

STATE OF MICHIGAN
COURT OF APPEALS

GEORGE FAYSAL,

Plaintiff-Appellant,

v

CENTURY 21 TOWN & COUNTRY
COMMERCIAL GROUP, INC., and HAROLD
NIMCHONOK,

Defendants-Appellees.

UNPUBLISHED
November 10, 2011

No. 299584
Wayne Circuit Court
LC No. 06-624464-CZ

Before: K. F. KELLY, P.J., and METER and GLEICHER, JJ.

MEMORANDUM.

Defendant Harold Nimchonok served as the real estate broker who arranged the sale of plaintiff George Faysal's jewelry store to Donald and Gerald Ferrier. Faysal filed breach of fiduciary duty and negligence claims against Nimchonok, arguing that Nimchonok's poor drafting caused Faysal to lose his lawsuit against the Ferriers for failure to follow through with the purchase agreement. The trial court precluded evidence regarding the Faysal-Ferrier judgment from the Faysal-Nimchonok trial, and the jury ultimately found no cause of action. Faysal now challenges the trial court's evidentiary ruling. We affirm.¹

A real estate broker, as an agent of a seller, owes the seller a fiduciary duty. *Andrie v Chrystal-Anderson & Assoc Realtors, Inc*, 187 Mich App 333, 335; 466 NW2d 393 (1991). A party may recover damages that are proximately caused by a breach of that duty. *In re Rosati Trust*, 177 Mich App 1, 5-6; 441 NW2d 30 (1989). We generally review a trial court's evidentiary rulings for an abuse of discretion. *Hilgendorf v St John Hosp & Med Ctr Corp*, 245 Mich App 670, 683; 630 NW2d 356 (2001). Yet, in this case, any error in precluding evidence of the Faysal-Ferrier judgment was harmless. The challenged evidence was not relevant to establish that Nimchonok breached his fiduciary duty owing to Faysal.

¹ The trial court previously dismissed Faysal's action pursuant to MCR 2.116(C)(10), but this Court reversed and remanded for further proceedings. *Faysal v Century 21 Town & Country Commercial Group, Inc*, unpublished opinion per curiam of the Court of Appeals, issued September 18, 2008 (Docket No. 278641).

The crux of the alleged breach was Nimchonok’s failure to draft a purchase agreement accurately reflecting the parties’ agreed-upon terms. The breach could be proved by the purchase agreement and evidence regarding Faysal’s and the Ferriers’ negotiations. Evidence of the prior court judgment, on the other hand, would be relevant to prove that Nimchonok’s breach of duty (1) proximately caused Faysal’s loss of a legal remedy against the Ferriers (2) such that Faysal suffered a specific amount of damages. The jury in the Faysal-Nimchonok trial determined that Nimchonok had not breached his fiduciary duty in drafting the purchase agreement. As a result, the jury did not consider whether any “breach of duty” proximately caused Faysal’s damages. “[A]ny error in the admission or exclusion of evidence will not warrant appellate relief ‘unless refusal to take this action appears . . . inconsistent with substantial justice,’ or affects ‘a substantial right of the [opposing] party.’” *Craig v Oakwood Hosp*, 471 Mich 67, 76; 684 NW2d 296 (2004), quoting MCR 2.613(A) and MRE 103(a). The trial court may have erroneously excluded the proffered evidence. However, reversal is unnecessary where the jury did not reach the pertinent issues—causation and damages—and Faysal was not truly affected by the court’s ruling.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Patrick M. Meter
/s/ Elizabeth L. Gleicher