UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

IN RE:	)	
	)	
Cornerstone Residential Development Corporation,	)	Case No. 97-52476C-7W
	)	
Debtor.	)	
	)	
Robert Liljeberg, Jr. and wife, Pamela T. Liljeberg,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Adversary No. 99-6035
	)	
J. Scott Hanvey; Sigmon, Clark, Mackie, Hutton & Hanvey, P.A.; Lee Beason and Centura Bank (a North Carolina Corporation,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

This adversary proceeding came before the court on August 31, 2000, for hearing upon a motion by Lee Beason for summary judgment. John A. Meadows appeared on behalf of the plaintiffs, R. Bradford Leggett appeared on behalf of Lee Beason and Christine L. Myatt appeared on behalf of Centura Bank.

FACTS

The depositions, answers to interrogatories and other materials submitted by the parties in support of and in opposition

to the motion, read in light most favorable to the plaintiffs, reflect the following undisputed facts. Prior to its bankruptcy, Cornerstone Residential Development Corporation ("Cornerstone") was a North Carolina corporation located in Hickory, North Carolina. Cornerstone was operated and managed by its president and sole shareholder, Todd Sides. The primary business of Cornerstone was the construction and sale of residences. In some instances, Cornerstone purchased "trade homes" from its customers and held these "trade homes" until they could be sold. In purchasing such homes, Cornerstone intended to purchase the homes for less than the price to be obtained by Cornerstone when the homes were sold.

During 1997, Cornerstone had a banking relationship with Centura Bank which included a substantial line of credit. One of the persons with whom Cornerstone dealt at Centura Bank was Lee Beason, a loan officer at Centura Bank. In approximately July of 1997, Cornerstone was experiencing financial difficulties, was at the limit of its line of credit and was advised by Centura Bank that no additional loans would be extended to Cornerstone.

During 1997, the plaintiffs also had a banking relationship with Centura Bank. Plaintiffs' personal banker at Centura was Mr. Beason. In addition to assisting the plaintiffs with their banking needs, Mr. Beason also had discussions with the male

plaintiff at various times concerning investments which the plaintiffs had under consideration.

Mr. Beason arranged a meeting which occurred in August of 1997 between the male plaintiff and Mr. Sides. Mr. Beason also attended the meeting which was held in the evening at plaintiffs' residence. At this meeting Sides and Beason discussed with the male plaintiff the general idea of the plaintiffs investing with Cornerstone by supplying money to Cornerstone to be used to purchase a trade home, with the plaintiffs to receive the profits from the sale of the trade home purchased with their money. During the course of the meeting neither Beason nor Sides mentioned that Cornerstone was experiencing financial difficulties, nor was there any mention of the fact that Centura no longer was making new loans to Cornerstone. No particular trade home or particular amount of investment was discussed at the meeting which closed with the understanding that Sides would call the plaintiffs in the future when the opportunity for a trade home investment came along. Mr. Beason earlier had left the employ of Centura Bank on August 1, 1997, and the male plaintiff already was aware of this fact or learned of it at the meeting.

In late August or early September, 1997, Mr. Sides called the plaintiffs and offered them the opportunity to invest in

Cornerstone's purchase of a residence referred to as the Yates residence, which involved an investment of $123,000.00. The plaintiffs decided to proceed with the investment and on September 15, 1997, delivered a check for $123,000.00 to Cornerstone, which was used by Cornerstone to purchase the Yates residence. In exchange for their investment of $123,000.00, Cornerstone agreed that when the Yates residence was sold the plaintiffs would receive the repayment of their investment and the profit from the sale, but not less than $128,000.00, for a minimum profit of $5,000.00. After Cornerstone closed on the Yates residence, a promissory note from Cornerstone in the amount of $128,000.00 and a deed of trust on the Yates property securing the promissory note were delivered to the plaintiffs. The deed of trust was not recorded before it was delivered to the plaintiffs and was not recorded by the plaintiffs when received.

Cornerstone was not able to find a purchaser for the Yates property until December of 1997. Prior to the closing of the sale, Mr. Sides sent the plaintiffs a letter observing that the public record reflected that plaintiffs had not recorded their deed of trust and stating that if the plaintiffs recorded their deed of trust at that point, the closing and sale of the Yates residence would not occur. Mr. Sides further advised the plaintiffs that the

home had sold for only $123,000.00 and proposed that only $60,000.00 be paid to the plaintiffs at that time. The plaintiffs made the conscious decision not to record their deed of trust and the sale of the Yates property closed on or about December 19, 1997. Thereafter, on or about January 5, 1998, Mr. Sides forwarded a check for $60,000.00 to the plaintiffs. Shortly thereafter, Cornerstone was placed in bankruptcy and no further payments were made to the plaintiffs with respect to their $123,000.00 investment.

Plaintiffs filed this adversary proceeding on October 1, 1999, alleging claims against Centura Bank and Mr. Beason for securities fraud, fraud, unfair trade practices and breach of fiduciary duty. The motion for summary judgment now before the court was filed following the completion of discovery. In the motion for summary judgment, Mr. Beason seeks summary judgment as to all of the claims asserted by the plaintiffs.

DISCUSSION

A. Summary Judgment Standard.

Under Rule 56 of the Federal Rules of Civil Procedure, which is incorporated into Rule 7056 of the Federal Rules of Bankruptcy Procedure, summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to

judgment as a matter of law. "Where the moving party has carried its burden of showing that the pleadings, depositions, answers to interrogatories, admissions and affidavits in the record construed favorably to the nonmoving party, do not raise a genuine issue of material fact for trial, entry of summary judgment is appropriate." Gutierrez v. Lynch, 826 F.2d 1534, 1536 (6th Cir. 1987)(citing Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 91 L.Ed.2d 265 (1986)); In re Specialty Concepts, Inc., 108 B.R. 104 (W.D.N.C. 1989); In re Caucus Distribs., Inc., 83 B.R. 921 (Bankr. E.D. Va. 1988).

In order to carry this burden, a party moving for summary judgment must show through affidavits, depositions or admissions all facts required to support each element of the claim or defense and that none of those facts are disputed. See Moore's Federal Practice, § 56.13. p. 56-134 (3d ed. 1998)(movant must make a prima facie case for summary judgment by establishing (1) the apparent absence of any genuine dispute of material fact and (2) movant's entitlement to judgment as a matter of law on the basis of the undisputed facts). In determining whether the evidence is sufficient to establish the claim, the court must apply the substantive evidentiary standard that would be applicable at trial. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct.

2505, 2510, 91 L.Ed.2d 202 (1968).

The evidence must be viewed in the light most favorable to the nonmoving party, and inferences to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion. See In re Graham, 94 B.R. 386 (Bankr. E.D. Pa. 1988); In re Trauger, 101 B.R. 378 (Bankr. S.D. Fla. 1989). However, the existence of a factual dispute is material and precludes summary judgment only if the disputed fact is determinative of the outcome under applicable law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986). The party seeking summary judgment bears the initial responsibility of informing the court of the basis of its motion, and also must identify those portions of the record that it believes demonstrates the absence of a genuine issue of material fact. Only after the movant has sustained the initial burden of production does the burden shift to the nonmovant to show the court that there is a genuine issue for trial. However, once this is done, the opposing party must set forth the specific facts showing there is a genuine issue for trial. Only when the entire record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, can the court find there is no genuine issue for trial. See In re Trauger, 101 B.R. at 380 (citing

Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S.Ct. 1348, 2513, 89 L.Ed.2d 538 (1986)).

B. Application of the standard.

Taken in the light most favorable to the plaintiffs, it is a permissible inference that when the meeting in August occurred there was an ongoing relationship between the plaintiffs and Mr. Beason in which the plaintiffs relied upon Mr. Beason for advice regarding their investments, that Cornerstone was in a deteriorating financial condition such that Centura had ceased lending to Cornerstone when the meeting in August occurred, that Mr. Beason, with an awareness that plaintiffs had come to rely upon his advice, actively participated in encouraging the plaintiffs to make an investment in Cornerstone without disclosing the deteriorating financial condition of Cornerstone and the fact that Centura Bank had ceased making new loans to Cornerstone and that plaintiffs relied upon Mr. Beason's encourgagement regarding Cornerstone in later investing $123,000.00 with Cornerstone. When the plaintiffs are given the benefit of the favorable inferences which can be drawn from these and the other circumstances reflected in the record, it cannot be said that a rational trier of fact could not find for the plaintiffs. The result is that Mr. Beason is not entitled to summary judgment. Accordingly, an order will be

entered contemporaneously with the filing of this memorandum opinion denying his motion for summary judgment.

This 25 day of September, 2000.

William L. Stocks

WILLIAM L. STOCKS
United States Bankruptcy Judge

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ORDER

In accordance with the memorandum opinion filed contemporaneously herewith, it is ORDERED, ADJUDGED AND DECREED that the motion for summary judgment filed on behalf of defendant Beason is denied.

This 25 day of September, 2000.

William L. Stocks

WILLIAM L. STOCKS
United States Bankruptcy Judge