

IN THE COURT OF APPEALS OF IOWA

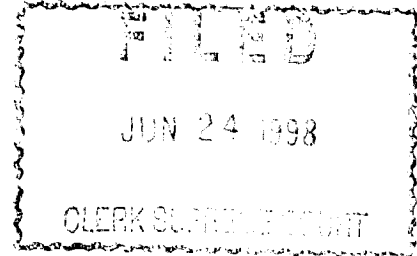
No. 8-078 / 97-0306

Filed June 24, 1998

TERRY P. HUFF,
Appellant,

vs.

MICHAEL L. FURMAN,
Appellee.



Appeal from the Iowa District Court for Johnson County, William L. Thomas,
Judge.

Terry Huff appeals from a district court judgment dismissing breach of
contract claims against Michael Furman. **AFFIRMED.**

Martin A. Diaz, Iowa City, for appellant.

Marc B. Moen, Iowa City, for appellee.

Heard by Cady, C.J., and Huitink and Vogel, JJ.

HUITINK, J.

Terry Huff appeals from an adverse judgment following a jury verdict finding Michael Furman did not breach the parties' contract. We affirm.

I. Background Facts and Proceedings.

In 1988, Huff contracted with Furman for Furman to design and construct an apartment building on Huff's land. The project was known as Capitol View I. Despite Huff's delays in obtaining financing, Furman completed Capitol View I. The parties later contracted for the construction of a second apartment building, Capitol View II. However, Furman did not build Capitol View II because Huff was unable to finance the project. In 1992, Furman obtained a \$171,000 judgment against Huff for negligent misrepresentation of his ability to finance Capitol View II. Huff recovered \$6000 on a counterclaim for defects in the construction of Capitol View I.

Huff initiated the instant lawsuit against Furman in 1994, alleging additional defects in the design and construction of Capitol View I. Furman counterclaims for damages allegedly caused by Huff's delays in obtaining financing.

Prior to trial Huff filed a motion in limine seeking to exclude evidence of the parties' prior litigation. The hearing on the motion was not recorded. In opening statements, Furman's counsel stated a jury found Huff liable for negligent misrepresentation in prior litigation concerning Capitol View II. Counsel also disclosed the amount of the award. The court overruled Huff's motion for a mistrial. Both parties subsequently introduced facts concerning the prior litigation. The jury

found neither party had breached the contract, and the court dismissed both claims Huff's motion for a new trial was denied.

On appeal, Huff contends the district court abused its discretion in admitting evidence of the parties' prior litigation.

II. Standard of Review.

Our review of a district court's evidentiary ruling is for an abuse of discretion. We will reverse only when the court abused its discretion and a party's substantial rights were affected. *Kalell v. Peterson*, 498 N.W.2d 413, 415 (Iowa App. 1993). An abuse of discretion is found when the court exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Rowen v. LeMars Mut. Ins. Co.*, 357 N.W.2d 579, 583 (Iowa 1984).

III. Evidence of Prior Litigation.

We initially reject Furman's argument that Huff failed to preserve error on this issue. The record clearly indicates the district court's ruling on the admissibility of the disputed evidence was definitive. Huff was not required to make further objections when the evidence was offered. *State v. Miller*, 229 N.W.2d 762, 768 (Iowa 1975). Additionally, Huff did not waive error by offering similar evidence as part of his case. *State v. Jones*, 271 N.W.2d 761, 765 (Iowa 1978).

At the hearing on Huff's motion for a mistrial, counsel stated his objection in these terms:

He [Furman's counsel] told this jury that Mr. Huff was founder [sic] of misrepresented facts. He didn't indicate it was neglect. He went into the fact that there was a 171 thousand dollar judgment against Mr. Huff and, Your Honor, besides the fact I specifically object to that any any reference to the verdict as being irrelevant in this case It's irrelevant to whether or not Mr. Furman breached the contract in this case with regard to he way he built this building. It has nothing to do with any claim Mr. Furman has that there was a delay in building the building caused by Mr. Huff

In its ruling on this objection, the court stated:

THE COURT: My understanding of the discussion at the time we had two things to talk about. One is the defect in who discovered what when, which were recoverable in this case. I think we had an agreement about that, that any claims that were discovered or should have been discovered prior to the time of the other lawsuit are not going to be recovered in this case, whether they're discussed or not. That will be covered in a jury instruction. The other question was going into the record. My recollection is closer to Mr. Moen's about the rest of the case was that I think the other verdict does come in. I think virtually anything about the relationship of the parties comes in, because it's not simply a how much is owed. There are other issues about that were mentioned by Mr. Moen about the motive of the lawsuit, how does that affect the credibility of the parties and the like. I think it all does come in.

Iowa Rule of Evidence 401 provides:

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Furman's theory of relevancy is that this evidence "bears on the question of whether the problems claimed by Huff were real or whether he manufactured them for other reasons."

We, based on our limited standard of review, are unable to say the district court abused its discretion by finding that this evidence was relevant and overruling Huff's objection. The record indicates that there were disputes concerning which of the structural defects Huff claimed were resolved in prior litigation and which were not. Furman's defense was also premised in part on Huff's retaliatory motives for bringing this action. Whether the district court could or should have excluded some but not all facts concerning the parties' prior litigation was a judgment call best made from a trial perspective. We will not interfere.

We have considered all of Huff's arguments on appeal and find them to be without merit. The judgment of the district court is affirmed.

AFFIRMED.