

IN THE COURT OF APPEALS OF IOWA

No. 7-197 / 06-0877

Filed May 23, 2007

JOSEPH SPREITZER,
Plaintiff-Appellee/Cross-Appellant,

vs.

BYRON ROSS, ESTATE OF ROSAMOND ROSS
and RAY GLASS,
Defendants,

HAWKEYE STATE BANK,
Defendant-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Johnson County, Amanda Potterfield,
Judge.

A defendant appeals and plaintiff cross-appeals from the trial judgment and
rulings on posttrial motions. **REVERSED AND REMANDED ON APPEAL;**
AFFIRMED ON CROSS-APPEAL.

Patrick Roby and Robert Hogg of Elderkin & Pirnie, P.L.C., Cedar Rapids, for
appellant.

Kevin Caster, Mark Zaiger, and Sarah Gayer of Shuttleworth & Ingersoll,
P.L.C., Cedar Rapids, for appellee.

Ray Glass, Yankton, SD, pro se.

Heard by Vogel, P.J., and Miller and Eisenhauer, JJ.

Decided by Sackett, C.J., and Vogel, Miller, and Eisenhauer, JJ.

SACKETT, C.J.

Hawkeye State Bank (“bank”), a defendant in a fraud suit, appeals from the district court’s denial of its motion for judgment notwithstanding the verdict, (JNOV), contending there was no evidence of fraud, justifiable reliance, or damages. Alternatively, the bank contends the amount of the damage award was not supported by the evidence. The plaintiff, Joseph Spreitzer, cross-appeals from the court’s refusal to submit his claim for punitive damages to the jury or to grant his motion for partial new trial. We reverse and remand on appeal and affirm on cross-appeal.

I. Background

Defendant Byron Ross and the plaintiff were co-guarantors of a \$1.5 million line of credit for Walker Manufacturing. The personal guaranty provided for joint and several liability. The bank’s president, defendant Ray Glass, told Spreitzer the guaranty would be enforced “equally” against both guarantors. Spreitzer understood Glass to mean he and Ross each would be liable for a maximum of \$750,000.

When Walker Manufacturing failed, the bank notified both guarantors it would be seeking payment of the line of credit. Spreitzer loaned the company \$750,000 to pay toward the balance due. The bank accepted the \$750,000 payment and gave Spreitzer a full release from his guaranty. The bank did not enforce the guaranty against Ross. The bank later took the assets of Walker Manufacturing in payment on the balance remaining on the line of credit. By the time of trial, the bank had not released Ross.

Spreitzer sued Ross for contribution, alleging Spreitzer, through his guaranty and surrender of corporate assets, had paid \$1,550,000 on the corporate debt, while

Ross had paid only \$65,000. Following discovery, Spreitzer amended his petition to add Glass and the bank as defendants, alleging fraudulent misrepresentation, breach of fiduciary duty, and vicarious liability. Spreitzer also sought punitive damages.

The trial court did not submit punitive damages to the jury. The jury found Spreitzer proved his claim of fraudulent misrepresentation against Glass, the fraud was a proximate cause of Spreitzer's damages, the amount of damages was \$838,000, and the bank was vicariously liable. The jury also found Spreitzer proved several claims against Ross and the amount of damages was \$175,000.

The bank filed a motion for JNOV, alleging a lack of evidence of fraudulent misrepresentation because Glass did what he said he would do and Spreitzer suffered no damage. It argued enforcing the guaranty "equally" meant Spreitzer and Ross each would not have to pay more than half of the total amount guaranteed.

Spreitzer filed a motion for partial new trial on the issue of punitive damages only. He argued the egregious conduct of Ross and Glass supported a jury finding their conduct toward him was willful and wanton, supporting a punitive damage award.

II. Scope and Standards of Review

JNOV. Our review of rulings on motions for JNOV is for correction of errors at law. *Mincks Agri Center, Inc. v. Bell Farms, Inc.*, 611 N.W.2d 270, 273 (Iowa 2000). "Our only inquiry in assessing such a motion is to determine whether there is sufficient evidence to justify submitting the case to the jury." *Bredberg v. Pepsico, Inc.*, 551 N.W.2d 321, 326 (Iowa 1996). The trial court has considerable discretion in determining whether evidence is sufficient to submit a claim to the jury.

Oberreuter v. Orion Indus., Inc., 398 N.W.2d 206, 209 (Iowa Ct. App. 1986). We review the evidence in the light most favorable to the trial court's decision. *Kurtenbach v. TeKippe*, 260 N.W.2d 53, 54 (Iowa 1977). "[I]f reasonable minds could differ on an issue when the evidence is viewed in the light most favorable to the nonmoving party, then it was appropriate to submit the issue to the jury and the jury's verdict should be upheld." *Lamb v. Manitowoc Co., Inc.*, 570 N.W.2d 65, 67 (Iowa 1997).

New Trial. Our review of rulings on motions for new trial depends on the grounds for new trial asserted in the motion and ruled on by the district court. *Hansen v. Central Iowa Hosp. Corp.*, 686 N.W.2d 476, 480 (Iowa 2004). If the motion and ruling are based on a discretionary ground, we review for an abuse of discretion. *Richards v. Anderson Erickson Dairy Co.*, 699 N.W.2d 676, 678 (Iowa 2005). If the motion and ruling are based on a legal issue, our review is for correction of errors at law. *Id.* A district court has considerable discretion in determining whether evidence is sufficient to submit a claim to the jury. *Oberreuter v. Orion Indust., Inc.*, 398 N.W.2d 206, 209 (Iowa Ct. App. 1986). Consequently, we review for an abuse of discretion.

III. Merits

A. Appeal. The bank contends the district court erred in denying its motion for JNOV, arguing there was no evidence to support a finding of fraud, justifiable reliance, or damages.

There is disputed evidence concerning what Glass knew or believed about Ross's finances at the time Spreitzer and Ross were guaranteeing the line of credit for Walker Manufacturing. The evidence is clear that it was important to Spreitzer

that Ross be a co-guarantor. The evidence suggests Spreitzer was influenced in his decision to be a co-guarantor by Glass's statement he would enforce the guaranties equally, notwithstanding Spreitzer's understanding the language of the guaranty could make him liable for the entire amount. Spreitzer understood the equal-enforcement assurance to mean he and Ross each would pay half of the line-of-credit balance if necessary. Given Spreitzer's business background and the circumstances here, we conclude his asserted reliance on Glass's verbal assurance contrary to the explicit terms of the written guaranty was not reasonable.

Concerning the claimed damages, the bank first demanded full payment of the \$1.5 million from both guarantors. Spreitzer offered to pay his share. In return, he received a full release, so he did not have to pay more than "his" half of the balance. We conclude Spreitzer did not prove any damages attributable to the alleged fraudulent misrepresentation.

The district court erred in not granting the bank's motion for JNOV. We reverse the decision of the district court and remand for entry of judgment notwithstanding the jury's verdict.

B. Cross-Appeal. Spreitzer contends the court erred in not submitting punitive damages to the jury and in denying his motion for partial new trial on punitive damages. Punitive damages may be awarded if a defendant's conduct "constitute[s] willful and wanton disregard for the rights" of the plaintiff. Iowa Code § 668A.1(a) (2001). Proof of willful and wanton conduct to justify punitive damages must be by a "preponderance of clear, convincing, and satisfactory evidence." *Id.* As used in the statute, willful and wanton means

the actor has intentionally done an act of unreasonable character in disregard of a known or obvious risk that was so great as to make it

highly probable that harm would follow, and which thus is usually accompanied by a conscious indifference to the consequences.

Fell v. Kewanee Farm Equip. Co., 457 N.W.2d 911, 919 (Iowa 1990). In order to establish such conduct “a plaintiff must show that the defendant’s conduct constituted actual or legal malice.” *Gibson v. ITT Hartford Ins. Co.*, 621 N.W.2d 388, 396 (Iowa 2001). “[M]erely objectionable conduct is insufficient.” *Hockenberg Equip. Co. v. Hockenberg’s Equip. & Supply Co.*, 510 N.W.2d 153, 156 (Iowa 1993). “To receive punitive damages, [a] plaintiff must offer evidence of [a] defendant’s persistent course of conduct to show that the defendant acted with no care and with disregard to the consequences of those acts.” *Wolf v. Wolf*, 690 N.W.2d 887, 893 (Iowa 2005) (quoting *Hockenberg*, 510 N.W.2d at 156)).

Spreitzer argues Glass fraudulently promised him the guaranties would be enforced equally, knowing Ross’s financial exposure was limited and Glass had no intent to enforce Ross’s guaranty. He notes Glass did not attempt to enforce Ross’s guaranty, but rather used embezzled funds to assure Ross recovered all the money he loaned to Walker Manufacturing. Spreitzer contends a jury “could easily conclude that Glass treated Spreitzer with actual malice and legal malice.”

The evidence supports the district court’s conclusions that (1) Glass and Ross wanted Walker Manufacturing to succeed, (2) neither Glass nor Ross believed there was a high probability that harm would follow the fraud, or held a conscious indifference to the consequences, (3) although both men may have intended to protect Ross from the guaranty, neither intended to leave Spreitzer with the entire debt, and (4) their actions lack the requisite willful or reckless disregard for Spreitzer’s rights to support submitting punitive damages to the jury.

We affirm the district court's denial of the motion for partial new trial on punitive damages.

IV. Conclusion

Because the plaintiff failed to prove justifiable reliance and damages, we reverse the district court's denial of the bank's motion for JNOV and remand for entry of an order granting the bank's motion. Because the plaintiff failed to prove the defendants acted with actual or legal malice, we affirm the district court's denial of his motion for new trial on punitive damages.

REVERSED AND REMANDED ON APPEAL; AFFIRMED ON CROSS-APPEAL.