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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-2036**

Asset Marketing Services, LLC,
Appellant,

vs.

Cody Hoskins,
Defendant,

Legacy, Inc.,
Respondent.

**Filed August 7, 2017
Affirmed
Connolly, Judge**

Hennepin County District Court
File No. 27-CV-15-10319

Thomas H. Boyd, David A. Davenport, Tucker A. Chambers, Winthrop & Weinstine, P.A.,
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Considered and decided by Smith, Tracy M., Presiding Judge; Peterson, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Following a jury trial on appellant's unjust-enrichment claim arising out of respondent's receipt of appellant's customer information from an employee who worked for respondent after working for appellant, appellant asserts that the district court erred in (1) instructing the jury on the elements of unjust enrichment; and (2) denying its motion for judgment as a matter of law. Because we conclude that the district court did not err in either respect, we affirm.

FACTS

Appellant Asset Marketing Services, LLC sued respondent Legacy, Inc. and respondent's employee Cody Hoskins, who was formerly employed by appellant, for unjust enrichment. Appellant and respondent are both in the business of selling collectable coins, currency, and related items. Appellant is a direct marketer that relies on advertising and data mining to generate customers. Respondent typically finds customers by purchasing "lead lists" from third-party vendors, populating names from the "lead list" in a call list database, and assigning names from that call list database to sales representatives for the purpose of making cold calls. If a sale is made outside of the call list database, the customer information is manually entered into the customer database by respondent's president.

Hoskins worked for appellant and its predecessor, New York Mint, LLC, from November 2009 to July 2014. As a condition of employment, Hoskins executed three confidentiality and nonsolicitation agreements, one each in 2009, 2010, and 2011, prohibiting him from disclosing appellant's confidential information. Specifically,

Hoskins agreed he would not “[s]olicit or attempt to solicit, accept or service” any restricted customers, nor “receive any commission, fee, benefit, or income” from any restricted customers. The jury found these agreements to be enforceable.

In July 2014, appellant fired Hoskins because of attendance issues. In December 2014, Hoskins began working for respondent making cold calls to customers from respondent’s lead lists. However, Hoskins made sales to 14 of appellant’s customers whose contact details and other information Hoskins learned during his previous employment with appellant. Hoskins sold approximately \$110,000 worth of coins to the 14 customers and only \$59,000 worth of coins to individuals contacted through respondent’s lead lists. Prior to trial, appellant and Hoskins entered into a settlement agreement wherein Hoskins admitted wrongdoing and liability for the claims asserted against him by appellant.

At trial, the district court did not use appellant’s proposed jury instructions for unjust enrichment, but instead instructed the jury that:

In order to establish its claim for unjust enrichment, the plaintiff must show that the defendant knowingly received something of value to which it was not entitled and that the circumstances are such that it would be unjust for that company to retain the benefit without compensation to the plaintiff.

An action for unjust enrichment does not lie simply because one party benefits from the efforts of others. It must be shown that the defendant was unjustly enriched. The term “unjustly” means illegally or unlawfully or that it is morally wrong for one party to enrich itself at the expense of another.

The verdict form consisted of three questions: “(1) Does [appellant] have an enforceable confidentiality and non-solicitation agreement with Cody Hoskins?”, “(2) Has [respondent] been unjustly enriched?”, and “(3) What amount of money should

[respondent] be required to pay to [appellant]?” The jury found that an enforceable confidentiality and nonsolicitation agreement existed between appellant and Hoskins but found no unjust enrichment and did not award appellant any damages.

Following the verdict, appellant moved for judgment as a matter of law, a new trial, and a permanent injunction. All three motions were denied. The district court found that “[t]o support its contention that [respondent] must have known that Hoskins was breaching his obligations to his former employer, [appellant] offered nothing more than the belief of its owner . . . that coin companies always know exactly where all of their orders and customers come from.” The district court concluded that this was not sufficient to grant appellant’s motions.

D E C I S I O N

I. Did the district court’s instruction on unjust enrichment materially misstate Minnesota law and mislead the jury?

“The district court has broad discretion in determining jury instructions and we will not reverse in the absence of abuse of discretion.” *Hilligoss v. Cargill, Inc.*, 649 N.W.2d 142, 147 (Minn. 2002). “Jury instructions must convey a clear and correct understanding of the law of the case as it relates to all the parties involved.” *Domagala v. Rolland*, 805 N.W.2d 14, 29 (Minn. 2011) (quotation omitted). “A jury instruction is erroneous if, when read as a whole, the instruction materially misstates the law, or is apt to confuse and mislead the jury.” *Id.* (citation and quotation omitted). “Errors [in a jury instruction] are likely to be considered fundamental or controlling if they destroy the substantial correctness of the charge as a whole, cause a miscarriage of justice, or result in substantial prejudice.”

Lindstrom v. Yellow Taxi Co. of Minneapolis, 298 Minn. 224, 229, 214 N.W.2d 672, 676 (1974) (quotation and citations omitted).

“In order to establish a claim for unjust enrichment, the claimant must show that another party knowingly received something of value to which he was not entitled, and that the circumstances are such that it would be unjust for that person to retain the benefit.” *Schumacher v. Schumacher*, 627 N.W.2d 725, 729 (Minn. App. 2001). Appellant argues that the district court erred in failing to “convey a clear and correct understanding of the law,” and contends that the law on unjust enrichment in Minnesota is inconsistent and should be clarified. Specifically, appellant argues that, if a knowledge requirement exists for unjust enrichment, it applies only to the element that respondent received a benefit and that the jury was misled because the district court failed to use commas or “any other separation of elements” to indicate the extent of the knowledge requirement. We disagree.

The jury instruction given on unjust enrichment used language from this court’s decision in *Schumacher*, which stated the law of unjust enrichment in Minnesota. *See id.* at 729. We do not agree that a district court that gives a jury instruction that states the requirements for unjust enrichment verbatim from a decision from this court abused its discretion. Moreover, it is not our role to change the law. *See Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987) (declining to expand a breach-of-warranty claim, explaining that “we believe the task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court”), *review denied* (Minn. Dec. 18, 1987). We conclude that appellant’s theory would extend existing law governing unjust enrichment and is outside of this court’s purview.

II. Did the district court err in refusing to grant judgment as a matter of law or a new trial?

Appellant argues that the district court erred in denying appellant's motions for judgment as a matter of law (JMOL) and for a new trial. JMOL is appropriate in the unequivocal cases where "(1) in the light of the evidence as a whole, it would clearly be the duty of the [district] court to set aside a contrary verdict as being manifestly against the entire evidence, or where (2) it would be contrary to the law applicable to the case." *Jerry's Enters., Inc. v. Larkin, Hoffman, Daly, & Lindgren, Ltd.*, 711 N.W.2d 811, 816 (Minn. 2006) (quotation omitted). "Viewing the evidence in the light most favorable to the nonmoving party, this court makes an independent determination of whether there is sufficient evidence to present an issue of fact for the jury." *Id.* "We review a district court's new trial decision under an abuse of discretion standard." *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 892 (Minn. 2010).

An appellate court "will not set aside a jury verdict on an appeal from a district court's denial of a motion for a new trial unless it is manifestly and palpably contrary to the evidence viewed as a whole and in the light most favorable to the verdict." *Navarre v. S. Wash. Cty. Sch.*, 652 N.W.2d 9, 21 (Minn. 2002) (quotations omitted).

We conclude that appellant is not entitled to JMOL or a new trial because the jury's finding—that it would not be unjust for respondent to retain the benefit it received—is not manifestly and palpably contrary to the evidence when viewed in the light most favorable to the verdict. The wrongdoer in this case was Hoskins and appellant and Hoskins entered into a settlement agreement.

Moreover, it is not unjust that respondent retain the benefit of the sales because the gain was not a result of respondent's malfeasance. Prior to hiring Hoskins, respondent asked if there was any reason that Hoskins could not start right away, assuming that this included restrictions that would prevent Hoskins from working for respondent. Hoskins responded that there were not. The record reflects that respondent did not become aware of the confidentiality and nonsolicitation agreements until preparing for trial. Additionally, prior to the lawsuit, Hoskins himself did not know what a confidentiality and nonsolicitation agreement was, or that he was subject to one. Under these circumstances, the jury's verdict is not contrary to the evidence.¹

Affirmed.

¹ Appellant also argues that, because respondent now knows that it is not entitled to continue profiting from the wrongfully contacted 14 customers, it is entitled to a permanent injunction. However, no evidence in the record indicates that respondent has made any sales to the 14 customers since the temporary injunction was issued near the time appellant filed its complaint. If there was any further unlawful infringement on appellant's business contacts moving forward, appellant would have a new cause of action.