STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0333

Sherwood Forest, Inc.,
Respondent,

vs.

Arctic Cat, Inc., et al.,
Appellants.

Filed September 11, 2017
Affirmed
Toussaint, Judge*

Hennepin County District Court
File No. 27-CV-15-3047

Chad McKenney, Bradley D. Hendrikson, Donohue McKenney, Ltd., Maple Grove, Minnesota (for respondent)

Erik T. Salveson, John J. Wackman, David J. Warden, Nilan Johnson Lewis PA, Minneapolis, Minnesota (for appellants)

Considered and decided by Smith, Tracy M., Presiding Judge; Cleary, Chief Judge; and Toussaint, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

TOUSSAINT, Judge

In this appeal from a judgment for respondent on its breach-of-contract claims, appellants argue that they are entitled to judgment as a matter of law (JMOL) or a new trial because (1) the evidence does not support the amount of damages the jury awarded to respondent, (2) the damages evidence was speculative and lacked foundation, (3) a provision governing respondent's fee was ambiguous, and (4) the evidence does not support the jury's finding that respondent performed all conditions precedent to appellants' contractual duty to pay respondent. Because the evidence supports the jury's findings and because the district court did not err in its evidentiary rulings, we affirm.

D E C I S I O N

If a party moves for JMOL after a jury returns a verdict, the district court may "(1) allow the judgment to stand, (2) order a new trial, or (3) direct entry of judgment as a matter of law." Minn. R. Civ. P. 50.02. "The jury's verdict will not be set aside if it can be sustained on any reasonable theory of the evidence." *Longbehn v. Schoenrock*, 727 N.W.2d 153, 159 (Minn. App. 2007) (quotation omitted). "Courts must view the evidence in the light most favorable to the nonmoving party and determine whether the verdict is manifestly against the entire evidence or whether despite the jury's findings of fact the moving party is entitled to judgment as a matter of law." *Id.* (quotation omitted). "JMOL is appropriate when a jury verdict has no reasonable support in fact or is contrary to law." *Id.* An appellate court reviews a district court's denial of JMOL de novo. *Id.*

Under Minn. R. Civ. P. 59.01(g), a district court may grant a motion for a new trial if "[t]he verdict . . . is not justified by the evidence, or is contrary to law." "On appeal from a denial of a motion for a new trial, an appellate court should not set aside a jury verdict unless it is manifestly and palpably contrary to the evidence viewed as a whole and in the light most favorable to the verdict." *Raze v. Mueller*, 587 N.W.2d 645, 648 (Minn. 1999) (quotations omitted). Because the district court is in a better position to determine whether the verdict is justified by the evidence, this court will not reverse its decision to deny a motion for a new trial absent a clear abuse of discretion. *See Baker v. Amtrak Nat'l R.R. Passenger Corp.*, 588 N.W.2d 749, 753 (Minn. App. 1999).

I.

A damages award for a breach-of-contract claim should put the injured party in the position in which it would be had the contract been performed. *Lesmeister v. Dilly*, 330 N.W.2d 95, 102 (Minn. 1983). Consequential damages are those that flow naturally from the breach of a contract or are reasonably contemplated by the parties as a probable result of the breach. *Imdieke v. Blenda–Life, Inc.*, 363 N.W.2d 121, 125 (Minn. App. 1985), *review denied* (Minn. Apr. 26, 1985). The harmed party has the burden to demonstrate consequential damages "with a reasonable degree of certainty and exactness." *County of Blue Earth v. Wingen*, 684 N.W.2d 919, 924 (Minn. App. 2004) (quotation omitted).

The fact-finder "need not adopt the exact figures of any witness in determining damages, and as long as its finding is within the mathematical limitations established by the various witnesses and is otherwise reasonably supported by the evidence as a whole, such finding must be sustained." *Fudally v. Ching Johnson Builders, Inc.*, 360 N.W.2d

436, 439 (Minn. App. 1985) (quotation omitted); *see also Hydra-Mac, Inc. v. Onan Corp.*, 450 N.W.2d 913, 921 (Minn. 1990) (affirming damages award when plaintiff presented sufficient evidence to support a reasonable inference that its claim for lost profits resulted directly from defendant's breach of warranties and product-defect problems and defendant presented no evidence to rebut that inference).

Appellants Arctic Cat Inc. and Arctic Cat Sales Inc. (collectively Arctic Cat) used FedEx as their major small parcel shipping carrier, but sought to reduce their shipping costs. In pursuit of this goal, Arctic Cat engaged in lengthy negotiations with UPS, resulting in a contract signed in September 2013, which included defined shipping rates and a quarterly rebate of $62,500 if certain volume requirements were met.

Respondent Sherwood Forest Inc. is a consulting firm that helps companies negotiate pricing and terms in small-package shipping contracts. In May 2013, Sherwood Forest entered into a contract with Arctic Cat to analyze shipping costs and help Arctic Cat negotiate lower rates with shippers. Sherwood Forest would receive a percentage of the savings achieved through its efforts. The contract specified that Arctic Cat's then-current agreements with FedEx would serve as a baseline for determining cost reductions. Arctic Cat's agreement with UPS was not final until several months after its agreement with Sherwood Forest.

Arctic Cat refused to pay Sherwood Forest a percentage of the savings achieved under the UPS contract, and Sherwood Forest sued for breach of contract. A jury reached a verdict in favor of Sherwood Forest and awarded damages of $249,888.04 out of its claim for $292,827.50 in damages.

Arctic Cat argues that the evidence was insufficient to prove damages because (1) the "damages calculation [was] based almost exclusively on a percentage of the quarterly rebate without any evidence of net savings"; and (2) Sherwood Forest was allowed to claim a fee for the rebate, but "the undisputed evidence conclusively proved that Sherwood Forest did not achieve that rebate."

In support of its damages claim, Sherwood Forest provided the testimony of its employee, Douglas Allen, a small-package contract optimization specialist. He testified that he used a computer program to compare the baseline FedEx contract with the UPS final incentive program agreement (IPA) to determine the savings. Sherwood Forest's fee was calculated based on the total savings. Allen explained that to determine the total savings, Sherwood Forest "take[s] the baseline FedEx agreement, the discounts and incentives, the terms and the conditions, and we measure against the UPS contract discounts, incentives, terms and conditions, and it will show by a line item a savings per package." The $62,500 quarterly rebate was included as a line-item savings.

Sherwood Forest argues that "Arctic Cat receiving a check for the $62,500 is its own 'financial event,' and since there is not comparable rebate in the Baseline FedEx Agreement, the whole $62,500 qualifies as additional savings subject to the 33% fee under the PSA [professional services agreement]." Arctic Cat counters that there were not net savings because any savings resulting from the rebate were largely eliminated by cost increases in the IPA that took effect in January 2014.

In the order denying Arctic Cat's posttrial motion, the district court stated:

> Mr. Allen explained that the quarterly rebate of $62,500 is a line-item addition. That is, because there is no quarterly rebate in the Baseline FedEx Agreement, there is nothing to offset the amount when running a comparison of the Final UPS Agreement and the Baseline FedEx Agreement. According to Mr. Allen, because the quarterly rate is its own line-item addition, it is not reduced for billing purposes by increased costs for other services (e.g. annual rate increases, fuel surcharges, etc.) That is, the fee for the quarterly rate is not affected by potential increases to Arctic Cat's net costs – it is a separate line item, that is compared to a similar provision, if any, the Baseline FedEx Agreement. This understanding is supported by the language in the PSA's Fee Provision that specifies that savings will be calculated "[o]n a per service or minute or financial event basis[.]" Arctic Cat receiving a check for the $62,500 is its own "financial event," and since there is no comparable rebate in the Baseline FedEx Agreement, the whole $62,500 qualifies as "additional savings" subject to the 33% fee under the PSA.

The evidence presented by Sherwood Forest was sufficient to prove its damages to a reasonable degree of certainty, the calculation methods used were explained in testimony and consistent with the PSA's language, and the jury's damages award was over $40,000 less than Sherwood Forest's claimed damages. The district court did not err in denying Arctic Cat's motion for JMOL or a new trial based on insufficient evidence to prove damages.

II.

The district court has broad discretion to admit expert testimony, and rulings on materiality and foundation will be reversed only if the district court clearly abused its discretion. *State v. Ritt*, 599 N.W.2d 802, 810 (Minn. 1999). "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to

determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Minn. R. Evid. 7.02.

Arctic Cat argues that the district court erred in allowing Allen to testify on Arctic Cat's actual savings under the UPS IPA because Allen did not have firsthand knowledge of those savings. The actual savings calculation for the first three months was done by an independent analyst. But Allen's work experience included 30 years of employment with UPS, during the last ten of which he was a national account manager managing their largest package shipper. After leaving UPS in 2004, he worked as a consultant in contract optimization for Sherwood Forest. The district court determined:

> Mr. Allen testified that he produced reports that calculate Arctic Cat's savings and fees represented in Exhibit 138. Mr. Allen explained that these reports are generated by uploading agreements into [a] software program and comparing the agreements against one another and against Arctic Cat's billing detail. He explained that the terms, conditions, and incentives for the Baseline FedEx Agreement had already been uploaded into [the] software program when he did his initial analysis comparing the baseline FedEx Agreement to the February 2013 UPS Proposal. In order to calculate Arctic Cat's savings and Sherwood Forest's damages, Mr. Allen uploaded the Final UPS Agreement into the software program and compared that agreement against the Baseline FedEx Agreement.

The district court did not err in determining that Allen's testimony was supported by adequate foundation.

Arctic Cat also objects to Sherwood Forest's failure to disclose the analyst during discovery and to produce reports and other documentation. *See* Minn. R. Evid. 1006

comm. cmt. (stating that the original, underlying documents "must be made available for inspection or copying"). To obtain a new trial based on an erroneous evidentiary ruling, a party must show that the error caused prejudice. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997). Because Arctic Cat has established no prejudice, any error in lack of disclosure is not a basis for a new trial.

III.

"The primary goal of contract interpretation is to ascertain and enforce the intent of the parties." *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 364 (Minn. 2009); *see also Travertine Corp. v. Lexington–Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004). The parties' intent is determined from the contract's plain language if the agreement is unambiguous. *Id.* A contract is ambiguous "if, judged by its language alone and without resort to parol evidence, it is reasonably susceptible of more than one meaning." *Metro Office Parks Co. v. Control Data Corp.*, 295 Minn. 348, 351, 205 N.W.2d 121, 123 (1973); *see also Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010). We apply a de novo standard of review to the question whether a contract is ambiguous. *Carlson v. Allstate Ins. Co.*, 749 N.W.2d 41, 45 (Minn. 2008). "The interpretation of a contract is a question of law if no ambiguity exists, but if ambiguous, it is a question of fact and extrinsic evidence may be considered." *City of Virginia v. Northland Office Props. Ltd.*, 465 N.W.2d 424, 427 (Minn. App. 1991), *review denied* (Minn. Apr. 18, 1991).

Arctic Cat argues that the PSA's fee provision only applies to savings that Sherwood Forest's work achieved for Arctic Cat. The fee provision states:

> For providing the services set forth above, [Sherwood Forest] shall be paid a fee equal to THIRTY THREE percent (33%) of the additional savings realized by [Arctic Cat] following the involvement of [Sherwood Forest]. Additional savings shall be calculated as follows:
>
> For an initial term of THIRTY SIX (36) months, commencing the first full month that cost reductions are in place, and continuing for THIRTY FIVE (35) consecutive months thereafter, Actual Cost Reductions (ACR) realized by [Arctic Cat] shall be compared to baseline costs.
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> . . . .
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> [Arctic Cat's] current technology or services cost and carrier agreements in force as of the date of this agreement shall be considered as baseline for purposes of computing the ACR. On a per service or minute or financial event as is, [Sherwood Forest] will measure the ACR realized by [Arctic Cat].
>
> For Example: After [Sherwood Forest] has achieved cost reductions for [Arctic Cat], a technology or service may cost $9.00. If, prior to the involvement of [Sherwood Forest], the cost for this same service would have been $10.00, the ACR on this service is $1.00, and the [Sherwood Forest] fee is $.33.

Based on the dictionary definition of "involvement," the district court concluded that the fee provision did not require a causal connection between Sherwood Forest's work and savings realized by Arctic Cat for Sherwood Forest to be entitled to a fee. But based on the definition of "achieve," the court determined that the example in the fee provision could be interpreted to mean that Sherwood Forest is only entitled to a fee for cost reductions that resulted from its work. The district court then determined:

> At trial, Mr. Hanson testified that shipping carriers like UPS and FedEx will often refuse to negotiate directly with third-party consultants like Sherwood Forest. Because of this, Sherwood Forest works "behind the scenes" by providing negotiation advice and strategies to the client who then uses that information to directly negotiate better contract terms with its shipping carrier. Mr. Hanson explained that he tells clients

> Sherwood Forest will be entitled to a fee for any savings realized by the client after Sherwood Forest is hired because Sherwood Forest is not privy to what information is actually used by the client during negotiations with a shipping carrier. This avoids any disagreement regarding who contributed what to achieve savings. However, exceptions can be negotiated into the PSA such that Sherwood Forest will not be entitled to a fee for certain savings achieved after the PSA has been signed. There are no exceptions written into the PSA executed by Arctic Cat and Sherwood Forest.

The district court did not err in concluding that the PSA was ambiguous and admitting extrinsic evidence to resolve the ambiguity.

IV.

Arctic Cat argues that the evidence proved that Sherwood Forest did not perform any work that achieved savings for Arctic Cat. Allen testified that the first step in his analysis was to compare the cost of the UPS proposal to the FedEx contract based on the number of shipping transactions and that "that was done approximately mid-June, June 18th." Allen testified that on June 18, 2013, he had a conference call with Dave Paulson and Vicky Sabo of Arctic Cat and gave them his recommendations for improving the UPS proposal. John Martens of UPS proposed eliminating the signing bonus and increasing the quarterly rebate to $62,500 in a June 12, 2013 e-mail. On July 21, 2013, Sherwood Forest issued a three-page document with specific recommendations for changes to the UPS proposal, and Allen reviewed it with Paulson and Sabo. On July 22, 2013, Tracy Crocker, vice-president of Arctic Cat, sent Martens an e-mail requesting that the discounts be changed from dollars/cents to percentages, which was what Allen had recommended. These recommendations were incorporated into the IPA. Also, on September 19, 2013,

before signing the final IPA, Crocker reviewed Allen's savings analysis. The evidence supports the jury's findings that Sherwood Forest performed all conditions precedent to Arctic Cat's contractual duty to pay Sherwood Forest. *See Nat'l City Bank of Minneapolis v. St. Paul Fire & Marine Ins. Co.*, 447 N.W.2d 171, 176 (Minn. 1989) (stating that a condition precedent is a fact or event after a contract is formed, that "must exist or occur before a duty of immediate performance arises under the contract").

Affirmed.