IN THE COURT OF APPEALS OF IOWA

No. 3-910 / 13-0275
Filed November 6, 2013

JASON KLINGE,
Plaintiff-Appellant,

vs.

LUANA SAVINGS BANK,
Defendant-Appellee.

Appeal from the Iowa District Court for Clayton County, John J. Bauercamper, Judge.

A borrower appeals following a jury verdict in favor of a lender on the borrower's claims alleging violations of the terms of an interest assistance agreement. **AFFIRMED.**

Peter C. Riley of Tom Riley Law Firm, P.L.C., Cedar Rapids, for appellant.

Dale L. Putnam, Decorah, for appellee.

Considered by Vaitheswaran, P.J., and Doyle and Danilson, JJ.

DOYLE, J.

Jason Klinge appeals following jury verdict in favor of Luana Savings Bank on Klinge's claims alleging violations by Luana of the terms of the parties' 2000 interest assistance agreement. The district court upheld the verdict, denying Klinge's motion for new trial. We affirm.

I. Background Facts and Proceedings

Viewing the evidence in the light most favorable to the verdict, the jury could find the facts substantially as follows.

In June 2000, Jason Klinge obtained a variable interest agricultural operating loan from Luana Savings Bank,[1] in which Luana agreed to lend Klinge $250,000 at an interest rate equal to Luana's "base rate," which was 11.65% at that time.[2] Klinge also entered a separate but related agreement entitled an "Interest Assistance Agreement" with Luana and the U.S. Department of Agriculture's Farm Service Agency (FSA),[3] in which the FSA agreed to reimburse Luana four percentage points of interest in exchange for Luana agreeing to pass this on to Klinge as a discount on his loan.[4]

---

[1] Klinge obtained the operating loan from Luana to refinance existing debt.

[2] According to the loan agreements, the "future rate" would be "equal to" the "announced base rate of Luana Savings Bank."

[3] At the time Klinge's interest assistance agreement was entered, the FSA operated an interest assistance program to enable lenders to provide credit to operators of family farms without the financial resources to meet the loan's standard repayment terms. The FSA has since suspended that program. Effective November 2011, the FSA announced it was indefinitely suspending acceptance of applications for loans with interest assistance due to "lack of program funding." FSA Notice, 76 Fed. Reg. 72160 (Nov. 17, 2011). The FSA action did not affect existing interest assistance agreements.

[4] The interest assistance agreement provided in part:

> This agreement is effective beginning 6/30/00 and expires on 6/30/07.
>
> In consideration of the lender's reduction of the interest charged the borrower's account, the United States of America, acting through the

Reading the loan documents together, the interest rate on Klinge's loan was to begin at 4% less than 11.65%, Luana's base rate at the time, or 7.65%. In addition, because the interest rate was variable (*i.e.*, the "future rate" would be "equal to" the "announced base rate of Luana Savings Bank"), Luana was to comply with federal regulations governing interest rates, including 7 C.F.R. part 762.150.[5] Per that regulation, although the interest rate on Klinge's loan would vary, Luana could not exceed the rate it charged its "average agricultural loan customer."

In essence, over the course of the loan, Luana was to charge Klinge an interest rate in accordance with the federal regulations, and then give Klinge a four percent discount on that interest rate, and the FSA would reimburse Luana for this discount.

> Farm Service Agency of the United States Department of Agriculture (FSA) pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C.1921 et seq.) agrees that in accordance with and subject to the conditions and requirements in this agreement it will reimburse the lender for a maximum of 4 percentage points per annum of interest reduction. The full amount of interest assistance payments made by FSA to the lender will be passed on to the borrower.
>
> For the initial period of this agreement beginning 6/30/00 and ending 6/30/01 FSA agrees to reimburse the lender for ____ percentage points per annum of the average daily principal balance. The rate of Interest Assistance in future years will be adjusted annually in accordance with the conditions of this agreement.
>
> **11. CONDITIONS OF INTEREST ASSISTANCE**
>
> a. Interest Rates
>
> The lender may charge a fixed or variable interest rate which is specified in this agreement during the term of the interest assistance agreement. The type of rate must be the same as the type of rate in the underlying note.
>
> The interest rate that the lender will charge will be clearly indicated in the request for interest assistance. If a variable rate is charged, it will comply with 7 C.F.R. part 762.150.

[5] There are two federal regulation provisions relevant to the interest rate allowed in FSA interest assistance agreements: part 762.124 and part 762.150. Indeed, part 762.150 was amended after this action was initiated; effective as of May 3, 2013, part 762.150(g) provides "[t]he lender interest rate will be set according to § 762.124(a)."

Klinge's loan was paid by renewal in 2003, and ultimately paid in full in 2007. Meanwhile, Klinge learned other Luana customers were being charged interest rates lower than his. He also "became aware of the specific language of the relevant regulations," and confronted Luana with the regulations, accusing it of charging him more than "its average agricultural loan customer." *See* 7 C.F.R. § 762.150(g) ("Rate of interest. The lender may charge a fixed or variable interest rate, but not in excess of what the lender charges its average agricultural loan customer.").

In response, Luana reduced Klinge's interest rate by approximately 2.5%, which further ignited Klinge's belief Luana "had engaged in a practice of overcharging" him. According to Luana, however, it reduced Klinge's rate merely as a "concession" "just to get [Klinge] out of the bank and out the door" after he came in several times "basically threatening a lawsuit."

In 2008, Klinge filed a petition at law, alleging Luana was in breach of contract by charging him a higher interest rate than its average agricultural loan rate in violation of 7 C.F.R. part 762.150(g). Luana filed an answer and asserted affirmative defenses.[6]

Luana filed a motion for summary judgment, claiming there was no genuine issue of material fact because Klinge "was at all time[s] charged the base rate and given the 4% discount." Following a hearing, the district court entered an order granting Luana's motion for summary judgment, finding "[w]hile the supporting documents indicate some banking customers were charged a

[6] Luana subsequently amended its answer to assert a counterclaim for defamation, which it later dismissed.

different rate than the plaintiff, it is clear that the bank strictly complied with the terms and conditions of the loan agreement . . . ." The district court did not, however, reference the interest assistance agreement or the requirement that Klinge's interest rate not exceed that charged for an average agricultural loan customer.

On appeal, this court reversed, finding "the record lacks evidence to determine whether Klinge was charged a rate no higher than the bank's average agricultural loan customer." *Klinge v. Luana Sav. Bank*, No. 09-1856, 2010 WL 4140463, at *5 (Iowa Ct. App. Oct. 20, 2010). We determined this was a genuine issue of material fact that precluded summary judgment. *Id.* We observed there was evidence Klinge "was charged the *base* interest rate at all times," but found "there is no showing that the base rate was equivalent to the average agricultural loan rate." As we stated:

> In other words, the record does not affirmatively show the rate charged to Klinge complied with 7 C.F.R. part 762.150 as required by the interest assistance agreement.
>
> . . .
>
> . . . Even if the bank's evidence supports a finding that it charged an interest rate compatible with its base rate, this does not prove whether the base rate was the same, or less than, its average agricultural loan interest rate.

Id. at *5-6. Accordingly, we reversed the district court's ruling granting Luana's motion for summary judgment and remanded for further proceedings. *Id.* at *6.

Back in district court, a jury trial ensued. The actual federal regulations at issue were not submitted to the jury, either in evidence or in the jury instructions. Instead, Klinge offered exhibit 47, which was admitted without objection, to summarize and explain to the jury the application of the federal regulations to

Klinge's interest assistance agreement. Exhibit 47, which is a photocopy of section 135 from the "FSA Handbook" entitled "Interest Rate Requirements (7 C.F.R. 762.124(a))," provided in part: "Maximum Interest Rates. Neither the interest rate on the guaranteed portion nor the unguaranteed portion may exceed the rate the lender charges its average agricultural loan customer." Exhibit 47 further provided, "If the lender's rates of interest are based on a standardized risk rating system, the rate charged an FSA-guaranteed borrower must be no higher than the rate charged a moderate risk borrower, regardless of the guaranteed borrower's equity, collateral, or repayment position."

At trial, Luana presented evidence it used a standardized risk rating system in determining its borrowers' interest rates, including the risk rating sheets it had compiled for Klinge annually from 1999 to 2006. Luana representatives testified Klinge's risk ratings placed him, generally, in a moderate risk category. Luana representatives further explained its standardized risk system provided "a guideline" for determining the base rate for each borrower, and that its base rate corresponded to Klinge's "overall risk score[s]." Luana also stated although most of its borrowers agreed to its base rate interest rate, some borrowers agreed to a fixed rate. Luana maintained it had at all times cooperated with the FSA and complied with its rules and regulations concerning the interest assistance agreement. The jury also received evidence that the FSA had reviewed Luana's loan file for Klinge and "[t]here were no deficiencies found."

Following the trial, the jury returned a verdict in favor of Luana, concluding Klinge had failed to prove his claims of breach of contract and fraudulent

misrepresentation against Luana. The district court entered judgment in favor of Luana.

Klinge filed a motion for new trial, claiming: there was irregularity on the part of the jury, there was misconduct by the jury, the verdict was not sustained by sufficient evidence and was contrary to law, the court erred in making evidentiary rulings, and the verdict failed to effectuate justice. Following an unreported hearing, the district court denied Klinge's motion for new trial with no additional analysis. Klinge appeals.

II. Motion for New Trial

Klinge contends the jury verdict is not supported by sufficient evidence and he is entitled to a new trial, because "the undisputed evidence shows the interest rate charged by [Luana] violated the regulations incorporated in the interest rate assistance agreement."

Where a motion for new trial claims a jury's verdict fails to administer substantial justice, we review for an abuse of discretion. *Estate of Hagedom ex rel*. *Hagedorn v*. *Peterson*, 690 N.W.2d 84, 87-88 (Iowa 2004). An abuse of discretion is shown where a court exercises its discretion on grounds clearly untenable or to an extent clearly unreasonable. *See id.* Here, "unreasonable" means not based on substantial evidence. *See Channon v*. *United Parcel Serv*., *Inc*., 629 N.W.2d 835, 859 (Iowa 2001).

Insofar as Klinge's motion was based on the sufficiency of the evidence, this presents a legal question and our review is on error. *See id.*; *Smith v*. *Haugland*, 762 N.W.2d 890, 900 (Iowa Ct. App. 2009). "Evidence is substantial to support a jury verdict if reasonable minds would find it adequate to reach the

same conclusion. In considering the sufficiency of evidence, we view the evidence in the light most favorable to the party in whose favor the verdict was rendered." *Condon Auto Sales & Serv*., *Inc*. *v*. *Crick*, 604 N.W.2d 587, 593 (Iowa 1999).

Klinge's contention on appeal is focused on the jury's interpretation of exhibit 47.[7] As described above, exhibit 47 is an excerpt from the FSA Handbook explaining the application of the relevant federal regulations to FSA interest assistance agreements. At trial, the jury was provided exhibit 47 in lieu of the actual federal regulations. Exhibit 47 provides in pertinent part:

> B. Maximum Interest Rates
>
> *Neither the interest rate on the guaranteed portion nor the unguaranteed portion may exceed the rate the lender charges its average agricultural loan customer*. At the request of the Agency, the lender must provide evidence of the rate charged the average agricultural loan customer. This evidence may consist of an average yield data, or documented administrative differential rate schedule formulas used by the lender.
>
> The FSA guarantee compensates a lender for much of the additional credit risk involved in guaranteed loans. *If the lender's rates of interest are based on a standardized risk rating system*, *the rate charged an FSA-guaranteed borrower must be no higher than the rate charged a moderate risk borrower*, *regardless of the guaranteed borrower's equity*, *collateral*, *or repayment position*.

(Emphasis added).

Klinge claims this exhibit should be interpreted to contain "two separate requirements" for Luana, namely, that Luana could not charge an interest exceeding the rate it charged its average agricultural loan customer *and* if Luana

[7] Exhibits 47 and 48, both offered by Klinge, were admitted at trial. The exhibits are identical, except for their dates—exhibit 48 was published in 1999; exhibit 47 was published in 2007. Although Klinge refers to both exhibits in his brief, for sake of simplicity, we refer to them together as exhibit 47.

used a risk rating system, the risk charge could not exceed the interest rate of a moderate risk borrower. Luana disagrees, stating "there are two options for figuring interest" set forth in exhibit 47. As Luana aptly points out, no evidence was presented at trial (by Klinge or Luana) that Luana used a differential rate schedule to determine Klinge's interest rate. Instead, the bulk of evidence introduced at trial was in regard to Luana's application of a standardized risk rating system to assess Klinge's interest rate. Apparently, the jury found the first paragraph of the text above inapplicable to this case and applied the second paragraph in determining whether Luana was in breach of the contract. And if so, we believe this was a reasonable interpretation of exhibit 47 by the jury.[8]

Klinge next claims "the evidence established [he] was overcharged in some amount regardless of how the regulation is interpreted." He points to the emphasized language above, and claims even if this language of the provision was a "separate and alternative requirement for lenders using a standardized risk rating system, the rate has to be based on what was charged a moderate risk borrower, and without consideration of the borrower's credit worthiness." He states in this case, he was "rated, and charged interest, at the highest or second highest risk classification," and therefore it is "it is clear" Luana charged him "a rate far in excess of the average borrower."

At trial, Luana president David Schultz and vice president Carol Jensen testified regarding Luana's standardized risk rating system. According to Luana

[8] From what we can discern, Klinge believes the jury misinterpreted the federal regulations that were "incorporated" into the parties' agreement. However, the jury was not provided the actual language of the regulations, only exhibit 47 interpreting the regulations. Klinge does not object to the admission of exhibit 47, and indeed, Klinge was the party that introduced that exhibit at trial.

representatives, Luana used a "risk rating sheet" to evaluate its borrowers or potential borrowers based on "five or six key components . . . and there is a scoring system within those different components." The borrower's scores were then added up to determine the borrower's overall risk category on the risk scale. As Schultz explained, Luana's risk scale contained five categories (A, B, C, D, and F), and "anybody we consider in that D or F category is definitely moderate risk," although Luana did not formally "have that term on [the scale]."[9]

Luana introduced evidence depicting Klinge's risk rating in 1999, even before he entered the interest assistance agreement. At that time, Klinge's risk rating was 4 [D].[10] Thereafter, Klinge's risk rating was 4 [D] in 2000, 5 [F] in 2001,[11] D in 2002, D in 2003, C in 2004, C in 2005, and C in 2006. The evidence introduced at trial, which was not rebutted by Klinge, shows his risk rating was consistently in the moderate or slightly-below-moderate categories.

Luana representatives explained some, but not all, interest assistance agreement borrowers agreed to Luana's base rate as their interest rate, and an inherent result of the standardized risk rating system was that "moderate risk borrowers were charged a higher rate than better credit" borrowers. When questioned about why its interest assistance agreements had "2 to 3 percent higher" interest rates than Luana's "other agricultural loans," Luana representatives explained interest assistance loans are available only under an

[9] Schultz specified the F category would be considered "a high risk."
[10] Although the scale categories were analogous prior, in 2002, Luana changed its scale category designations from numerals (1, 2, 3, 4, and 5) to letters (A, B, C, D, and F) in order to "match that up with [its] regulators."
[11] However, Luana representatives testified that even though Klinge was rated at the highest risk in February 2001, his rate did not change based on that rating.

operating loan, not under a farm ownership loan, and operating loans generally had higher interest rates.

In this case, Klinge agreed to an interest rate equal to Luana's base rate, which in June 2000 was 11.65%, and he was charged that rate, minus 4%, or 7.65%. Luana determined its base rate using a standardized risk rating system, and Klinge's rating was primarily the same as that of a moderate risk borrower. Klinge did not present evidence to contradict the evidence presented by Luana that at all times during the term of the loan he was charged Luana's base rate, minus 4%.[12]

Klinge does not contest the instructions provided to the jury. We note the jury was not instructed to determine whether Luana charged Klinge a rate of interest higher than the Bank charged its average agricultural loan customers. The jury was also not instructed the parties' contract required the interest rate charged Klinge could not exceed the rate Luana charged its average agricultural loan customers. The jury did not receive the actual federal regulations at issue.

Instead, the jury was presented exhibit 47, providing that if Luana based its rates of interest on a standardized risk rating system, the rate charged to Klinge must be no higher than the rate charged a moderate risk borrower, regardless of Klinge's equity, collateral, or repayment position. Under these

[12] Klinge received invoices from Luana periodically informing him of his interest rate changes, including rate changes to 6.4% in June 2001, and 9.4% in January 2002. In March 2003, Klinge's loan was paid by renewal and his new interest rate was 5.15%. His rates changed to 5.4% in October 2004, 5.65% in December 2004, 5.9% in March 2005, 6.4% in September 2005, 6.65% in December 2005, 6.9% in February 2006, 7.15% in March 2006, 7.4% in May 2006, and 7.65% in June 2006. Per Klinge's exhibit 42, his rates corresponded directly with Luana's base rates for those time periods (less 4%). In January 2007, after discussions with Klinge, Luana lowered his rate from 7.65% to 5.15%. Klinge satisfied the loan payments in June 2007.

facts, we determine the jury's verdict finding Luana did not breach the parties' contract is supported by the record evidence. Accordingly, we affirm the district court's denial of Klinge's motion for a new trial.

III. Evidentiary Rulings

Klinge further claims he is entitled to a new trial because the district court erred in admitting "prejudicial evidence" of his "credit problems." He contends "the explanation for the jury's verdict, which is unsupported by the evidence, is the fact that the jury was exposed to prejudicial and irrelevant evidence."

Evidence is relevant if it has "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." *See* Iowa R. Evid. 5.401. In general, all relevant evidence is admissible and evidence that is not relevant is not admissible. *See* Iowa R. Evid. 5.402. Further, even evidence that is relevant "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." *See* Iowa R. Evid. 5.403.

We review the evidentiary rulings made by the district court in this case for an abuse of discretion. *See Heinz v. Heinz*, 653 N.W.2d 334, 338 (Iowa 2002). An abuse of discretion exists when the court exercises its discretion on grounds or for reasons clearly untenable, or to an extent clearly unreasonable. *Id.* Not every erroneous admission of evidence requires reversal. *See McClure v. Walgreen Co.*, 613 N.W.2d 225, 235 (Iowa 2000). Reversal is only warranted when a substantial right of the party is affected. *See id.* "Although a presumption of prejudice arises when the district court has received irrelevant

evidence over a proper objection, the presumption is not sufficient to require reversal if the record shows a lack of prejudice." *Id.*

Klinge takes issue with exhibits F through F-8, Luana's risk rating sheets for Klinge from 1999 to 2006. However, Klinge did not object to the admission of this evidence at trial. As a general rule, objections to evidence cannot be raised for the first time on appeal. *See Handlon v. Henshaw*, 221 N.W. 489, 491 (Iowa 1928). In any event, these exhibits were not prejudicial to Klinge whereas they were clearly relevant to the question of whether Luana used a standardized risk rating system to assess Klinge's interest rate.

Klinge also takes issue with exhibits O-1, O-2, O-3, and O-5. This evidence was admitted at trial over Klinge's objections.[13] Exhibits O-1, O-2, and O-3 are three letters sent from Luana to Klinge in 1995 discussing Klinge's 1994 loss in net worth and projected loss in net worth for 1995, and requesting "to get together" with Klinge to "come up with a plan to improve the situation." Exhibit O-5 is Klinge's 1999 federal income tax return showing a net loss of earnings.

Klinge claims evidence of his financial condition was not relevant, reiterating that "when the lender's rates of interest are based on standardized risk rating systems, the rate charged the FSA guaranteed borrower must be no higher than the rate charge a moderate risk borrower, regardless of the borrower's equity, collateral or repayment position."

Luana points out that Klinge was actively seeking punitive damages against it, and even if Klinge's financial condition was not relevant to whether Luana charged a higher interest rate than permitted by law, these exhibits were

[13] Klinge also objected to exhibit "O" on relevance grounds before trial.

relevant to show whether Luana "behaved in a manner to justify the submission of punitive damages to the jury, if the jury returned a verdict in Klinge's favor." We agree these exhibits were directly relevant to Klinge's request for punitive damages.

In regard to punitive damages, the jury was instructed:

> Punitive damages may be awarded if the plaintiff, Jason Klinge, has proven by a preponderance of clear, convincing and satisfactory evidence that the conduct of the defendant, Luana Savings Bank, by its agents or employees, constituted a willful and wanton disregard for the rights of another and caused actual damage to the plaintiff.
>
> . . . .
>
> Conduct is willful and wanton when a person intentionally does an act of an unreasonable character in disregard of a known or obvious requirement that is so great as to make it highly probabl[e] that financial injury will follow.

See also Iowa Code § 668A.1(1)(a) (2011) (providing the standard for awarding punitive damages); *McClure*, 613 N.W.2d at 230 (setting forth definition of "willful and wanton" in the context of section 668A.1).

> Punitive damages serve as a form of punishment and to deter others from conduct which is sufficiently egregious to call for the remedy. Mere negligent conduct is not sufficient to support a claim for punitive damages. Such damages are appropriate only when actual or legal malice is shown.
>
> Actual malice is characterized by such factors as personal spite, hatred, or ill will. Legal malice is shown by wrongful conduct committed or continued with a willful or reckless disregard for another's rights.

McClure, 613 N.W.2d at 230-31 (internal citations and quotation marks omitted).

We find exhibits O-1, O-2, O-3, and O-5 were relevant to show Luana's longstanding lending relationship with Klinge, and continued actions in providing him financing even if he had been turned down by other lenders. To be clear, this evidence would rebut a finding that Luana acted "with personal spite, hatred,

or ill will" against Klinge or that its conduct was "committed or continued with a willful or reckless disregard" for Klinge's rights. *See id.* In other words, the evidence was highly probative to show Luana was not acting maliciously toward Klinge.

In any event, even if the evidence was not relevant, its admission did not unfairly prejudice Klinge. *See id.* (noting reversal for admission of irrelevant evidence is not required if the record shows a lack of prejudice). The evidence was not inconsistent with other evidence of Klinge's financial condition admitted without objection at trial.[14] *See Lawson v. Fordyce*, 21 N.W.2d 69, 73 (Iowa 1945) (observing cumulative evidence "is not such additional evidence as materially changes the evidential record"). The district court exercised its discretion in admitting the evidence. We affirm on this issue.

IV. Conclusion

Having considered the issues raised on appeal, we affirm the district court's denial of Klinge's motion for new trial.

AFFIRMED.

[14] In addition, the record also contains evidence indicating the only way a borrower could qualify for the FSA interest assistance program is if they had a poor credit history and could not obtain financing otherwise.