

May 2, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 05-50763

BRIAN JAMES JOHNSEN

Plaintiff - Appellant

v.

BAKER HUGHES INCORPORATED

Defendant - Appellee

Appeal from the United States District Court
for the Western District of Texas, Midland
No. 7:04-CV-68

Before KING, STEWART and DENNIS, Circuit Judges.

PER CURIAM:*

Plaintiff-appellant Brian James Johnsen argues on appeal that the district court erred in denying his motion for a new trial following a jury verdict for defendant-appellee Baker Hughes, Inc. He claims that the district court failed to apply correctly the "safe harbor" provision of the Americans with Disabilities Act, 42 U.S.C. § 12114(b)(3). As Baker Hughes points out, this is a new argument that Johnsen filed to raise in

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

the jury charge conference or his motion for a new trial. We do not address arguments raised for the first time on appeal.

Second, Johnsen argues that the district court erred in granting summary judgment on his defamation claim. For several reasons spelled out in the district court's Order Granting in Part, and Denying in Part, Defendant's Motion for Summary Judgment and Denying Plaintiff's Amended Motion for Summary Judgment, entered March 16, 2005, and in Baker Hughes' brief and at oral argument, including the substantial truth of the statement asserted, the district court correctly disposed of that claim.

The judgment of the district court is AFFIRMED.