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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1992**

Waymouth Farms, Inc.,
Appellant,

Gerard S. Knight,
Plaintiff,

vs.

Shuqin Liu a/k/a Sam Liu a/k/a Peter Liu,
Respondent.

**Filed September 9, 2019
Affirmed
Reyes, Judge**

Hennepin County District Court
File No. 27-CV-16-7213

Ryan R. Dreyer, Jeffery R. Underhill, Morrison Sund, P.L.L.C., Minnetonka, Minnesota
(for appellant)

Shuqin Liu, Apple Valley, Minnesota (pro se respondent)

Considered and decided by Reyes, Presiding Judge; Cleary, Chief Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

REYES, Judge

In this appeal from judgment following a jury trial, appellant/cross-respondent asserts that the district court erred by (1) granting judgment as a matter of law (JMOL) on

its abuse-of-process claim and (2) granting a new trial on fraud damages, rather than applying remittitur. Respondent/cross-appellant argues that the evidence does not support the jury's verdict in the new trial on fraud damages. We affirm.

FACTS

Appellant/cross-respondent Waymouth Farms, Inc. (Waymouth) is a former employer of respondent/cross-appellant Shuqin Liu (Liu). In 2014, the district court granted Waymouth's motions to dismiss Liu's racial-discrimination and retaliation claims against Waymouth, and for rule 11 sanctions against Liu.

In 2016, Waymouth sued Liu alleging, inter alia, fraud and abuse of process. The district court denied Liu's motion to dismiss Waymouth's claims and for sanctions against Waymouth. The district court granted summary judgment on Liu's liability for fraud, and denied summary judgment on Waymouth's damages for fraud and its abuse-of-process claim. After a trial, a jury determined the amount of damages that Waymouth suffered as a direct result of Liu's fraud, and found that Liu's suit against Waymouth constituted an abuse of process.

Liu filed motions for JMOL and a new trial. The district court granted Liu's motion for JMOL on the abuse-of-process claim, determining that it had provided too broad a definition of "process" in its instructions to the jury, and that Waymouth provided insufficient evidence to support liability. The district court also granted a new trial on fraud damages, based on its error in allowing the jury to consider, as part of Waymouth's damages, attorney fees and expenses that Waymouth incurred to defend Liu's initial discrimination action.

In 2018, the district court conducted a new trial on fraud damages. The jury found that Waymouth suffered damages as a direct result of its reliance on the false representation and omission in Liu’s résumé, and awarded Waymouth \$29,076.88. Liu filed motions for JMOL and for a new trial, which the district court denied.

Waymouth appealed the district court’s grant of Liu’s motion for JMOL on its abuse-of-process claim and its grant of a new trial on fraud damages. Liu appealed the district court’s denial of his posttrial motions on the fraud-damages verdict.

D E C I S I O N

I. The district court did not err in granting Liu’s motion for JMOL on Waymouth’s abuse-of-process claim.

Waymouth argues that the district court erred in granting Liu’s motion for JMOL on its abuse-of-process claim because the evidence presented to the jury supports the verdict, and the district court abused its discretion in determining, post-verdict, that it defined “process” too broadly in its jury instructions. We disagree.

We review de novo a district court’s decision on a motion for JMOL. *Pouliot v. Fitzsimmons*, 582 N.W.2d 221, 224 (Minn. 1998). Viewing the evidence in the light most favorable to Waymouth, as the nonmoving party, *Christie v. Estate of Christie*, 911 N.W.2d 833, 838 n.5 (Minn. 2018), we determine whether “there is [a] legally sufficient evidentiary basis for a reasonable jury to find” that Waymouth met its burden in proving its abuse-of-process claim. Minn. R. Civ. P. 50.01(a).

A prima facie abuse-of-process claim requires evidence of (1) the existence of an ulterior purpose in using the process and (2) an act of using the process to accomplish a

result not within the scope of the proceeding in which it was used. *Kellar v. VonHoltum*, 568 N.W.2d 186, 192 (Minn. App. 1997), *review denied* (Minn. Oct. 31, 1997).

Waymouth's claim fails on the second element. Waymouth contends that the evidence shows that Liu did not institute the legal process to determine whether Waymouth "violated Liu's rights and was liable," but rather to force Waymouth to incur attorney fees "until it capitulated and paid Liu." Waymouth argues that, even under the district court's narrow definition of "process" as the papers issued by a court to bring a party or property within its jurisdiction, the jury received evidence that Liu misused "the summons and other process to extort money, not to right a wrong."

The limited Minnesota caselaw on this seldom-invoked cause of action demonstrates a different kind of claim than that alleged by Waymouth. In *Hoppe v. Klapperich*, the supreme court determined that the defendants abused the process by obtaining an arrest warrant against the plaintiff solely to threaten her with imprisonment if she did not surrender her personal property. 28 N.W.2d 780, 790 (Minn. 1947). In *Wood v. Bangs*, the supreme court held that a creditor abused the process by transferring a debtor's property to creditor's president in order to circumvent the rule preventing creditors from garnishing debtors' property when it is in the creditor's possession. 271 N.W.2d 447, 448 (Minn. 1937).

Here, Waymouth does not cite to any authority to support its argument that requiring a party to hire counsel to defend against claims with the ulterior motive of obtaining money constitutes misusing the "process." Stated differently, even if Liu's motivation for

initiating the lawsuit was to coerce Waymouth into agreeing on a smaller settlement amount, this is not outside the scope of lawsuits generally.

Because Waymouth cannot establish a prima facie case for abuse of process, we need not consider its arguments on the scope of the term “process.”

II. The district court did not abuse its discretion in granting a new trial for damages on Waymouth’s fraud claim.

Waymouth argues that the district court abused its discretion in ordering a new trial for damages on Waymouth’s fraud claim when it could have ordered remittitur in the amount of the “allegedly improper attorney fee[s].” We disagree.

District courts “possess[] the *broadest possible discretion*” in determining whether to set aside a verdict as being excessive and whether the cure is remittitur. *Myers v. Hearth Techs., Inc.*, 621 N.W.2d 787, 792 (Minn. App. 2001) (emphasis added) (citation omitted), *review denied* (Minn. Mar. 13, 2001). On appeal from a district court’s decision on a motion for a new trial, we will set aside a jury’s verdict only if “it is manifestly and palpably contrary to the evidence viewed as a whole and in the light most favorable to the verdict.” *Lake Superior Ctr. Auth. v. Hammel, Green & Abrahamson, Inc.*, 715 N.W.2d. 458, 476-77 (Minn. 2006) (citation omitted).

During the first trial, Waymouth claimed fraud damages totaling \$169,177.54. The district court determined that this amount included \$69,279.90 in attorney fees for defending Liu’s initial racial-discrimination and retaliation lawsuit, and \$4,836.75 for an appeal in that lawsuit. “The general rule in Minnesota is that attorney fees are not recoverable in litigation unless there is a specific contract permitting or a statute

authorizing such recovery.” *Dunn v. Nat’l Beverage Corp.*, 745 N.W.2d 549, 554 (Minn. 2008) (quotation and citation omitted). Waymouth contends that, because it provided the district court with itemized attorney-fee amounts, the district court should have ordered remittitur in the amount of \$74,116.65, the sum of both attorney-fee amounts, instead of ordering a new trial on fraud damages.

Waymouth cites no authority for its argument other than caselaw providing that district courts have great discretion in determining whether remittitur is appropriate. In line with Waymouth’s cited caselaw, we conclude that the district court did not abuse its discretion in ordering a new trial instead of remittitur.

III. The evidence supports the jury’s verdict that Liu’s false representation and omission directly caused Waymouth’s damages.

On cross-appeal, Liu argues Waymouth presented insufficient evidence to prove that his false representation and omission in his résumé directly caused Waymouth’s damages. We disagree.

“We will overturn a jury verdict only if it is manifestly contrary to the evidence.” *Cox. Crown CoCo, Inc.*, 544 N.W.2d 490, 497 (Minn. App. 1996) (quoting *Hudson v. Snyder Body, Inc.*, 326 N.W.2d 149, 155 (Minn. 1982)). “On appeal, the evidence must be considered in the light most favorable to the prevailing party and the verdict must be sustained if it is possible to do so on any reasonable theory of evidence.” *Carpenter v. Mattison*, 219 N.W.2d 625, 628-29 (Minn. 1974).

Here, the jury heard Liu testify that a person does not need “to be 100 percent truthful” on a résumé. He testified that, even though he had been terminated by prior

employers, he did not disclose the terminations because he believed that they were illegal. He conceded that he made a false representation in his résumé, that he omitted from his résumé the prior employer he sued so as to not “destroy [his] chance” of getting hired at Waymouth, and that he checked the “no” box on Waymouth’s job application form when it asked whether he had been terminated by a past employer. The record shows that Waymouth testified about its policy to “not hire anybody who has been terminated before.” The jury also heard testimony from Liu confirming the amount of his salary while working for Waymouth. Viewing the evidence submitted at trial in the light most favorable to Waymouth, the jury had more than sufficient evidence to find that, as a direct result of Liu’s false representation and omission in his résumé, Waymouth suffered damages in the amount of Liu’s salary.

Affirmed.