geiger* held a party "cannot raise in tort what they cannot prove in contract: the existence of an enforceable contract." *Id.* at *6.

Consistent with the court's decision in *Geiger*, it is clear from the plain language of Section 535.17 that Shallas' claims fail as a matter of law. *See Griffen v. State*, 767 N.W.2d 633, 637 (Iowa 2009) ("When the language of a statute is plain and its meaning clear, the rules of statutory construction do not permit us to search for meaning beyond the statute's express terms") (internal quotations omitted)). Iowa Code Section 535.17(1) provides:

> A credit agreement is not enforceable in contract law by way of action or defense by any party unless a writing exists which contains all of the material terms of the agreement and is signed by the party against whom enforcement is sought.

Id. at § 535.17(1).

In their Appeal Brief, Shallas focus on the phrase "contract law" in Section 535.17(1) to support their argument that the Code section only applies to contract actions. *(Appellants' Proof Brief, p. 58).* However, Shallas' statutory reading completely ignores how broadly the relevant statutory definitions in Section 535.17 have been written and that such definitions go beyond traditional breach-of-contract actions to include the tort claims Shallas raised in this case. The broadness of the definitions in Section 535.17 were specifically recognized by the court in *Geiger*:

> Iowa Code [s]ection 535.17 has its own specific definitions of "credit agreement," "contract," and "lender," which are broad and cover any promise and set of promises made by a lender or person primarily in the business of loaning money to finance any transaction or otherwise extend credit for any purpose the breach of which the law would set forth a remedy.

Id. at *4 (quoting the District Court's Ruling in *Geiger*).

The broad language in the statute clearly recognizes a lender may have a number of obligations that can be construed as "promises" during the lending process and that all such promises must be in writing to be enforceable. Section 535.17 broadly defines "credit agreement" as "any contract made or acquired by a lender to loan money, finance any transaction or otherwise extend credit for any purpose." *Id.* at § 535.17(5)(c). "Lender" is broadly defined to include not only a "person primarily in the business of loaning money" but also a person "financing sales, leases, or other provision of property of services." *Id.* at § 535.17(5)(e). Section 535.17 also, notably, has its own definition of "contract," which is very broadly defined as follows:

> "Contract" means a promise or set of promises for the breach of which the law would give a remedy or the performance of which the law would recognize a duty, and includes promissory obligations based on instruments and similar documents or on the contract doctrine of promissory estoppel.

Id. at § 535.17(5)(b) (emphasis added). The statutory definition of "contract" confirms that any "promise" to extend credit, the breach of which gives rise to a claim, is subject to Section 535.17. Shallas argue that the inclusion of

promissory estoppel, but not equitable estoppel, in the definition of "contract" is "significant evidence the legislature did not intend to include misrepresentation claims." *(Appellants' Proof Brief, p. 62).* However, this is the same unsuccessful argument Shallas' counsel raised in *Geiger*, and the Iowa Court of Appeals in *Geiger* disagreed with this characterization given how broadly "contract" and other terms were defined in the statute. *Geiger,* 940 N.W.2d 46, at *4.

As reflected in the *Geiger* opinion, it is clear from the plain meaning of this code section that it must be applied expansively. Contrary to the Shallas' argument in their Brief, the broad applicability of Section 535.17 actually is further supported, not limited, by the statutory language of subsections 535.17(6) & (7), which state as follows:

> 6. This section shall be interpreted and applied purposively to ensure that contract actions and defenses on credit agreements are supported by clear and certain written proof of the terms of such agreements to protect against fraud and to enhance the clear and predictable understanding of rights and duties under credit agreements.
>
> 7. This section entirely displaces principles of common law and equity that would make or recognize exceptions to or otherwise limit or dilute the force and effect of its provisions concerning the enforcement in contract law of credit agreements or modifications of credit agreements. However, this section does not displace any additional or other requirements of contract law, which shall continue to apply, with respect to the making of enforceable

> contracts, including the requirement of consideration or other basis of validation.

Id. at § 535.17(6) & (7) (emphasis added).

Section 535.17(6) specifically directs that the Code section "shall be interpreted and applied purposively" in order to "protect against fraud and to enhance the clear and predictable understanding of rights and duties under credit agreements." *Id.* at § 535.17(6). Additionally, Section 535.17(7) provides that this Code section "entirely displaces principles of common law and equity that would make or recognize exceptions to otherwise limit or dilute the force and effect of its provisions . . . ." *Id.* at § 535.17(7).

The *Geiger* opinion cited to the Iowa Supreme Court's decision in *Clinton National Bank v. Saucier*, 580 N.W.2d 717, 718 (Iowa 1998). *Id.* at *5. In *Saucier*, the Iowa Supreme Court affirmed a summary judgment ruling that Section 535.17 barred claims that a bank orally represented to a customer that it would honor customer overdrafts. *Saucier*, 580 N.W.2d at 720. While acknowledging that *Saucier* did not directly address whether Section 535.17 applies to tort claims, the *Geiger* opinion noted that *Saucier* did provide guidance on the broad applicability of Section 535.17, concluding "Iowa Code Section 535.17(6) controls over any ambiguity in the provisions of section 535.17 and clearly requires that any alleged credit agreement must be in

writing to be enforceable." *Geiger,* 940 N.W.2d 46, at *4 (quoting *Saucier*, 580 N.W.2d at 722).

Additionally, as the Iowa Court of Appeals noted in *Geiger,* there is persuasive authority from other states with similar statutes that "the statute of frauds does cut off a tort claim based on an unenforceable contract." *Geiger*, 940 N.W.2d 46 at *5, citing to *Dixon v. Countrywide Fin. Corp.*, 664 F.Supp.2d 1304, 1309 (S.D. Fla. 2009) (holding plaintiffs' claims for negligent misrepresentation, breach of contract and fraud were barred under Florida's statute of frauds); *Horseshoe Entm't, L.P. v. Gen Elec. Capital Corp.*, 990 F.Supp. 737, 743 (E.D. Mo. 1997) (holding claims related to a lender orally agreeing to waive a prepayment penalty on a note were barred by Missouri's statute of frauds regardless of theory of recovery asserted); *Ohio Valley Plastics, Inc. v. Nat'l City Bank*, 687 N.E.2d 260, 264-65 (Ind. Ct. App. 1997) (holding, regardless of how a cause of action is labeled, if the substance of the action is based upon an agreement to loan money, then the statute of frauds is applicable barring such claim).

Other jurisdictions have relied upon *Geiger's* sound reasoning in rejecting similar efforts to plead tort claims in order to avoid state banking statutes of frauds. As noted in the District Court's Ruling in this case, two federal cases have cited to *Geiger* to interpret state banking statute of frauds

cases: *Ramsey v. Bank of Oklahoma*, No. 08-CV-0239-CVE-SAJ, 2008 WL 4936316 (N.D Ok. Nov. 17, 2008); and *Twiford v. Enterprises, Inc. v. Rolling Hills Bank and Trust*, No. 20-CV-28-F, 2020 WL 5248561 (D. Wyo. Aug. 5, 2020). The federal cases involved similar claims, including claims of fraud and negligence concerning promises made by bank representatives to provide services in connection with loans, and, in both of those cases, the federal courts found that the tort claims were barred by a statute of frauds. *Ramsey*, 2008 WL 4936316 at *4; *Twiford*, 2020 WL 5248561, at *2.

b. The Legislative History Further Supports Barring Shallas' Tort Claims Against Peoples.

In their Appeal Brief, Shallas attempt to shift focus from the clear statutory language and compelling authority in *Geiger* to the legislative history of Section 535.17 in an effort to try to overcome the District Court's unfavorable ruling in this case. *(Appellants' Proof Brief, pp. 63-65).* It is only appropriate for courts to look at legislative intent if there is ambiguity. *See Kay-Decker v. Iowa State Bd. of Tax Review*, 857 N.W.2d 216, 223 (Iowa 2014). No ambiguity exists here for the reasons discussed above, and the plain language of the statute should control.

Even if this Court were to find some ambiguity and consider legislative history, Shallas' argument that the legislative history of Section 535.17 changes this result agreement misreads the legislative history and adds

nothing new to the court's analysis in *Geiger*. The initial draft of Section 535.17, HF 677—the focus of Shallas' Brief—was a vague, cursory bill with little detail concerning the types of claims to which its provisions would apply. HF 677 was completely deleted and rewritten in the final bill, SF 5253, now Section 535.17. *(Appellants' Proof Brief, pp. 63-65; App. 525-569).* Unlike HF 677, SF 5253, now Section 535.17, contained new definitions of "credit agreement," "contract," and "lender," which as the District Court observed, citing *Geiger*, are "specific definitions . . . which are broad enough to cover any promise or set of promises made by a lender or person primarily in the business of loaning money to finance any transaction or otherwise extend credit for any purpose the breach of which the law would set forth a remedy." *Geiger*, 940 N.W.2d 46, at *4.

The District Court correctly applied Section 535.17 to dismiss Shallas' claims as a matter of law. Goerdt's alleged oral agreement to secure financing for Shalla to repurchase his farm unquestionably was a promise to loan money falling squarely within the definition of "credit agreement" under Section 535.17. The record is clear that all Shalla's interactions with Goerdt were for the purpose of obtaining a loan to repurchase his farm. Shallas' argument, reduced to its simplest terms, is that Goerdt agreed to loan them money to repurchase their farm, and as part of that agreement would assist

with Shallas' obligation to exercise the contractual option. Any alleged promises made by Goerdt to assist Shalla with the exercise of the option, communicate with the Kochs, and make recommendations whether or not Shallas should obtain legal counsel or otherwise assist Shalla with the option, are unquestionably ancillary promises made in connection with a promise to make a loan, and, therefore, are subject to the requirements of Section 535.17. *See Saucier*, 580 N.W2d at 720 (affirming summary judgment in favor of the bank, finding alleged ancillary statements made by the bank to honor overdrafts are subject to Section 535.17 and must be in writing to be enforceable); *Geiger*, 940 N.W.2d 46 (affirming summary judgment in favor of the bank, finding alleged oral statements by a banker to assist with matters like obtaining appraisals, ancillary to an agreement to secure financing, were subject to Section 535.17 and must be in writing to be enforceable); *Raccoon Valley State Bank v. Gratias*, 728 N.W.2d 224 (Table), No. 04-1854, 2006 WL 3798902 (Iowa Ct. App. Dec. 28, 2006) (holding a bank's alleged oral statements to accept a lesser payoff amount, ancillary to a loan agreement, was subject to Section 535.17 and must be in writing to be enforceable).

As in *Geiger*, this Court should resist Shallas' attempt to "end run" Section 535.17 by arguing their claims sound in tort, not contract. When this Court carefully examines what Shallas' claim to have caused their damage,

those claims all were made in connection with Goerdt's alleged agreement to secure financing, and the statute-of-frauds provisions of Section 535.17 preclude those claims. To conclude otherwise would violate the clear language of Section 535.17 and expose lenders to actions based upon ill-defined claims related to a promise to loan money that were never put in writing—the exact circumstance Section 535.17 was designed to guard against. As in *Geiger*, Shallas' claim is that Peoples "made a false promise to perform," and this Court should reject Shallas' efforts to skirt the requirements of Section 535.17.

c. Even if Section 535.17 Could Arguably Apply to Tort Claims, Shallas' Claims Still Fail as a Matter of Law Based on the Undisputed Facts in this Case.

Even if this Court were to find that Section 535.17 could arguably apply to tort claims, Shallas' tort claims concerning the option still would fail as a matter of law because there is no factual basis upon which Shallas can support their claimed damages for fraudulent misrepresentation or negligence. When there are no genuine issues as to any material fact, then a party moving for summary judgment is entitled to judgment as a matter of law. *Geiger*, 940 N.W.2d 46, at *2 (citing *Fees v. Mut. Fire & Auto. Ins. Co.*, 490 N.W.2d 55, 57 (Iowa 1992)). Shallas' claims center around Goerdt's alleged failure to timely exercise the contractual option on behalf of Shalla. Shallas' primary

claim for damages is that Goerdt is somehow responsible for Shalla's failure to exercise the option, which Shallas claim resulted in them paying a higher buyback price for the farm.

By their own admissions, Shallas have conceded that they never even discussed the option with Goerdt prior to the deadline. *(App. 298-300 at 45:20-46:19 (C. Shalla), and App. 321 at 35:15-17 (M. Shalla))*. The mere fact that Shalla claims Goerdt told him he would assist him in securing financing for the repurchase of Shallas' farm, which Goerdt eventually accomplished when he obtained a loan for Shallas through County Bank, as a matter of law does not give rise to a tort claim for misrepresentation. Additionally, Shalla has conceded it was his own contractual responsibility (not Goerdt's) to exercise the option, and Shalla read the contract containing the option requirements before signing it. *(App. 294 at 31:7-18 and App. 298-299 at 45:20-46:19 (C. Shalla))*. While Shallas also vaguely claim Goerdt failed to advise them to seek legal advice after the option deadline passed, Shalla concedes he could have sought legal advice but chose not to do so and otherwise has not introduced any evidence in this case that doing so would have resulted in a different outcome. *(App. 303-305 at 54:1-57:22 (C. Shalla))*.

There simply are no issues of material fact upon which Shallas could prevail against Peoples for their tort claims. Shallas admitted never discussing the option with Goerdt, let alone discussing that Goerdt would meet the option deadline. These admissions are dispositive and further support the District Court's dismissal of Shallas' tort claims as a matter of law.

II. THE DISTRICT COURT DID NOT ERR IN DENYING SHALLAS' REQUEST TO CONDUCT ADDITIONAL DISCOVERY.

1. Error Preservation.

Peoples does not dispute Shallas preserved error with regard to the District Court's discovery decision.

2. Standard of Review.

Peoples does not dispute that discovery decisions are reviewed for an abuse of discretion. *Baker v. City of Iowa City*, 750 N.W.2d 93, 97 (Iowa 2008). "An abuse of discretion will be found when the district court exercises its discretion on grounds or reasons that are clearly untenable or to an extent that is clearly unreasonable." *Id.*

3. Argument.

Shallas cannot meet the high standard of showing abuse of discretion. It was well within the District Court's discretion to deny Shallas' request to reset pre-trial discovery and deposition deadlines that had been closed for

nearly two years. Pursuant to Iowa Rule of Civil Procedure 1.602(2), the District Court had the power to impose scheduling orders that set the time limits for pre-trial deadlines in the case. *Id.* If a party (such as Shalla) fails to obey that scheduling order, "the court, upon motion or its own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in rule 1.517(2)(b)(2)-(4)." Iowa R. Civ. P. 1.602(5).

The Iowa Supreme Court gives district courts "wide latitude" in reviewing decisions regarding discovery. *Jones v. University of Iowa*, 836 N.W.2d 127, 139 (Iowa 2013). In *Olson v. Nieman's, Ltd.,* the Iowa Supreme Court rejected a party's contention that the court abused its discretion by refusing to extend pre-trial deadlines where the party believed there was good cause to do so. 579 N.W.2d 299, 305 (Iowa 1998). *Olson* held the district court was "well within its broad discretion" to deny the party's request to extend pre-trial deadlines where the party violated the deadlines in the pre-trial order and the district court "gave cogent reasons for the denial." *Id.*; *see also Sullivan v. Chicago & Northwestern Transp. Co.*, 326 N.W.2d 320, 324 (Iowa 1982) (holding that a district court's imposition of discovery sanctions would not be distributed without an abuse of discretion).

Throughout the litigation, Shallas never requested to extend discovery, deposition or other pre-trial deadlines, except in the limited, specific context

of suspending summary judgment proceedings until the deposition of Goerdt could be taken following the conclusion of federal criminal proceedings against him. The District Court granted this limited request, and continued the trial date, but did not extend any pre-trial deadlines in the case. *(App. 865-866, 377-378).* Then, nearly two years after the close of discovery and other pre-trial deadlines, Shallas filed a Motion for Discovery Conference seeking to reopen discovery and reset pre-trial deadlines in order to depose an officer of Peoples, which Shallas had delayed taking because they did not want to move forward with the Peoples' officer deposition without Goerdt's deposition. *(App. 600-611).* Shallas concede in their Appeal Brief that Shallas elected not to take the deposition of a representative of Peoples after Goerdt's deposition was postponed. *(Appellants' Proof Brief, p. 69).*

Peoples resisted Shallas' request to reopen deadlines. Peoples asserted the request was untimely, lacked good cause and was contrary to the Iowa Rules of Civil Procedure. Peoples also recited Shallas' request was unfair and prejudicial because "[r]esetting deadlines would open pretrial portions of this case, including potentially broadening the scope of discovery, depositions and pleadings, which Peoples had long relied upon and understood to be closed and determined." *(App. 867-872, ¶ 10, pp. 3-4, App. 639-642).*

As in *Olson*, the District Court in this case was well within its broad discretion to deny Shallas' untimely request to extend pre-trial deadlines in response to Shallas' belated request. The District Court provided cogent reasons for its denial denying Shallas' request "because this case has been on file for an extended time period" and "[t]he interests of justice are not served by further extending deadlines." The court also relied upon the reasons recited in Peoples' Resistance. *(App. 645-646).* The District Court Order recites the Court denied the Motion "for reasons recited in the Plaintiff's Resistance." This appears to be a typographical error, since Peoples, and not Plaintiff County Bank, was the party who filed the Resistance. *(App. 645-646).*

The District Court was within its discretion to find Shallas' claimed legal strategy was insufficient grounds to reopen discovery and reset deadlines, especially considering that Peoples always was available to participate in discovery and depositions and Peoples' availability to participate in the case was not impacted by Goerdt's criminal proceedings. *(App. 867-872, ¶ 10, pp. 3-4).* In their appeal, Shallas incorrectly allege there was some stipulation by the parties to extend discovery; however, Shallas offer no citation in the record to support this claim, and this assertion is incorrect. Shallas never requested to extend pretrial deadlines. While Peoples made an earlier scheduling change request in the case, Peoples did so under

entirely different circumstances, and Shallas' argument on this issue was appropriately rejected by the District Court. Shallas clearly have failed to meet the high standard of abuse of discretion, and this Court should find the District Court did not err in its discovery decision.

III. THE DISTRICT COURT DID NOT ERR IN ITS APPLICATION OF THE PRINCIPLES OF VICARIOUS LIABILITY/ RESPONDEAT SUPERIOR.

1. Error Preservation.

It is not clear from Shallas' briefing whether Shallas intend that this appeal point apply to Peoples. Shallas' Brief point defines this issue as "Whether The Trial Court Erred In Its Application Of The Principles Of Vicarious Liability/Respondeat Superior To County Bank Based On The Actions Of Its Officer Goerdt?" (Emphasis added.) *(Appellants' Proof Brief, p. 73).* While the brief point only raises this issue against County Bank, in the concluding paragraph of this section of their brief, Shallas assert "the aforementioned facts make clear each and every act committed by Goerdt subject to the Shallas' claims of fraud occurred while under the scope of his role as an officer of Peoples and County Bank and could not have been accomplished otherwise." *(Appellants' Proof Brief, p, 89)*. To the extent Shallas are making an argument against Peoples under this appeal point, Peoples disputes that Shallas preserved error against Peoples.

"The appellant has the duty to provide a record on appeal affirmatively disclosing the alleged error relied upon." *In re Marriage of Ricklefs*, 726 N.W.2d 359, 362 (Iowa 2007). Iowa R. App. P. 6.903(2)(g)(1) requires an appellant to reference "the places in the record where the issue was raised and decided," which was not done in regard to Peoples. In their Appeal Brief, Shallas only cite to the Summary Judgment Rulings and Directed Verdicts in the record, as well as Shallas' Motion for New Trial to preserve error. *(Appellants' Proof Brief, pp. 72-73).* None of these filings preserve error on this issue against Peoples. Specifically, in regard to the conversion claims against Peoples, Shallas failed to preserve error by not appealing the jury verdict or District Court Order granting Peoples' Motion to Enforce/Dismiss related to the conversion claims against Peoples. Peoples' Motion to Enforce/Dismiss, which, in part, sought to bar Shallas from claiming vicarious liability against Peoples for the same reasons set forth in County Bank's Motion for Directed Verdict, was not objected to by Shallas and was granted by Court Order dated September 28, 2022. *(App. 823-830, 831-833).*

2. Standard of Review.

Shallas' Appeal Brief cites to the standard of review for discovery decisions under this section, which is not the correct standard for this issue which relates to the granting of County Bank's Motion for Directed Verdict.

(Appellants' Proof Brief, p. 74). The standard of review on appeal for the granting of a motion for directed verdict is for corrections of error at law. *Dettmann v. Kruckenberg*, 613 N.W.2d 238, 250-51 (Iowa 2000). The evidence is viewed in the light most favorable to the party to whom the motion was directed. *Godar v. Edwards*, 588 N.W.2d 701, 705 (Iowa 1999). The review on appeal "from the grant of a motion for directed verdict involves looking for substantial justice." *Id.* Thus, where no substantial justice exists to support each element of a plaintiff's claim, the court may sustain a motion for directed verdict." *Id.* Courts view evidence as substantial "when a reasonable mind would accept it as adequate to reach a conclusion." *Id.* (internal quotations omitted).

3. Argument.

While Peoples believes this appeal point is against County Bank, only, out of an abundance of caution and given the fact that this Court's decision could impact Peoples if there is a reversal on appeal and the case is retried, Peoples will briefly address the issue as to any acts by Goerdt that Shallas may claim Peoples are vicariously liable for. An employer is only responsible for conduct that is within the scope of employment, meaning it is conduct "of the same general nature as that authorized or incidental to the conduct authorized." *Godar v. Edwards*, 588 N.W.2d 701, 705 (Iowa 1999); *see*

Sandman v. Hagan, 154 N.W.2d 113, 117 (Iowa 1967). Iowa courts apply the Restatement (Second) of Agency § 229(2) (1958), which identifies several factors to consider when determining whether conduct was within the scope of employment. *See* Restatement (Second) of Agency § 229(2) (1958); *see Godar*, 588 N.W.2d at 706 (quoting Restatement (Second) Agency § 229(2) (1958)). Two factors are of particular relevance to this case: "(i) the extent of departure from the normal method of accomplishing the act authorized; and (j) whether or not the act is seriously criminal." *Id.* § 229(2)(i)–(j). Additionally, Shallas would need to show Goerdt was acting within the scope of his employment to recover punitive damages. *Briner v. Hyslop*, 337 N.W.2d 858, 861 (Iowa 1983); *see also Seraji v. Perket,* 452 N.W.2d 399, 401 (Iowa 1990) (holding no punitive damages possible against employer defendant) (citing Restatement (Second) of Torts § 909 (1979)); *see also Gordon v. Almanza*, No. 4:16-cv-00603, 2018 WL 2085379 (S.D. Iowa Feb. 21, 2018) (holding the issue of punitive damages against a corporate defendant would not be submitted); *Iowa, Chicago & Eastern Railroad Corp. v. Pay Load, Inc.*, 348 F.Supp.2d 1045 (N.D. Iowa 2004) (holding employer's failure to fire an employee driver after he drove in front of a train did not amount to approval of the employee's conduct and did not support award of punitive damages).

Shallas have not, and cannot, present any evidence to suggest that it is the normal practice of a bank officer to commit fraud or convert funds, or that any such alleged conduct was known or ever approved by the bank, and therefore, Shallas cannot succeed on such claims, nor on their punitive damage claim, against Peoples. This position is supported by the findings of the District Court at trial. In granting County Bank's Motion for Directed Verdict, the District Court stated:

> I've got a guy [Goerdt] that testified for over three hours from a federal prison . . . because he did things that bankers don't do. Listening to the evidence, I have never met a banker that did what Mr. Goerdt 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 have 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.

(App. 1633 at 144:11-23). The same reasons the District Court found that County Bank was not responsible for the actions of Goerdt under the doctrine of respondeat superior also apply to Peoples.

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

1. Error Preservation.

Peoples does not dispute that Shallas' preserved error regarding the issues specifically raised against Peoples in the Motion for New Trial.

2. Standard of Review.

Peoples does not dispute that denials of a new trial for failure to administer substantial justice are reviewed for an abuse of discretion. *Whitlow v. McConnaha,* 935 N.W.2d 565, 569 (Iowa 2019). "In ruling upon motions for new trial, the district court has broad but not unlimited discretion in determining whether the verdict effectuates substantial justice between the parties." *Jack v. Booth*, 858 N.W.2d 711, 718 (Iowa 2015) (citing Iowa R. App. P. 6.904(3)(c)).

3. Argument.

Shallas have failed to establish that the District Court abused its broad discretion in denying Shallas' Motion for New Trial based upon rulings made in connection with the trial or made prior thereto, including the District Court's Ruling granting Peoples' Rule 1.904 Motion and District Court's Order Denying to Reset Pretrial Deadlines. For all of the reasons set forth above, the District Court correctly granted Peoples' Rule 1.904 Motion to Reconsider by applying Iowa's Credit Agreement Statute of Frauds to

Shallas' tort claims, and the Court correctly denied Shallas' requests to reopen discovery and deposition deadlines that had been closed for nearly two years. This Court should affirm the District Court's Ruling and find the District Court did not abuse its discretion and Shallas are not entitled to a new trial.

CONCLUSION

For all of the reasons set forth herein, Peoples requests this Court affirm the District Court's Ruling and deny Shallas' requests on appeal in their entirety.

REQUEST FOR ORAL ARGUMENT

Peoples respectfully requests the opportunity for oral argument.

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CERTIFICATE OF FILING

I hereby certify that the foregoing document was filed via the electronic filing system on the 25th day of July, 2023.

/s/ Ellen Alessio
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CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2023, I electronically filed the foregoing document with the Clerk of Court using the ECF system, which will send notification of such filing to the following attorneys of record:

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