IN THE COURT OF APPEALS OF IOWA

No. 7-480 / 06-1271
Filed November 15, 2007

HITTERS, INC.,
Plaintiff-Appellee,

vs.

HARRIOTT BROTHERS, L.L.C., CHARLES HARRIOTT, and JAMES HARRIOTT,
Defendants-Appellants.

CHARLES HARRIOTT and JAMES HARRIOTT,
Plaintiffs-Appellants,

vs.

CARLTON O. TRONVOLD, Individually and as Trustee of the CARLTON O. TRONVOLD TRUST Dated 9/29/92, and HITTERS, INC.,
Defendants-Appellees.

HITTERS, INC.,
Plaintiff-Appellee,

vs.

CHARLES HARRIOTT and JAMES HARRIOTT,
Defendants-Appellants.

Appeal from the Iowa District Court for Linn County, Thomas L. Koehler, Judge.

Minority shareholders appeal from district court rulings denying their motion for new trial and determining the debt claims of the shareholders following verdict and judgment entry in favor of the majority shareholder. **AFFIRMED AS MODIFIED.**

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

James E. Shipman of Simmons Perrine, P.L.C., Cedar Rapids, for appellee Hitters, Inc.

Thomas D. Wolle of Moyer & Bergman, P.L.C., Cedar Rapids, for appellee Carlton O. Tronvold.

Heard by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MILLER, J.

Minority shareholders, Charles and James Harriott, appeal from district court rulings denying their motion for new trial and determining the debt claims of the shareholders following verdict and judgment entry in favor of the majority shareholder, Carlton O. Tronvold, trustee of the Carlton O. Tronvold trust. We affirm the judgment of the district court as modified.

I. BACKGROUND FACTS AND PROCEEDINGS.

This is the third appeal arising from a failed business venture that began in 1994 when James Harriott approached Tronvold and proposed they build a "first class softball facility" in Cedar Rapids, Iowa. *See Harriott v. Tronvold*, 671 N.W.2d 417 (Iowa 2003); *Hitters, Inc. v. Harriott Bros., L.L.C.*, No. 02-1941 (Iowa Ct. App. Nov. 26, 2003). Tronvold was an experienced real estate investor and businessperson. He considered himself to be a "surrogate father" to James and "wanted to be able to help him realize a dream . . . to be in business for [him]self."

To that end, Tronvold filed articles of incorporation for Hitters, Inc. on June 15, 1994, and transferred land he owned near Cedar Rapids to the corporation in return for 1000 shares of stock. One month later, Tronvold gifted 200 of the 1000 shares to James and 200 of the 1000 shares to James's brother, Charles Harriott. Charles was hired to manage the facility. He was to earn $40,000 per year. The three shareholders were named directors of the corporation, James was elected president, Tronvold was elected vice-president, and Charles was elected secretary/treasurer.

The corporation borrowed $484,000 from Farmers State Bank for construction of the sports complex. The facility opened for business in May 1995 and lost money every year thereafter. In 1995, 1996, and 1997, Tronvold and the Harriotts contributed cash to the corporation in proportion to their ownership interests.[1] The Harriotts testified they contributed money to the corporation because Tronvold told them "before we even incorporated" if the "business ever needs cash that we all put in proportionally to our equity of what we own" or they would "lose [their] interest" in the corporation.

Tronvold became increasingly dissatisfied with Charles's management as the facility continued to lose money. By the end of 1998, the corporation did not have enough money to make the December loan payment in full. At a shareholders' meeting in December 1998, Tronvold insisted the corporation hire a new manager or he would not "put any more money into this business." The brothers did not want to hire a new manager.

A shareholders' meeting was held in January 1999 where Charles was removed from the board of directors and replaced by Tronvold's long-time friend, Vince Arioso. In February 1999 after the loan went into default, the Harriotts made a payment to cure the default. Despite the money the corporation was losing, the Harriotts decided to continue to operate the facility in an attempt to minimize their losses. Tronvold, meanwhile, was exploring options for the sale of the facility.

The Harriotts filed a declaratory judgment action against Tronvold and the corporation in November 1999 seeking in relevant part a declaration as to

[1] Charles and James each contributed a total of $35,268.65, while Tronvold put in a total of $105,770.03.

whether their contributions to the corporation should be considered debt or equity. In an amended petition, the Harriotts alleged breach of an oral contract to contribute to the corporation to cover cash shortfalls, breach of an oral contract to sell the assets of the corporation, and interference with contractual relations with the corporation.

The board voted to treat the shareholders' contributions through the end of 1999 as debt of the corporation at a special meeting of the board of directors in October 2000. The board also voted to terminate Charles's employment as manager of the facility effective January 1, 2001, which triggered the dissolution provisions of the shareholders' buy-sell agreement. Another shareholders' meeting was consequently held in March 2001 during which Tronvold voted for dissolution of the corporation. The board also approved a resolution prohibiting any "shareholder, director, employee or other person or entity" from operating the facility "in the 2001 season."

Despite the board's directive, the Harriotts continued to operate the facility. Hitters accordingly filed a petition requesting injunctive relief, an accounting, and damages in April 2001. The lawsuits were consolidated, and the matter proceeded to trial by jury in September 2001.[2] At the close of the Harriotts' case, Tronvold moved for a directed verdict, which the district court granted. The Harriotts appealed. Our supreme court held the district court erred in granting a directed verdict on the Harriotts' claim that Tronvold breached an oral contract to contribute money to the corporation to cover cash shortfalls.

[2] Hitters dismissed its claims for damages before trial. The parties also stipulated before trial that the corporation would agree to be bound by the court's determination regarding the classification of the corporate contributions, and the corporation would not pursue its remaining claims for an injunction and an accounting until after the trial.

Harriott, 671 N.W.2d at 423. The matter was remanded back to the district court for trial limited to the issue of "whether Tronvold breached a contract with the Harriotts that if a shareholder failed to contribute to the cash shortfalls, in proportion to his ownership interest, his interest in the corporation would be forfeited." *Id.*

The Harriotts continued to operate the facility through 2005. They were not able to obtain a liquor license in 2002 under the corporation's name because it was being dissolved. "[T]o keep the business running," the Harriotts "created Harriott Brothers, LLC and applied for a liquor license." Hitters attempted to stop the Harriotts from operating the facility by requesting injunctive relief and filing an action for forcible entry and detainer, but its efforts were not successful. Hitters also filed another lawsuit against the Harriotts and Harriott Brothers, L.L.C. in August 2002 again seeking an accounting and damages arising from the Harriotts' continued unauthorized operation of the facility.

The case proceeded to a jury trial in September 2005. Before trial, the parties agreed if the jury found there was no breach of the alleged oral agreement, the trial court would decide the extent and amount of all corporate debt claims of the shareholders in a separate evidentiary hearing. Following a lengthy trial, the jury found there was an oral agreement, but they found Tronvold did not breach that agreement. The district court accordingly dismissed the Harriotts' breach of oral contract claim against Tronvold. The Harriotts filed a motion for new trial, claiming the "jury's finding there was no breach of the contract is not supported by the evidence, or is inconsistent with the finding there

was a contract, under the evidence that was submitted to the jury." The district court denied the motion.

The ballpark was sold for $860,000 in 2006. After the sale of the property, a hearing was held on June 1, 2006, to determine the shareholders' claims for reimbursement from the corporation. The district court entered a detailed ruling on June 28, 2006, rejecting any debt claims the Harriotts asserted they incurred for operating the facility from 2001 through 2005 and finding they were responsible for real estate taxes incurred during that time period. The court determined Charles was entitled to any unpaid salary "for the operation of Hitters for as long as he served in the legitimate role of manager of the ballpark," but it rejected James's claim for compensation for his role in managing the facility. The court treated the contributions the shareholders made to the corporation from its inception as debt of the corporation. Finally, the court concluded Tronvold should be reimbursed for his personal attorney fees and the attorney fees he paid on behalf of the corporation. The court accordingly found Tronvold was owed $482,425 from the corporation, while James was entitled to $87,197.70 and Charles was entitled to $88,468.74, with the shares of each Harriott reduced by one-half of certain real estate taxes for 2004 and 2005 that had been paid by Hitters as closing costs when the ballpark was sold.

The Harriotts appeal. They claim the district court erred in denying their motion for new trial because the jury's verdict was not supported by sufficient evidence. They also claim the district court erred in its distribution to the shareholders of the proceeds from the sale of the corporation's real estate.

II. SCOPE AND STANDARDS OF REVIEW.

Our review of a district court's ruling on a motion for new trial depends on the grounds raised in the motion. *Clinton Physical Therapy Servs., P.C. v. John Deere Health Care, Inc.*, 714 N.W.2d 603, 609 (Iowa 2006). When the motion and ruling are based on discretionary grounds, our review is for abuse of discretion. *Id.* However, when the motion and ruling are based on a claim the trial court erred on issues of law, our review is for correction of errors at law. *Id.*

If a verdict "is not sustained by sufficient evidence" and the movant's substantial rights have been materially affected, it may be set aside and a new trial granted. Iowa R. Civ. P. 1.1004(6); *Olson v. Sumpter*, 728 N.W.2d 844, 850 (Iowa 2007). "Because the sufficiency of the evidence presents a legal question, we review the trial court's ruling on this ground for the correction of errors of law."[3] *Estate of Hagedorn ex rel. Hagedorn v. Peterson*, 690 N.W.2d 84, 87 (Iowa 2004).

The Harriotts assert our review of the district court's ruling determining the debt of the corporation is de novo because the matter was tried in equity. We consider and review a case in the same manner as the district court tried the case. *Molo Oil Co. v. City of Dubuque*, 692 N.W.2d 686, 690 (Iowa 2005). The Harriotts filed their action at law and demanded a jury, although the parties later agreed to a bench trial. *See Bricker v. Maytag Co.*, 450 N.W.2d 839, 840-41 (Iowa 1990) (finding it was "clear that the trial itself was conducted in the manner of a law action" where the plaintiffs filed the action at law and demanded a jury

[3] Tronvold asserts a ruling on a motion for new trial based on whether the jury's verdict is supported by sufficient evidence is reviewed for abuse of discretion. We believe *Estate of Hagedorn*, 690 N.W.2d at 87, states the correct standard of review applicable to the facts presented by this case.

but later agreed to a bench trial). The district court ruled on objections as they were made during the hearing, which is "the hallmark of a law trial, not an equitable proceeding." *Sille v. Shaffer*, 297 N.W.2d 379, 381 (Iowa 1980). We agree with Tronvold this case was tried at law. Thus, our review of the district court's ruling determining the debt of the corporation is also for correction of errors at law. Iowa R. App. P. 6.4.

III. MERITS.

A. Motion for New Trial.

The Harriotts claim the district court erred in overruling their motion for new trial because the jury's verdict finding Tronvold did not breach the parties' oral agreement is not supported by the evidence.[4] The jury found there was "an oral agreement that shareholders forfeited all ownership in the corporation by failing to contribute to the future cash shortfalls in proportion to their stock ownership." However, they found Tronvold did not breach that oral agreement. The Harriotts argue the jury's finding that Tronvold did not breach the parties' oral agreement is not supported by the evidence because "[t]he undisputed evidence showed that Harriotts continued to make payments to the cash shortfalls . . . and [Tronvold] did not make payments."

We view the evidence in the light most favorable to the jury's verdict when reviewing a motion for new trial. *Estate of Pearson ex rel. Latta v. Interstate*

[4] Tronvold argues the Harriotts waived their claim that the jury's verdict was inconsistent because they failed to raise the inconsistency before the jury was discharged. We first note Tronvold's argument in this regard is based on facts outside of the record. We cannot and will not consider facts for which there is no record support. *Alvarez v. IBP, Inc.*, 696 N.W.2d 1, 3 (Iowa 2005). Furthermore, the Harriotts do not appear to be arguing the jury's verdict is inconsistent. Instead, they assert the "verdict is not sustained by sufficient evidence." We therefore reject Tronvold's argument.

Power & Light Co., 700 N.W.2d 333, 345 (Iowa 2005); *see also Iowa Mut. Ins. Co. v. McCarthy*, 572 N.W.2d 537, 543 (Iowa 1997) (viewing the evidence "in the light most favorable to the jury's verdict" in assessing the sufficiency of the evidence). We are generally reluctant to interfere with a jury verdict and give considerable deference to a trial court's decision not to grant a new trial. *Condon Auto Sales & Serv., Inc. v. Crick*, 604 N.W.2d 587, 594 (Iowa 1999).

In order to prevail on a breach of a contract claim, the complaining party must show "it has performed all the terms and conditions required under the contract." *Molo Oil Co. v. River City Ford Truck Sales, Inc.*, 578 N.W.2d 222, 224 (Iowa 1998). The jury was so instructed in Instruction No. 11, which provided that the Harriotts must prove, among other things, that they "have done what the contract requires." The record contains substantial evidence the Harriotts did not comply with their obligations under the contract, not contributing the cash shortfalls of the corporation after 1997 in proportion to their ownership interests, and that their failure to do so occurred at least as early as Tronvold's failure to contribute.[5] Furthermore, the evidence showed that Tronvold was willing to continue making contributions in 1998 if the corporation obtained a new manager. The Harriotts, however, refused to change managers and Charles continued to manage the facility. Based on this evidence the jury could have

[5] James Harriott did not contribute to a cash shortfall in 1998, and Charles Harriott contributed only $785 for that year, substantially less than his share of the cash shortfall. In late 1998 Tronvold also declined to contribute to the 1998 shortfall. In 1999 James contributed $25,895.70, Charles contributed nothing, and Tronvold contributed nothing. In 2000 James contributed $11,000, Tronvold contributed nothing, and it appears that Charles contributed $6500. (Although the Harriott's brief indicates Charles contributed nothing in 2000, an exhibit introduced during the jury trial portion of the case suggests he contributed $6500 in 2000, and after the later, non-jury trial the court found he had contributed $6500 after 1998.) In 2001 Tronvold and James made contributions, and Charles did not.

concluded it was the Harriotts that breached the parties' oral agreement by not performing their obligations under the contract. Viewing the evidence in the light most favorable to the jury's verdict, we conclude there was sufficient evidence in the record supporting the jury's finding that Tronvold did not breach the parties' oral agreement.[6]

B. Shareholders' Debt Claims.

1. Pre-1998 contributions.

The Harriotts first argue the district court erred in "giv[ing] effect to the October, 2000 action of the Board of Directors recharacterizing pre-1998 contributions as debt rather than equity." In support of their argument, they assert the contributions the shareholders made in 1995, 1996, and 1997 were "booked as equity in the corporate records and on the tax returns," but they do not refer us to places in the record supporting this assertion.[7] Upon our own review of the record and appendix, it appears the Harriots' assertion is without evidentiary support. The contributions the shareholders made to the corporation in 1995, 1996, and 1997 were labeled as "paid-in capital" on the corporation's tax returns and "Shareholder Basis Schedule," and no additional shares of stock were issued. There was no specific designation for those years as to whether the contributions were "debt" of the corporation or "equity" of each shareholder.

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[6] We find it unnecessary to address the additional bases upon which Tronvold argues the jury could have found he did not breach the oral agreement.

[7] We note the use of summarized evidence without citation violates Iowa Rules of Appellate Procedure 6.14(1)(*d*) and (*f*). *Tratchel v. Essex Group, Inc.*, 452 N.W.2d 171, 174 (Iowa 1990). "Courts should not be required to search the record to verify the facts . . . and are warranted in ignoring uncited contentions, especially in cases where the record is voluminous." *Id.*

We agree with the district court that the board's vote to treat the shareholders' contributions to the corporation as debt was protected by the business judgment rule, which "limit[s] secondguessing of business decisions" that were "made by those whom the corporation has chosen to make them." *Hanrahan v. Kruidenier*, 473 N.W.2d 184, 186 (Iowa 1991). We, like the district court, find the decision of the board was "reasonably prudent, in good faith, and not in Tronvold's self interest." *See id.* ("When directors act in good faith in making a business decision, when the decision is reasonably prudent, and when the directors believe it to be in the corporate interest, there can be no liability.").

As the district court acknowledged, "[w]hen the board resolved in October 2000 that all shareholder contributions should be treated as corporate debt, it was unknown to Tronvold (or the board of directors) whether the decision would benefit either Tronvold or the Harriotts." Arioso questioned Tronvold as to the propriety of his proposal that "all money provided to the corporation by the shareholders after the incorporation which can be verified should be treated as debt of the corporation" before voting. He seconded the motion only after learning the contributions were "treated as paid in capital" for which no additional stock was issued. Based on the foregoing, we conclude the district court did not err in finding the board's decision that the shareholders' contributions be treated as debt was within the standard for the business judgment rule.

2. The Harriotts' compensation.

At the June 2006 hearing, Charles claimed he was entitled to $40,000 per year while James sought $20,000 per year for their efforts in operating the ballpark from 1999 through 2005. The district court found "the corporation had

an agreement to pay Charles Harriott the sum of $40,000.00 per year so long as he remained the manager of the ballpark." The court accordingly determined Charles was owed $46,666.74 in unpaid wages from 1998 through 2000 but denied his claims for compensation for 2001 through 2005. The court found James was not entitled to any compensation for his role in managing the facility because he did not have an agreement with the corporation. The Harriotts assert the district court erred in failing to award James any compensation for his efforts in managing the facility and in failing to award Charles compensation for his management of the facility from 2001 through 2005 under implied-in-fact and implied-in-law contract theories. We conclude neither theory supports the Harriotts' claims for compensation.

"A contract implied in fact is to every intent and purpose an agreement between the parties." *City of Pella v. Fowler*, 215 Iowa 90, 97, 244 N.W. 734, 737 (1932). Thus, an implied-in-fact contract "rests upon consent." *Id.* It is clear the Harriotts operated the facility from 2001 through 2005 without the consent of the board or the corporation's majority shareholder, as evidenced by the petitions for injunctions and other legal actions filed by the corporation. The evidence also suggests the brothers operated the facility "over Tronvold's objections" in 1999 and 2000. Furthermore, the record is devoid of evidence suggesting the corporation consented to pay James $20,000 per year for his role in operating the facility. We therefore conclude the Harriotts should not recover under an implied-in-fact contract theory.

The Harriotts' unauthorized operation of the facility also prevents their recovery under an implied-in-law contract theory. In order to recover under such

a theory, the Harriotts must show they conferred a benefit upon the corporation to their own detriment. *Iowa Waste Sys., Inc. v. Buchanan County*, 617 N.W.2d 23, 30 (Iowa Ct. App. 2000). "The underlying policy issue surrounding a recognizable claim of unjust enrichment is, regardless of the legal position of the parties, a situation has arisen making it inequitable or unjust not to order restitution." *Id.* at 31 (noting unjust enrichment is the "modern designation" for contracts implied in law). The Harriotts claim their operation of the facility benefited the corporation because they reduced the mortgage to $180,000. However, Tronvold testified the "Harriotts' operation of the park brought nothing to the table other than the continual losses that they had when operating the park." His testimony established the brothers' actions actually harmed the corporation because they hindered his efforts to sell or lease the real estate. Furthermore, the Harriotts' defiant operation of the facility does not appeal to the "underlying sense of justice" implicit in an unjust enrichment claim. *Id.* We agree with the district court that "[b]oth brothers knew . . . they were operating without authority and both, nevertheless, were willing participants." The district court did not err in rejecting the Harriotts' claims for compensation.

The district court also did not err in ordering the Harriotts to pay the real estate taxes incurred during the years they operated the ballpark without the consent of the board and the majority shareholder. As stated, the brothers knowingly took on the operation of the facility despite the directives of the board and the majority shareholder. They created their own company so that they could continue to run the ballpark after the process to dissolve the corporation commenced. *See* Iowa Code § 490.1405(1) (2001) ("A dissolved corporation . . .

shall not carry on any business except that appropriate to wind up and liquidate its business and affairs."). The district court appropriately concluded, "When the Harriotts chose to operate the ballpark in defiance of the board of directors, they did so on their own and not 'in trust' for Hitters." Thus, we agree with the district court that "any profit . . . generated . . . remain[s] the property of the Harriotts. By the same token, the . . . real estate taxes payable during that time frame are business expenses of the Harriotts and their L.L.C., rather than expenses of the corporation."

3. Attorney Fees.

Finally, we turn to the Harriotts' claim that the district court erred in allowing Tronvold to be reimbursed for his personal attorney fees. In *Holden v. Constr. Machinery Co.*, 202 N.W.2d 348, 367 (Iowa 1972), our supreme court held a majority shareholder was entitled to indemnification for reasonable attorney fees and expenses incurred in defense of the minority shareholder's nonderivative action. *See also* Iowa Code § 490.851(1) (authorizing a corporation to indemnify "an individual who is a party to a proceeding because the individual is a director" under certain circumstances). Tronvold sustained substantial attorney fees in defending himself in the protracted litigation initiated against him by the minority shareholders arising from actions he performed as a director of the corporation. The district court did not err in finding Tronvold was entitled to reimbursement from the corporation for the reasonable attorney fees and expenses he personally incurred in defending the Harriotts' action.

The Harriotts also argue the district court erred in allowing Tronvold to be reimbursed for the attorney fees he paid on behalf of the corporation.[8] The board's decision to retain counsel for the corporation to defend the Harriotts' lawsuits and to attempt to restrain them from continuing their unauthorized operation of the ballpark is protected by the business judgment rule. *See Hanrahan*, 473 N.W.2d at 186. A corporation is "entitled to defend itself" when it is "under attack." *Rowen v. LeMars Mut. Ins. Co.*, 230 N.W.2d 905, 915 (Iowa 1972). Tronvold testified he believed obtaining counsel for the corporation was appropriate because the attorneys "were defending Hitters and taking action consistent with Hitters' board of directors to prevent the Harriotts from continuing the operation of the park as was directly opposed to what the board of directors had indicated." We find no error in the district court's determination that Tronvold's decision to obtain counsel for the corporation to represent its interests in the litigation and carry out the wishes of the board was "in good faith, . . . reasonably prudent, and with the belief that the actions were in the best interests of the corporation." *See, e.g.,* Iowa Code § 490.830(5)(b) (contemplating that a director may rely on legal counsel in discharging his corporate duties).

We have considered the Harriotts' claims regarding alleged billing errors and duplicative entries related to the claims for attorney fees and expenses. Upon review of the record, it appears the initial law firm for the corporation, White & Johnson, P.C., in one instance billed the corporation twice for the same

[8] Although the Harriotts do not cite any authority in support of their contention that the trial court "should not have allowed attorney fees and expenses purportedly incurred by the corporation," we will address their argument. *See Harrington v. Univ. of N. Iowa*, 726 N.W.2d 363, 367 n.4 (Iowa 2007) (stating "failure to cite authority" in support of an issue may be deemed a waiver of that issue); *see also* Iowa R. App. P. 6.14(1)(*c*).

service. The August 2000 bill reflects a charge for "Third-Party Services invoice #981379 for 3 investigator's time and expenses" in the amount of $1393.53. The September 2000 bill contains an identical charge in the same amount. We therefore reduce the amount the district court determined Tronvold was due from the corporation by $1393.53. In addition, the amounts paid to White & Johnson, P.C., and which the trial court found Tronvold was owed from Hitters, include $5000 withdrawn from a Hitters account in December 1998 and paid to White & Johnson, P.C., shortly thereafter. We therefore further reduce the amount due Tronvold by an additional $5000.

We conclude the rest of the Harriotts' claims concerning alleged billing errors and duplicative entries are without merit. Substantial evidence supports the district court's findings as to the expenses and attorney fees incurred by Tronvold and the corporation. *See* Iowa R. App. P. 6.14(6)(*a*) ("Findings of fact in a law action . . . are binding upon the appellate court if supported by substantial evidence."). The remainder of the district court's order determining the shareholders' debt claims is therefore affirmed.

IV. CONCLUSION.

Viewing the evidence in the light most favorable to the jury's verdict, we conclude there was sufficient evidence in the record supporting the jury's finding that Tronvold did not breach the parties' oral agreement. We therefore affirm the district court's denial of the Harriotts' motion for new trial. We also conclude the district court did not err in determining the extent and amount of the shareholders' claims for reimbursement from the corporation with one exception. The amount the district court determined Tronvold was due from the corporation

should be reduced by $1393.53 due to a duplicative charge by the attorneys for the corporation, and $5000 that was in fact paid by the corporation. Tronvold is accordingly due $476,031.47 from the corporation. The remainder of the district court's order determining the shareholders' debt claims is affirmed.

AFFIRMED AS MODIFIED.