

IN THE COURT OF APPEALS OF IOWA

No. 2-611 / 92-364

MICHAEL L. FURMAN,

Appellee,

vs.

TERRY P. HUFF,

Appellant.

FILED

MAR 30 1993

CLERK SUPREME COURT

Appeal from the Iowa District Court for Johnson County,
Paul J. Kilburg, Judge.

Defendant appeals the district court order denying his
motion for a new trial or remittitur based on the amount of
damages awarded to plaintiff. **AFFIRMED.**

Douglas S. Russell of Stein & Russell, Iowa City, for
appellant.

Marc B. Moen, Iowa City, for appellee.

Heard by Donielson, P.J., and Hayden, J., and
McCartney, S.J.*

*Senior Judge from the 2nd Judicial District serving on
this court by order of the Iowa Supreme Court.

MCCARTNEY, S.J.

Plaintiff Michael L. Furman is a building contractor in Iowa City, Iowa. Defendant Terry P. Huff is a real estate investor. Furman and Huff worked together to build two apartment complexes in Iowa City, Oakcrest and Capitol View I. These projects were successful and in 1989 they entered into a contract for a new project, Capitol View II. Huff represented to Furman that he would be able to obtain financing for the project.

Capitol View II was a 104-unit apartment complex which was expected to cost \$3,129,000. Furman designed this apartment complex and drew up the blueprints. He obtained the necessary permits from the city to demolish the existing structures and to build the apartment complex. He also supervised the clearing of the land which Huff had purchased.

On February 9, 1990, Huff advised Furman he was unable to obtain financing. As a consequence, Furman refused to perform any further work until he was paid for the work already done.

Furman filed the present lawsuit alleging: (I) breach of contract; (II) negligent misrepresentation; (III) punitive damages; and (IV) slander. Huff filed a counterclaim seeking damages for cost-overruns in the Oakcrest and Capitol View I projects. The case was submitted to a jury which returned a verdict for Furman on

his claim of negligent misrepresentation and awarded him \$171,000. The jury awarded Huff \$5,800 on his counterclaim based on the Capitol View I project. All other claims were denied.

Huff filed a motion for a new trial or remittitur. He claimed that because the jury had deliberated for only two hours and forty-five minutes, the verdict was the result of passion or prejudice. The court denied the motion and Huff now appeals.

We affirm the trial court in granting judgment on the verdicts.

I. Huff first contends the court abused its discretion in overruling his motion for a new trial or remittitur. He claims the award of damages to Furman is not supported by the evidence in this case. Huff believes the jury's verdict must have been the result of passion or prejudice because of the short period of jury deliberations. He claims the jury did not have time to fully consider all of the theories submitted in the case.

Furman argues that Huff failed to preserve error on this issue. We find Huff adequately preserved error for our review since he sought a directed verdict and a judgment notwithstanding the verdict based on the sufficiency of the evidence. It would defy logic to require Huff to object to the amount of damages awarded prior to the jury deliberations. Thus, his motion for a

new trial adequately preserved the issue concerning the amount of damages.

In ruling upon a motion for new trial, broad but not unlimited discretion is vested in the trial court. Kiner v. Reliance Insurance Co., 463 N.W.2d 9, 13 (Iowa 1990). Furthermore, we will not find an abuse of discretion unless it is shown that the trial court's discretion was exercised on grounds clearly untenable or to an extent clearly unreasonable. Id.

We conclude the trial court did not abuse its discretion in denying the motion for new trial or remittitur. We find Huff has not adequately shown the award of damages was the result of passion or prejudice. A short period of deliberation, taken alone, does not indicate the jury failed to give a case careful and thoughtful consideration. Ives v. Swift & Co., 183 N.W.2d 172, 177 (Iowa 1971). Huff has presented no evidence, other than the period of the jury's deliberation, to support his claim the verdict was the result of passion or prejudice.

We also find there was adequate evidence in the record to support the award of damages, \$171,000. Furman claimed unpaid expenses of \$77,982. He also claimed lost profits because he committed himself to the Capitol View II project based on Huff's representations, rather than pursue other projects. Evidence was introduced that if the Capitol View

II project had been completed as planned, Furman would have received profits of about \$250,000. A jury question was generated on this issue. The amount of damages to be awarded in a case is peculiarly a jury, not a court, function. Waddell v. Peet's Feeds, Inc., 266 N.W.2d 29, 32 (Iowa 1978). The fact that a court may have reached a different result is no ground for setting aside a jury verdict and awarding a new trial. Id.

We affirm the district court's denial of the motion for a new trial or for remittitur.

II. Huff also contends the district court abused its discretion in awarding certain deposition expenses to Furman. Furman filed a motion pursuant to Iowa Rule of Civil Procedure 157(a) requesting the court to order Huff to pay for the depositions of John Rhoades, Keith Jacobson, and Robert Mickelson. Rhoades was Huff's property manager for Oakcrest and Capitol View I. Jacobson and Mickelson previously did business with Huff. The district court ordered Huff to pay \$707 for these depositions.

The award of deposition costs pursuant to rule 157 is within the discretion of the trial court. Vorthman v. Keith E. Myers Enterprises, 296 N.W.2d 772, 779 (Iowa 1980). An award of deposition costs against the losing party at trial is limited by rule 157(a) to the portion of those costs necessarily incurred for testimony offered and admitted upon the trial. Woody v. Machin, 380 N.W.2d 727, 730 (Iowa 1986).

The Rhoades deposition was referred to a number of times during the trial. The Jacobson deposition was admitted into evidence in its entirety. Mickelson was out of the country at the time of the trial and his deposition was admitted into evidence. We find the district court did not abuse its discretion in ordering Huff to pay the costs of these depositions.

We affirm the district court on all issues. Costs of this appeal are assessed to Huff.

AFFIRMED.