

IN THE COURT OF APPEALS OF IOWA

FILED

JUN 25 1985

CLERK SUPREME COURT

CHARLES BLAIR, A. C. VOLKENS, and)
E. C. HAWKINSON, Trustees of the)
Estate of WILLIAM CLEMENT PUTNAM,)

Plaintiffs-Appellants,)

Filed June 25, 1985

vs.)

PETERSEN-HARNED-VON MAUR, INC.,)

5-176
84-1202

Defendant-Appellee.)

Appeal from the Iowa District Court for Scott County - Linda K. Neuman,
Judge.

Plaintiffs appeal from judgment for defendant in an action for breach of a
lease termination agreement. **AFFIRMED.**

Jeff Cook and Charles Blair of Nagle, Blair & Harris, Davenport, for plain-
tiffs-appellants.

Thomas D. Waterman and Thomas N. Kamp of Lane & Waterman, Davenport,
for defendant-appellee.

Heard by Oxberger, C.J., and Donielson and Schlegel, JJ.

DONIELSON, J.

Plaintiffs appeal from an adverse judgment in an action for breach of a lease termination agreement. They assert that the foundation was insufficient to support admission of certain expert testimony relating to the meaning of the agreement. We affirm.

The defendant, Petersen-Harned-Von Maur, formerly leased office space from the plaintiffs in Davenport, Iowa. In 1970, the parties entered into a lease termination agreement. As consideration for the early termination of the lease, the defendant agreed to pay \$25,000 annually if rents fell below \$95,000, with payment reduced dollar-for-dollar for rents received in excess of \$95,000. Defendant owed no payment when plaintiffs' "gross annual rent" exceeded \$120,000. The termination agreement also contained the following proviso, the meaning of which is in dispute:

Lessors' said rentals shall exclude any amounts, whether or not designated as rent, which Lessor can demonstrate are paid by any subsequent lessee to amortize leasehold improvements which Lessor may agree to make in connection with any such subsequent lease.

In 1981, plaintiffs received \$205,377.49 in rental income. They sought to deduct \$134,637.76 from this figure as "amortization of leasehold improvements"; the claimed deduction consisted of \$57,503.44 for depreciation and \$77,134.32 for interest.

The primary issue at trial was whether it was proper to consider the \$77,134.32 interest as "amortization of leasehold improvements." If this term includes interest the annual gross rent would be below \$95,000; exclusion of interest from the amount amortized would result in annual gross rent exceeding \$120,000. Essentially, the defendant would owe no payment for 1981 unless interest could be deducted from gross rent.

At trial, both parties presented expert testimony on this issue. A real estate broker/mortgage banker testified for plaintiffs that the inclusion of interest was

appropriate. James Blayney, a certified public accountant, testified for the defendant that under accepted accounting definitions interest should not be included in amortization of leasehold improvements. The trial court overruled the plaintiffs' foundational objection to Blayney's testimony, reasoning that he was "consummately qualified" to testify.

In entering judgment for the defendant, the trial court found that the accounting principles relied on by Blayney were appropriate in determining the meaning of the agreement. Plaintiffs have appealed from this determination.

The plaintiffs' sole argument on appeal is that James Blayney, defendant's expert witness, was not qualified to testify. We believe, however, that a proper foundation was laid.

This state adheres to a liberal policy concerning the admissibility of opinion testimony. Such evidence will be admitted if it is of a nature that will aid the jury and is based upon special training, experience, or knowledge with respect to an issue in controversy. Haumersen v. Ford Motor Co., 257 N.W.2d 7, 11 (Iowa 1977). The admissibility of opinion testimony, lay or expert, has not been distilled into distinct rules. Rather, it rests in the sound discretion of the trial court, and the trial court's determination will not be disturbed on appeal unless manifest abuse of that discretion causing prejudice to the complaining party is shown. Ganrud v. Smith, 206 N.W.2d 311, 314 (Iowa 1973).

State ex rel. Leas in re O'Neal, 303 N.W.2d 414, 420 (Iowa 1981).

The record reveals that Mr. Blayney has a master's degree in accounting and eight years' experience in the field. He is currently a certified public accountant and a partner in an accounting firm. Blayney testified that his professional practice includes working with accounting principles as they affect real estate and leasehold agreements.

In addition to these qualifications, it is also apparent from the record that a sufficient factual foundation existed to support his opinions. Contrary to the plaintiffs' assertion, we believe the language of the lease termination agreement would support Blayney's opinion that asset-amortization methods should apply

rather than debt-amortization methods. The agreement refers to amortization of leasehold "improvements" rather than "indebtedness." As the trial court stated in its opinion:

The word "improvement" is defined in Ballentine's Law Dictionary with Pronunciations Second Edition (1948) as "a word that includes everything that enhances the value of premises permanently for general uses." The capital expended to finance an improvement is a means to an end, not the end in itself. The Lease Termination Agreement logically refers to an amortization of an asset, not the amortization of debt.

The record establishes that James Blayney had special knowledge and expertise that would aid the court. As with any opinion testimony, the trier of fact can consider credibility and is at liberty to reject the testimony. Haumersen v. Ford Motor Co., 257 N.W.2d 7, 11 (1977). Therefore, it is only in clear cases of abuse that the admission of such evidence is found to be prejudicial. We cannot say that the trial court clearly abused its discretion in allowing the expert testimony.

AFFIRMED.