

**FILED**

JUL 26 1989

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

|                               |   |        |
|-------------------------------|---|--------|
| ELMER M. GREINER,             | ) |        |
| Plaintiff-Appellee,           | ) | 231    |
| KEITH SASSEEN,                | ) |        |
| Plaintiff,                    | ) |        |
| vs.                           | ) |        |
| UNION BANK AND TRUST COMPANY, | ) | 9-211  |
| Defendant-Appellant.          | ) | 88-832 |

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Appeal from the Iowa District Court for Wapello County  
(CL 2467-1085), Robert Bates, Judge.

Defendant appeals from a trial court decision granting  
plaintiff a new trial. **AFFIRMED.**

Jerome M. Beaver of Kiple, Kiple, Deneffe & Beaver,  
Ottumwa, for defendant-appellant.

Peter C. Riley of the Tom Riley Law Firm, P.C., Cedar  
Rapids, for plaintiff-appellee Elmer Greiner.

Considered by Oxberger, C.J., and Donielson and  
Sackett, JJ. Hayden, J., takes no part.

SACKETT, J.

The question we need to address is whether the trial court abused its discretion in granting a new trial in plaintiff-appellee Elmer M. Griener's suit against defendant-appellee Union Bank and Trust Company for claimed misrepresentation and interference with a financing contract. We find no abuse of discretion and affirm the trial court.

Plaintiff guaranteed a loan made to Hadley Chevrolet, Inc. by defendant bank. The loan was assigned to defendant bank's correspondent bank, Merchants National Bank of Cedar Rapids. Hadley had problems and the note was paid by plaintiff. Defendant bank had other notes with Hadley which were not assigned to the correspondent bank. Hadley gave defendant bank a real estate mortgage and a security interest in personal property.

Plaintiff contends the mortgage and security interest given by Hadley to defendant bank were assigned to the correspondent bank and he assumed the secured position of the correspondent bank when he paid off the note. Defendant's position is the note assigned to the correspondent bank and guaranteed by plaintiff was not secured and the security given by Hadley was to apply only to Hadley's notes which remained with defendant bank and were not assigned to the correspondent bank.

Plaintiff filed suit contending defendant bank forced Hadley into bankruptcy and diminished the security. Plaintiff also alleged at the time he guaranteed the loans defendant bank made certain misrepresentations. He further alleged defendant bank interfered with an indemnification agreement he had with Hadley's. The case was submitted to the jury on issues of fraudulent misrepresentation, interference with a contract and the claim of diminished security. The jury answered no to three interrogatories asking if plaintiff was entitled to recover on these claims.

The trial court granted plaintiff a new trial because it determined certain instructions with reference to the issue of an assignment of defendant's security position to the correspondent bank, Merchants, were confusing.

Plaintiff's position was when the note he guaranteed was assigned to the correspondent bank, the correspondent bank took defendant's secured position and when plaintiff paid the correspondent, he took the correspondent's position as it related to that security. The only way the correspondent bank could have received an assignment of the security was by assignment from defendant bank. The trial court determined an important issue to plaintiff's position was whether defendant bank had assigned the security interest to the correspondent. We agree with the trial court's assessment of this issue. The trial court gave an

instruction setting forth a series of ways by which the correspondent bank could obtain a security interest including by assignment. Under this record the correspondent bank could have obtained a security interest only by assignment. There is no factual support in the record for the correspondent bank's having obtained a security interest under any of the other ways given in the trial court's instructions. The trial court found the instruction had a cumulative adverse effect against plaintiff and granted a new trial.

Defendant contends this was an abuse of discretion because plaintiff did not object to the instruction given and there was not substantial evidence to support a finding an assignment was given. Plaintiff had asked the court to instruct as a matter of law the assignment was given. The trial court refused that request.

We find, as did the trial court, there is substantial but conflicting evidence on the question of whether an assignment was given. We agree with the trial court that issue should have been submitted to the jury. We find, as did the trial court, the instruction given was confusing where there was no evidence to support the correspondent bank obtaining a security interest under ways specified in the instructions.

The trial court has wide discretion in ruling on a motion for new trial and the ruling will not be disturbed

unless it is reasonably clear there was an abuse of discretion. Northrup Homes v. Miles Homes, Inc. of Iowa, 204 N.W.2d 850, 861 (Iowa 1973). To grant a new trial there must be some fair reason in the record to do so. Id. We are more reluctant to interfere with the grant of a new trial than the denial. Id. There is some support in the record for the trial court's decision. See Carter v. MacMillan Oil Co., 355 N.W.2d 52, 55 (Iowa 1984); Lappe v. Blocker, 220 N.W.2d 570, 572 (Iowa 1974); Hardy v. Britt-Tech Corp., 378 N.W.2d 307, 311 (Iowa App. 1985). We affirm.

**AFFIRMED.**