STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0102

Bay Side Recycling Company LLC, et al.,
Appellants,

vs.

SKB Environmental Inc.,
Respondent,
Gem-Ash Processing LLC, et al.,
Respondents.

Filed December 23, 2019
Affirmed
Reyes, Judge

Hennepin County District Court
File No. 27-CV-15-8797

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Considered and decided by Florey, Presiding Judge; Reyes, Judge; and Smith, Tracy M., Judge.

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

REYES, Judge

Appellants challenge the denial of their motion for a new trial on breach-of-fiduciary-duty and related civil-conspiracy and aiding-and-abetting claims following a jury trial. Appellants assert that (1) the district court abused its discretion by submitting to the jury the question of whether respondents owed a fiduciary duty to appellant AMG Alliance and (2) even if the district court properly submitted the question to the jury, it improperly instructed the jury on that question. We affirm.

FACTS

Appellants AMG Alliance LLC (AMG Alliance) and Bay Side Recycling Company LLC (Bay Side) are companies engaged in scrap-metal recycling and processing. Bay Side is based in Duluth, and AMG Alliance is a Delaware Limited Liability Company (LLC) based in Saint Paul. Bay Side is owned by parent company Alliance Steel Services Company (Alliance Steel), which is not a party to this litigation. Alliance Steel and AMG Resources Corporation (AMG Resources), also not a party to this litigation, formed and own AMG Alliance under an LLC agreement. AMG Alliance asserts that it is a joint venture of Alliance Steel and AMG Resources. AMG Alliance contracted with respondent SKB Environmental Inc. (SKB) to purchase scrap metal that SKB received from waste processed at the Hennepin Energy Recovery Center (HERC) in Minneapolis. Bay Side also contracted with SKB for SKB to take the by-products of Bay Side's scrap-metal-extraction process to SKB's landfill. Respondents Matthew and C.J. Goodwald (the

Goodwalds) are brothers who were managers at Bay Side and received compensation from both Bay Side and Alliance Steel.

During an April 2013 meeting with SKB regarding its business with Bay Side, the Goodwalds learned from SKB of an opportunity to extract metals from the HERC incinerator ash that SKB hauled to its landfill. SKB had not been able to separate metal from this ash. C.J. Goodwald and his father, respondent Jerry Goodwald, formed respondent Gem-Ash Processing LLC, which began contracting with SKB to extract metals from the incinerator ash.[1] The Goodwalds subsequently resigned from Bay Side. Later that year, SKB did not renew its contract with AMG Alliance for the scrap metal from the HERC. Instead, SKB sent AMG Alliance and other companies a request for bids on the new contract. AMG Alliance submitted the minimum bid, and SKB awarded the contract to a company unaffiliated with the parties that submitted the highest bid.

Appellants brought twelve claims against respondents, one of which appellants voluntarily dismissed before trial. Relevant here, appellants alleged that the Goodwalds acted on a corporate opportunity presented to them by SKB and which the Goodwalds should have brought to the attention of appellants. Appellants also alleged that respondents' work with SKB caused SKB not to renew its contract with AMG Alliance for the purchase of the HERC scrap metal. Appellants claimed that the Goodwalds breached the fiduciary duties they owed to appellants (count IV) and that the other respondents conspired in (count IX) and aided and abetted (count X) this breach.

[1] Appellants' claims against Gem-Ash are not at issue in this appeal.

Before trial, appellants and respondents filed cross motions for summary judgment, which the district court largely denied. It granted Matthew Goodwald's motion on the usurpation of corporate opportunity claim against him, dismissing the claim after determining that no reasonable jury could find that appellants entrusted him with active management. The case proceeded to a 16-day jury trial. Appellants requested a jury instruction stating that the Goodwalds owed fiduciary duties not only to their employers but also to their employers' joint ventures, including AMG Alliance. The district court denied the proposed instruction based on its determinations that AMG Alliance is not a joint venture of Alliance Steel and AMG Resources and that fiduciary duties do not flow as a matter of law from employees of a company to the company's joint ventures. It prohibited appellants from arguing these joint-venture theories in their closing arguments. Appellants were allowed to argue instead that the Goodwalds directly owed fiduciary duties to AMG Alliance. With appellants' agreement, the district court submitted a special-verdict form to the jury that included the question of whether the Goodwalds owed fiduciary duties to AMG Alliance. The jury found that they did not. Appellants moved for judgment as a matter of law or a new trial. The district court denied the motion and entered judgment in favor of respondents. This appeal of the denial of appellants' motion for a new trial on counts IV, IX, and X follows.

D E C I S I O N

As an initial matter, Bay Side does not raise any issues on appeal. SKB therefore asks this court to affirm the judgment against Bay Side. Appellants' brief makes no arguments on behalf of Bay Side, and at oral arguments, counsel for appellants conceded

that Bay Side does not raise any issues on appeal. We therefore conclude that Bay Side has waived all arguments and turn to the issues AMG Alliance raises.

We review a district court's decision to deny a motion for a new trial for a clear abuse of discretion. *See Halla Nursery, Inc. v. Baumann-Furrie & Co.*, 454 N.W.2d 905, 910 (Minn. 1990).

I. The district court did not abuse its discretion by submitting to the jury the question of whether the Goodwalds owed fiduciary duties to AMG Alliance.

AMG Alliance argues that the district court improperly submitted the question of fiduciary duty in count IV to the jury because the existence of a fiduciary duty is a question of law for the district court, not the jury, to determine. We disagree.

Respondents claim AMG Alliance failed to object to the district court submitting the question to the jurors and that it therefore cannot raise the issue now. When a party fails to object on the record, the party generally forfeits any objection, and it is precluded from raising the issue on appeal. *Estate of Hartz v. Nelson*, 437 N.W.2d 749, 752 (Minn. App. 1989), *review denied* (Minn. July 12, 1989); *see also* Minn. R. Civ. P. 51.03, .04; *State v. Beaulieu*, 859 N.W.2d 275, 278 (Minn. 2015) (clarifying that "forfeiture is the failure to make the timely assertion of a right" (quotation omitted)). But even if a party forfeits an objection, this court may review special-verdict questions for errors in fundamental law or controlling principle. *Estate of Hartz*, 437 N.W.2d at 752. We address the issue of forfeiture first.

A. AMG Alliance forfeited its right to challenge the submission of the fiduciary-duty question to the jury.

AMG Alliance asserts that it did not forfeit its right to challenge the submission of the fiduciary-duty question to the jury because it repeatedly argued to the district court that the Goodwalds owed it a fiduciary duty, including at summary judgment, the charging conference, and in posttrial motions. AMG Alliance's argument is misguided. While AMG Alliance argued that the Goodwalds owed it a fiduciary duty, it did not object to the jury deciding the issue rather than the district court.

At the first charging conference, AMG Alliance argued extensively that employees of Alliance Steel who owed it a fiduciary duty also owed that duty to Alliance Steel's joint ventures, such as itself. AMG Alliance requested a jury instruction that explained that the Goodwalds "*owed* fiduciary duties to all of their employers' joint ventures." (Emphasis added.) But, it agreed when the district court stated that it could not use AMG Alliance's suggested language:

> DISTRICT COURT: Sure. Okay, so I just can't tell the jury that they owe that duty. *The jury* would have to find that they owe it.
>
> COUNSEL: Changing this to "*can owe*" would be fine.
>
> DISTRICT COURT: But I would have to ask *the jury* if they owe a fiduciary duty, right?
>
> COUNSEL: I'm sorry, I don't understand.
>
> DISTRICT COURT: . . . [I]f you're going to pursue this theory [of fiduciary duty to AMG Alliance], then I think you have to explain it to the jury and then ask them if they find it.

> COUNSEL: And I guess I'm unclear on what's not explained in the proposed. *I understand you say I can't just tell them they owe it*, and so I get that. *And revising it to say "you can owe" is fine with me*. But I'm afraid I don't understand.
>
> DISTRICT COURT: Okay.

(Emphases added.) All of AMG Alliance's arguments and objections on this issue related to the content of the jury instructions, not to whether to submit the question to the jury for the jury to decide. Upon the first review of the special-verdict form, AMG Alliance raised no objections to the jury being asked to determine if the Goodwalds owed it a fiduciary duty, nor did it object upon the final review of the form. Nowhere in the record did AMG Alliance object to this question, nor did it ask the court to decide the issue, rather than the jury, as it now argues on appeal. Therefore, because AMG Alliance did not object at any point to the district court sending to the jury the question of fiduciary duties owed to AMG Alliance, it cannot now seek a new trial on that basis.

B. The district court properly asked the jury to determine whether the Goodwalds owed a fiduciary duty to AMG Alliance.

Because AMG Alliance forfeited its argument, we may review the special-verdict question only for errors in fundamental law or controlling principle. *See Estate of Hartz*, 437 N.W.2d at 752. The district court has broad discretion over the substance of special-verdict questions. *Poppler v. Wright Hennepin Coop. Elec. Ass'n*, 845 N.W.2d. 168, 171 (Minn. 2014). But, courts must decide questions of law, not the jury. *See generally Sparf v. United States*, 156 U.S. 51, 171, 15 S. Ct. 273, 320 (1895) (discussing rationale for leaving questions of law to the court). Nonetheless, special-verdict questions "need not be questions of pure fact, but, in the discretion of the trial court, may be in the form of ultimate

fact questions." *Hill v. Okay Const. Co.*, 252 N.W.2d 107, 118 (Minn. 1977) (citing *Thielbar v. Juenke*, 189 N.W.2d 493, 498 (Minn. 1971)). When questions are of mixed law and fact, the jury may properly resolve them. *United States v. Gaudin*, 515 U.S. 506, 506, 115 S. Ct. 2310, 2311 (1995).

Although "a relationship might not be fiduciary per se, the facts of the case might create such a relationship." *Carlson v. SALA Architects, Inc.*, 732 N.W.2d 324, 331 (Minn. App. 2007), *review denied* (Aug. 21, 2007). Therefore, "[t]he existence of a fiduciary relationship is a question of fact." *Toombs v. Daniels*, 361 N.W.2d 801, 809 (Minn. 1985) (fiduciary duties of trustees); *see also, e.g.*, *Murphy v. Country House, Inc.*, 240 N.W.2d 507, 512 (Minn. 1976) (fiduciary duties of director shareholders to one another). AMG Alliance cites *Staffing Specifix, Inc. v. TempWorks Mgmt. Servs., Inc.*, 913 N.W.2d 687 (Minn. 2018), in support of its argument that the question of fiduciary duty is a question of law not proper for the jury. But the supreme court in *Staffing Specifix, Inc.* found it improper for a jury to determine whether contract terms were ambiguous. *Id.* at 692. The decision did not involve fiduciary duties.

Here, the parties heavily disputed whether the Goodwalds had a fiduciary relationship with AMG Alliance. The district court stated that the jury would need to determine the relationship between AMG Alliance and the Goodwalds, and AMG Alliance agreed to let it do so. The special-verdict question itself correctly stated Minnesota law on fiduciary duty. *See State by McClure v. Sports and Health Club, Inc.*, 370 N.W.2d 844, 858 (Minn. 1985); *Carlson*, 732 N.W.2d at 330-31. The question as written related to a mixed question of law and fact appropriate for the jury.

Because the special-verdict question did not contain any error in fundamental law or controlling principle, we do not need to address whether it caused AMG Alliance prejudice. As a result, the district court properly asked the jury to determine whether the Goodwalds owed a fiduciary duty to AMG Alliance, and a new trial on that ground is not warranted.

II. The district court did not abuse its discretion by instructing the jury on the question of fiduciary duty.

AMG Alliance argues that the instructions on fiduciary duty in count IV materially misstated the law by (1) omitting any instruction regarding joint ventures and (2) misleading the jury to think fiduciary duties are owed only in the employee-employer context. We disagree.

Absent a clear abuse of discretion, we will not reverse a district court's decision to deny a motion for a new trial based on a claim of an erroneous jury instruction. *Youngquist v. W. Nat'l Mut. Ins. Co.*, 716 N.W.2d 383, 385 (Minn. App. 2006). A new trial is required if the district court issues an erroneous instruction that either prejudices the complaining party or has an effect that cannot be determined. *Christie v. Estate of Christie*, 911 N.W.2d 833, 838 (Minn. 2018). Jury instructions must be reviewed as a whole, including in the context of the other instructions, *Lewis v. Equitable Life Assur. Soc. of the U.S.*, 389 N.W.2d 876, 885 (Minn. 1986), and the evidence in the case, *Poppenhagen v. Sornsin Const. Co.*, 220 N.W.2d 281, 286 (Minn. 1974). Here, the district court provided the following jury instructions:

> In Count IV, Bay Side and AMG Alliance each brings claims against CJ Goodwald and Matthew Goodwald for breach of fiduciary duty.
>
> To succeed on this claim, the plaintiff must prove:
>
> 1. That the defendant owed a fiduciary duty;
> 2. That the defendant breached the fiduciary duty;
> 3. That the breach directly caused harm to the plaintiff; and
> 4. That the plaintiff suffered damages.
>
> **Breach of fiduciary duty**
> In general, all employees have a fiduciary relationship to their employers with a duty to act in the interest of the employer and not as an adversary.
>
> A "fiduciary relationship" is characterized by a "fiduciary" who enjoys a superior position in terms of knowledge and authority and in whom the other party places a high level of trust and confidence. The law imposes on fiduciaries the highest standards of integrity and good faith in their dealings with those who place trust in them.

The special-verdict form then asked whether C.J. and Matthew Goodwald owed a fiduciary duty to AMG Alliance.

AMG Alliance proposed an instruction stating that the Goodwalds "owed fiduciary duties to those who placed a high degree of trust and confidence in them. That included, but was not limited to, their employers, Bay Side Recycling and Alliance Steel. Matthew Goodwald and Christopher J. Goodwald also owed fiduciary duties to all of their employers' joint ventures." The proposed instruction went on to list the elements required for the formation of a joint venture. We address AMG Alliance's arguments in turn.

A. The district court properly rejected AMG Alliance's proposed joint-venture instruction.

AMG Alliance argues that the instruction on fiduciary duty materially misstated the law by omitting any instruction regarding joint ventures. We are not persuaded.

In its order denying AMG Alliance a new trial, the district court determined that it properly rejected the joint-venture instruction because, as a matter of law, (1) AMG Alliance is not a joint venture and (2) fiduciary duties do not flow from employees of a company to the company's joint venture. Because we conclude that AMG Alliance is not a joint venture,[2] we need not address whether employees of a company owe fiduciary duties to the company's joint ventures.

Whether a joint venture exists is generally a question of fact, but a district court may decide it as a matter of law if "no competent evidence will support a finding of joint venture." *Duxbury v. Spex Feeds, Inc.*, 681 N.W.2d 380, 390 (Minn. App. 2004), *review denied* (Minn. Aug. 25, 2004). We review de novo a finding as a matter of law that a joint venture does not exist. *Dorsey & Whitney LLP v. Grossman*, 749 N.W.2d 409, 416 (Minn. App. 2008). The party arguing for the existence of a joint venture has the burden of proof. *Beehner v. Cragun Corp.*, 636 N.W.2d 821, 832 (Minn. App. 2001).

The required elements of a joint venture under Minnesota law are (1) contribution by the parties of money, property, time, or skill; (2) joint proprietorship and control over

[2] AMG Alliance did not argue that this duty existed by virtue of it being an LLC with members Alliance Steel and AMG Resources. Members of LLCs can also owe fiduciary duties to other LLC members. Nonetheless, the Goodwalds were not officers or directors of either member, and an argument on that basis also fails.

the subject matter of the property; (3) sharing of profits but not necessarily of losses; and (4) an express or implied contract showing that the parties entered into a joint venture.[3] *Rehnberg v. Minn. Homes*, 52 N.W.2d 454, 457 (Minn. 1952) (footnotes omitted).[4]

Here, elements two and four are missing. First, members Alliance Steel and AMG Resources do not have joint control of AMG Alliance. The LLC agreement between the members explicitly provides in section 4.02 that "[n]either Member, in its capacity as such, shall take part in the management of the business and affairs of the Company or have, or represent to any other Person that such Member has, any authority to bind the Company in any respect." Second, the parties did not agree to enter into a joint venture. The agreement itself is called a "Limited Liability Company Agreement," and it contains an unambiguous disclaimer in section 6.16 that AMG Alliance is not a joint venture. Although a disclaimer of joint-venture status is not dispositive, "it is strong evidence that the parties did not intend that their cooperative undertaking create a partnership or joint venture." *Ringier Am., Inc. v. Land O'Lakes, Inc.*, 106 F.3d 825, 829 (8th Cir. 1997) (applying Minnesota law and concluding joint venture did not exist when parties did not have joint control and expressly disclaimed joint-venture relationship in contract). The district court therefore properly concluded that AMG Alliance is not a joint venture. Because AMG Alliance is not a joint

[3] Minnesota cases appear to use "joint venture" and "joint adventure" interchangeably, with "joint venture" being a modern trend. *See, e.g.*, *Tate v. Ballard*, 68 N.W.2d 261, 264 (Minn. 1954) (using the term "joint venture" but citing to materials that use both terms).

[4] The parties used Minnesota law, although AMG Alliance's LLC agreement provides that the agreement is governed and construed under Delaware law. While the parties cite to some Delaware caselaw, they have argued joint-venture status under Minnesota law. We will therefore use the Minnesota joint-venture elements.

venture, the district court did not abuse its discretion in rejecting appellant's proposed joint-venture instruction.

B. The district court's instruction did not improperly imply that a fiduciary duty is owed only in a direct employer-employee relationship.

AMG Alliance argues that the district court's instruction on count IV misled the jurors and misstated the law by implying that fiduciary duties arise only from the employer-employee relationship. We are not persuaded.

AMG Alliance did not argue to the district court that the instruction failed to focus on positions of trust, even after the district court properly excluded the joint-venture instruction. Because AMG Alliance did not raise this issue with the jury instruction below, we review it only for errors in fundamental law or controlling principle. *See Estate of Hartz*, 437 N.W.2d at 752. The instruction first described that "[i]n general, all employees have a fiduciary relationship to their employers." It then described that a "fiduciary relationship" involves a "'fiduciary' who enjoys a superior position in terms of knowledge and authority and in whom the other party places a high level of trust and confidence." While the wording of this instruction may have been different had AMG Alliance requested a focus on positions of trust, the instruction correctly stated the law.[5] The district court

[5] Further, at oral arguments, AMG Alliance argued that the Goodwalds owed it a fiduciary duty because of a direct employer-employee relationship with AMG Alliance. AMG Alliance's brief argues that AMG Alliance employed Matthew Goodwald, and AMG Alliance's reply brief states that cases about "special circumstances" and fiduciary duties are distinguishable from this case, in which "a fiduciary relationship exists as a matter of law." To the extent that AMG Alliance has relied on arguing that the Goodwalds were direct employees of AMG Alliance, even an instruction on only employer-employee relationships would be proper.

therefore did not abuse its discretion in instructing the jury on the fiduciary-duty question in count IV.

Because AMG Alliance is not entitled to a new trial on count IV, breach of fiduciary duty, it also is not entitled to a new trial on counts IX or X, civil conspiracy and aiding and abetting, both of which require proving the underlying breach of fiduciary duty.

Affirmed.