STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0719

Chad Monson, et al.,
Respondents,

vs.

Thomas J. Egge, et al.,
Appellants.

Filed January 8, 2024
Affirmed
Cochran, Judge

Chippewa County District Court
File No. 12-CV-22-91

Thomas C. Atmore, Patrick C. Bower, Martin & Squires, P.A., St. Paul, Minnesota (for respondents)

Christopher A. Wills, Gordon H. Hansmeier, Rajkowski Hansmeier, Ltd., St. Cloud, Minnesota (for appellants)

Considered and decided by Cochran, Presiding Judge; Segal, Chief Judge; and Hooten, Judge.*

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

NONPRECEDENTIAL OPINION

COCHRAN, Judge

This appeal arises from soured business dealings among the parties. At trial, respondents 71 Aggregate Inc. and its owner Chad Monson obtained a jury verdict in their favor on an unjust-enrichment claim against appellants Dennis L. Larson and his company MAAC Inc. Respondents also obtained a jury verdict on a breach-of-fiduciary-duty and breach-of-loyalty claim against appellant Thomas J. Egge, a director of 71 Aggregate. In a separate phase of the trial, the jury awarded respondents punitive damages against MAAC and Larson. After the trial, the defendants moved for a new trial or, alternatively, for judgment as a matter of law (JMOL). The district court denied the motion.

On appeal, appellants argue that they were entitled to JMOL on respondents' claims for unjust enrichment and punitive damages. Appellants also argue that the district court committed several errors that warrant a new trial. We conclude that none of appellants' arguments support reversal. We therefore affirm.

FACTS

This case involves two corporations that did business with each other, 71 Aggregate and MAAC. 71 Aggregate, which ceased operations in 2017, was owned solely by Chad Monson. Thomas Egge was the president of 71 Aggregate and served on the board of directors. 71 Aggregate was in the business of excavation.

Dennis Larson owned MAAC, an asbestos abatement company. Larson knew Monson prior to the formation of 71 Aggregate. Larson lent money to Monson and 71 Aggregate to help Monson start the company. After 71 Aggregate was formed, MAAC

contracted with 71 Aggregate for work and vice versa. The issues in this case center on the formation of 71 Aggregate, its business dealings with MAAC and Larson, and its subsequent liquidation.

The Formation of 71 Aggregate

Monson worked in excavation for many years prior to forming 71 Aggregate. For a time, Monson owned an excavation company called Monson Corporation that had over 100 employees. In 2012, Monson's wife filed for divorce and the ensuing judgment against Monson created financial difficulties for Monson and Monson Corporation. Monson filed for bankruptcy. Monson Corporation's assets were placed in a receivership and sold to pay Monson Corporation's outstanding debts. Monson reached out to family and friends, including Larson, for financial assistance in buying equipment from the receivership. Monson testified that Larson coached him through the bankruptcy. Some of the money Larson loaned Monson was secured by a mortgage on Monson's home.

Through the money raised from family and friends, Monson was able to purchase almost all the assets of Monson Corporation from the receivership. With the reacquired assets, Monson formed 71 Aggregate in 2016. 71 Aggregate conducted the same type of work as Monson Corporation but on a smaller scale. Monson, the sole shareholder, appointed a board of directors. The board consisted of five individuals: Monson, Todd Dallman,[1] and former Monson Corporation employees Egge, Matthew Ryan, and Luke Holien.

[1] Dallman left the company in 2016 or 2017 and was not a party to the underlying lawsuit.

One asset that 71 Aggregate did not purchase from the receiver was a gravel pit known as the "Grace Pit." As part of its operations, 71 Aggregate obtained materials from the Grace Pit. During the receivership, Larson purchased the Grace Pit from Monson Corporation for $50,000. In October 2016, 71 Aggregate issued a check to MAAC in the amount of $51,036.30 with the memo "for Grace Pit."

Larson and MAAC Contribute to 71 Aggregate's Financial Struggles

MAAC and 71 Aggregate worked together on various projects, contracting with each other for services and subcontract work. At trial, the parties disputed how much the corporations (and their respective owners) owed each other in unpaid debt. Respondents produced invoices that showed MAAC allegedly owed 71 Aggregate $445,138 for unpaid jobs. Larson disputed the accuracy of these invoices, citing duplicate bills, overcharges, and shoddy work. Larson prepared a balance sheet that showed he was owed $257,294.01 by Monson and 71 Aggregate. But on cross-examination, Larson admitted that his balance sheet failed to credit 71 Aggregate and Monson for several payments. While the parties disagreed at trial as to the amounts owed, the record reflects that Larson and MAAC were both creditors and customers of 71 Aggregate. As a result, Larson and MAAC were able to simultaneously demand payments from and withhold payments to 71 Aggregate.

In late 2017, at a meeting with the board, Monson decided to wind up the business of 71 Aggregate. Monson determined that he "had to get out from under [Larson's] thumb." Monson hoped to "just pay him off and be done," but Larson never provided Monson with a clear accounting of the debt. Initially, Monson planned to sell 71 Aggregate's business and main gravel pit to a competitor to pay off Monson's and

71 Aggregate's debts to Larson. However, that deal fell through after 71 Aggregate defaulted on loan payments for the main gravel pit, where its business office was also located. The default allowed another company to buy the main gravel pit and force 71 Aggregate off the premises. 71 Aggregate issued a memo to its staff that it would cease operations around November and end employee benefits on December 31, 2017.

Monson is Arrested and 71 Aggregate is Liquidated

On January 28, 2018, not long after Monson made the decision to cease operating 71 Aggregate, Monson was arrested on charges unrelated to this case. He spent over two years in prison. Neither Larson nor any of 71 Aggregate's directors contacted Monson while he was in prison.

On February 5, 2018, Larson met with the directors of 71 Aggregate other than Monson. Monson was not informed of the meeting. At the meeting, Larson told the remaining directors (Egge, Ryan, and Holien) that, if 71 Aggregate paid him $260,000, he would clear all debt owed by 71 Aggregate to MAAC and drop a pending lawsuit. At Larson's urging, the remaining directors agreed to liquidate 71 Aggregate's assets and pay Larson. They did so without consulting Monson. After 71 Aggregate's assets were auctioned off, MAAC received a check for $260,000. Larson also foreclosed on Monson's house in 2018 and later sold the property.

Evidence of Larson's Influence Over Egge

Respondents produced evidence that Larson convinced Egge, as 71 Aggregate's president, to forego collection of accounts due to 71 Aggregate from MAAC and to transfer property to Larson without fair consideration in the months before and after 71 Aggregate's

liquidation. In August 2017, Egge signed a "Voluntary Relinquishment Agreement" under which 71 Aggregate agreed to give Larson several pieces of 71 Aggregate's excavation equipment in exchange for Larson reducing 71 Aggregate's debt by $292,500. Egge signed the agreement despite knowing 71 Aggregate's treasurer estimated that the equipment was worth $490,000. Then, in January 2018, Egge agreed with Larson to reduce the invoices owed to 71 Aggregate by MAAC to the sum of $155,140 even though Egge did not know how much MAAC actually owed to 71 Aggregate—Egge simply agreed with the amount averred by Larson. Finally, on March 30, 2018, 71 Aggregate deeded its remaining gravel pit (the Grace Pit) to Larson via a warranty deed signed by Egge for less than $500 in consideration. Larson later sold the Grace Pit for $90,000. At trial, Egge testified that the deed was signed over to Larson because 71 Aggregate had never paid Larson for the Grace Pit and that the 2016 check paid to Larson with the memo indicating "for Grace Pit" was "written wrong."

Egge remained the president of 71 Aggregate until at least June 26, 2018. At some point, Larson hired Egge to be a general manager at MAAC. Egge and Larson testified that they first discussed the general manager position sometime between March and May 2018. At his deposition, Egge testified that he started working for MAAC in April 2018, but at trial he corrected his testimony and claimed he started working for MAAC in August 2018. Egge agreed that working for MAAC while also being president of 71 Aggregate would have created a conflict of interest.

Services Agreement

Egge and Ryan, who both worked for Monson at Monson Corporation prior to becoming directors and officers of 71 Aggregate, testified regarding a "services agreement." According to Egge and Ryan, in 2013 Monson offered his employees at Monson Corporation the option to take "pay cuts to someday be reimbursed." Several employees resigned their positions, but Egge and Ryan continued working for Monson in hopes of future pay. At trial, Monson denied ever making such an offer in 2013.

In 2018, at Ryan's request, 71 Aggregate's attorney drafted a "services agreement" between 71 Aggregate and Egge and Ryan that contemplated payments to Egge and Ryan for "owed" wages dating back to 2013 in exchange for Egge and Ryan assisting with "an orderly wind down of operations" of 71 Aggregate. Monson was in prison at the time the agreement was drafted by 71 Aggregate's attorney. The copy of the "services agreement" admitted at trial is unsigned. After 71 Aggregate's assets were liquidated, Egge and Ryan paid themselves $76,187.13 and $46,037.87, respectively, from 71 Aggregate's bank account via checks with references to the "services agreement" in the memo line.

The Lawsuit

In 2022, Monson and 71 Aggregate (together, respondents) brought the underlying action, naming Larson, MAAC, Egge, Holien, and Ryan as defendants. Respondents asserted twelve claims against the various defendants. Before trial, the district court granted respondents' motion to amend their complaint to allege claims for punitive damages. During trial, several counts were dismissed, and the remaining six claims were submitted to the jury. The jury found respondents were entitled to $300,000 from Larson

and MAAC for unjust enrichment and $88,998.11 from Egge for breach of fiduciary duty and duty of loyalty.[2] The district court held a second phase of the trial regarding punitive damages. The jury found respondents were entitled to punitive damages against Larson and MAAC in the amount of $475,000.

Following the trial, respondents filed a motion pursuant to Minnesota Statutes section 549.20, subdivision 5 (2022), requesting the district court make specific findings of fact regarding the award of punitive damages. The district court granted respondents' motion and made the following findings: Larson and MAAC received more assets and cash from 71 Aggregate than they were entitled to; Larson exercised influence and control over the directors of 71 Aggregate while Monson was imprisoned; Larson failed to credit 71 Aggregate for several transactions, including for receipt of the Grace Pit and other equipment worth more than $300,000; Larson and MAAC, as both creditors and customers of 71 Aggregate, were able to "strangle 71 Aggregate financially" through actions that were "more than poor recordkeeping"; and "the end of 71 Aggregate was not only probable but inevitable" due to Larson's and MAAC's actions.

After the trial, appellants moved for a new trial or alternatively for JMOL. The district court denied their motion and entered judgment in favor of Monson and 71 Aggregate. Egge, Larson, and MAAC appeal.[3]

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[2] The jury also found for respondents on several other claims against Egge but included the valuation of those damages in the award for breach of fiduciary duty and duty of loyalty. In addition, the jury found Ryan breached his fiduciary duty to respondents and awarded damages of $46,037.87.

[3] According to appellants' brief, Ryan decided not to join the appeal and respondents settled their claims again Holien.

DECISION

I. The district court properly denied appellants' motion for judgment as a matter of law.

The district court's denial of JMOL is subject to de novo review. *Karl v. Uptown Drink, LLC*, 835 N.W.2d 14, 17 (Minn. 2013). JMOL may be granted only when a verdict is manifestly against the evidence or contrary to applicable law. *650 N. Main Ass'n v. Frauenshuh, Inc.*, 885 N.W.2d 478, 486 (Minn. App. 2016), *rev. denied* (Minn. Nov. 23, 2016); *see also* Minn. R. Civ. P. 50.01(a). "When reviewing the denial of a motion for JMOL, we construe the evidence in the light most favorable to the prevailing party and ask whether there is a legally sufficient evidentiary basis for a reasonable jury to find for the prevailing party." *Karl*, 835 N.W.2d at 17 (quotation omitted).

Appellants argue that they are entitled to JMOL on respondents' claims against Larson and MAAC for unjust enrichment and punitive damages. As follows, we conclude the district court did not err in denying appellants' motion for JMOL on either basis.

A. Unjust Enrichment

Appellants argue that they are entitled to JMOL on the unjust-enrichment claim for two reasons. First, they argue that 71 Aggregate and Monson were barred from bringing an unjust-enrichment claim because 71 Aggregate and Monson had an adequate remedy at law. Alternatively, they argue that the evidence at trial was not sufficient to support the claim. Neither argument is persuasive.

Adequate Remedy at Law

Equitable relief is not available to a party who has an adequate remedy at law available. *ServiceMaster of St. Cloud v. GAB Bus. Servs., Inc.*, 544 N.W.2d 302, 305 (Minn. 1996). Unjust enrichment is an equitable doctrine. *Herlache v. Rucks*, 990 N.W.2d 443, 450 (Minn. 2023).[4] In other words, "[t]he right to recovery for unjust enrichment is equitable." *Southtown Plumbing, Inc. v. Har-Ned Lumber Co.*, 493 N.W.2d 137, 140 (Minn. App. 1992). Consequently, an unjust-enrichment claim is barred where there is an adequate remedy at law. *See ServiceMaster*, 544 N.W.2d at 305. A remedy at law that is "practically ineffective" is not adequate. *See Ostrander v. Ostrander*, 252 N.W. 449, 450 (Minn. 1934) (quotation omitted). The existence of an adequate remedy at law is reviewed de novo. *ServiceMaster*, 544 N.W.2d at 305.

At trial, respondents argued that Larson and MAAC were unjustly enriched by receipt of respondents' assets and cash. Appellants argue that there are three remedies at

[4] Respondents argue that unjust enrichment is a legal claim, not an equitable one. In support of this argument, they cite caselaw that predates *ServiceMaster* and *Herlache*. *See, e.g.*, *Lundstrom Const. Co. v. Dygert*, 94 N.W.2d 527, 531 (Minn. 1959) ("Under the theory of quasi-contract, the right to recover is governed by principles of equity, but the remedy—the obligation upon which the right of recovery rests—is created and imposed by law to prevent unjust enrichment at the expense of another."); *Roske v. Ilykanyics*, 45 N.W.2d 769, 774 (Minn. 1951) (holding that under the theory of quasi-contract, "[t]he right to recover is governed by principles of equity, but the remedy is governed by the law" (citation omitted)). The older caselaw that respondents cite is inconsistent with *ServiceMaster* and other more recent caselaw. Still, respondents' argument raises an interesting question about the role of equitable and legal principles involving a claim for unjust enrichment. We need not reach the specific question here, however, because on the narrower issue presented, we conclude that appellants have not demonstrated that respondents had an adequate remedy at law barring their claim for unjust enrichment.

law that respondents could have pursued in lieu of their equitable claim for unjust enrichment against Larson and MAAC: (1) a claim for breach of fiduciary duty against 71 Aggregate's directors, (2) a claim for conversion or theft against Larson and MAAC, or (3) opposition to the foreclosure action on Monson's home. But appellants provide no legal authority that supports their contention that these three alternative legal claims could have provided an adequate remedy at law for respondents in place of their unjust enrichment claim against Larson and MAAC. The only case that appellants cite, *ServiceMaster*, is distinguishable on its particular facts.

In that case, ServiceMaster was hired to repair fire damage at the home. 544 N.W.2d at 303-04. After the homeowner and homeowner's insurer did not pay ServiceMaster for the work completed on the house, ServiceMaster brought several claims against the homeowner's insurer, including equitable claims for unjust enrichment and estoppel. *Id.* at 305. The district court found for ServiceMaster on its equitable claims and ordered the insurer to pay ServiceMaster damages. *Id.* The insurer appealed, arguing that ServiceMaster could not pursue equitable relief because it had an adequate remedy at law via filing a mechanics lien against the home. *Id.* The supreme court held that the potential lien rights were adequate remedies at law barring equitable relief. *Id.* at 306.[5]

[5] The *ServiceMaster* holding was not based solely on the existence of an adequate remedy at law. The supreme court also noted that the insurer had already paid the homeowner's mortgagee for the repairs performed by ServiceMaster in return for a partial mortgage interest in the home. *ServiceMaster*, 544 N.W.2d at 304-05. According to the supreme court, the insurer was not "enriched" at all, because it paid "dollar-for-dollar for what it got" and therefore a finding of unjust enrichment would require the insurer to pay twice. *Id.* at 306-07. Here, the record does not contain any evidence, nor do appellants make the

Appellants contend that *ServiceMaster* supports their argument that a breach-of-fiduciary-duty claim provides respondents with an adequate remedy at law in lieu of their unjust-enrichment claim. Appellants assert *ServiceMaster* is directly on point, equating ServiceMaster to respondents, the insurer to Larson and MAAC, and the homeowner to the directors. But appellants ignore a critical distinction. In *ServiceMaster*, the insurer was not enriched by the value of ServiceMaster's work, the home itself was. *See id.* at 306-07. Thus, a lien against the home was an adequate remedy at law for ServiceMaster. Here, on the other hand, the jury found that Larson and MAAC, rather than the directors, were unjustly enriched by receipt of 71 Aggregate's cash and assets. Appellants have not demonstrated how a breach-of-fiduciary-duty claim against the directors would allow respondents to recover assets and cash received by Larson and MAAC.[6]

Also unpersuasive is appellants' assertion that a potential tort claim for conversion or theft against Larson and MAAC is an adequate remedy at law. First, respondents did not allege that Larson and MAAC stole assets, but instead that Larson and MAAC are not entitled to retain the assets, or their value, because of the circumstances under which they received the assets. Second, caselaw suggests that a plaintiff may waive tort claims for a claim for unjust enrichment. *See Kubat v. Zika*, 242 N.W. 477, 478 (Minn. 1932) (holding

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argument, that Larson or MAAC already paid for amounts contemplated by the jury's award for unjust enrichment.

[6] Appellants also ignore that Monson *did* sue the directors for breach of fiduciary duty and even recovered for those breaches. But the damages recovered against the directors were limited to money and property *actually retained* by the directors. The jury's verdict shows that breach-of-fiduciary-duty claims against the directors would not provide recovery of the property and money retained by Larson and MAAC.

tort claims can be waived in lieu of a claim for "assumpsit on the implied contract to repay the money or the value of the property"); *Soderlin v. Marquette Nat'l Bank of Minneapolis*, 8 N.W.2d 331, 333 (Minn. 1943) (citing *Kubat* and explaining "the rule that one who has a cause of action in tort may waive the tort and sue on an implied contract for money had and received . . . does not apply in cases where there is no unjust enrichment"). We are not persuaded that respondents' claim for unjust enrichment is barred by the potential existence of any tort claim that the respondents chose not to plead in their complaint.

Finally, opposing the foreclosure action would not have been an adequate remedy at law. At trial, there was testimony about loans from Larson to Monson secured by a mortgage on Monson's home. Larson testified that he foreclosed on Monson's house in 2018 and later sold it. Appellants offer no guidance or legal authority on the foreclosure process and how it could have provided an adequate remedy at law addressing Larson's and MAAC's receipt of respondents' cash and assets, particularly given that the claims of unjust enrichment were based on receipt of equipment and cash beyond that received from the foreclosure action. "An assignment of error based on mere assertion and not supported by any argument or authorities in [a] brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection." *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971). We discern no obvious error and therefore we need not further consider appellants' conclusory foreclosure argument.

Because appellants have not persuaded us that respondents had an adequate remedy at law that would preclude their unjust-enrichment claim against Larson and MAAC, we conclude appellants were not entitled to JMOL on this ground.

Evidence of Unjust Enrichment

As an alternative ground for JMOL, appellants argue that the evidence at trial was insufficient to sustain a finding of unjust enrichment because respondents "failed to offer any evidence that [Larson's] and/or MAAC's conduct was morally wrong." To reverse a district court's denial of a motion for JMOL, "the evidence must be so overwhelming on one side that reasonable minds cannot differ as to the proper outcome." *Vermillion State Bank v. Tennis Sanitation, LLC*, 969 N.W.2d 610, 619 (Minn. 2022) (quotation omitted). Here, because the evidence is not overwhelmingly in favor of appellants on whether Larson's and MAAC's conduct was morally wrong, appellants' argument is unavailing.

The doctrine of unjust enrichment "allows a plaintiff to recover a benefit conferred upon a defendant when retention of the benefit is not legally justifiable." *Herlache*, 990 N.W.2d at 450. A claim for unjust enrichment "do[es] not lie simply because one party benefits from the efforts or obligations of others." *Id.* Instead, an unjust-enrichment claim must be premised on some illegal, unlawful, or "morally wrong" conduct by the defendant. *Id.* Here, the parties agree that the issue is whether there was evidence showing that Larson's and MAAC's conduct was "morally wrong." Although the caselaw does not clearly define morally wrong conduct, we have referred to it as conduct that is "unconscionable by reason of a bad motive, or where the result induced by [the] conduct will be unconscionable." *Park-Lake Car Wash, Inc. v. Springer*, 394 N.W.2d 505, 514 (Minn. App. 1986) (quotation omitted).

Decisions that have identified morally wrong conduct provide guideposts for our analysis of whether appellants' conduct was morally wrong. For example, in

Anderson v. DeLisle, we reversed the district court's award of judgment notwithstanding the verdict and ordered entry of judgment for Anderson, the plaintiff, based on the jury's finding of unjust enrichment. 352 N.W.2d 794, 796 (Minn. App. 1984), *rev. denied* (Minn. Nov. 8, 1984). There, Anderson signed a contract to purchase real estate from DeLisle. *Id.* at 795. Before the parties entered into the contract, and with DeLisle's knowledge, Anderson made improvements on the property that enhanced the value of the property. *Id.* The contract "specified that all existing improvements were the property of [DeLisle]." *Id.* DeLisle knew that Anderson had financial troubles and was unlikely to fulfill the contract to purchase the property. *Id.* Nonetheless, DeLisle "stood silent and watched Anderson make extensive improvements." *Id.* at 796. When Anderson's down-payment check was dishonored by the bank, DeLisle cancelled the contract and retained the property. *Id.* at 795. We concluded that "the jury reasonably could find that equity and good conscience" required DeLisle to compensate Anderson. *Id.*

In *Spiess v. Schumm*, we affirmed a district court's finding that a constructive trust was necessary to avoid morally wrong unjust enrichment. 448 N.W.2d 106, 108-09 (Minn. App. 1989). There, a decedent designated Schumm to distribute funds to his family upon his death. *Id.* at 107. To facilitate the distribution, the decedent named Schumm the beneficiary of a trust account. *Id.* Upon the decedent's death, the account funds passed to Schumm, but Schumm never distributed the funds as intended by the decedent. *Id.* at 107-08. The district court found that allowing Schumm to keep the funds would be "ethically wrong and would result in his unjust enrichment." *Id.* at 108 (quotation omitted).

This court affirmed the district court's finding that it would have been "morally wrong" for Schumm to retain the funds. *Id.* at 108-09.

Viewing the evidence in the light most favorable to respondents, as we must under JMOL standards, the record reflects that Larson's and MAAC's conduct is comparable to the examples of morally wrong conduct identified above. The following is supported by the record: (1) Larson failed to credit 71 Aggregate and Monson for work and equipment he received from 71 Aggregate; (2) under the weight of 71 Aggregate's and Monson's debts to Larson and MAAC, 71 Aggregate endured financial hardship that caused Monson to wind down operations; (3) without Monson's knowledge, Larson influenced Egge to make deals that benefited Larson and MAAC at 71 Aggregate's expense; and (4) Larson and MAAC actually owed money to 71 Aggregate at the time of its liquidation, but Larson and MAAC still received $260,000 from the liquidation funds. Relying on this evidence, reasonable minds could conclude that Larson's and MAAC's conduct was morally wrong. In fact, in its post-trial order on punitive damages, the district court found that this evidence showed that Larson's and MAAC's actions "were morally wrong and intentional." Because the evidence does not overwhelmingly favor appellants' position, we decline to reverse the district court's denial of JMOL on this ground.

B. Punitive Damages

Next, we address appellants' contention that they were entitled to JMOL on the award of punitive damages against Larson and MAAC. During the first phase of the trial, the jury awarded damages against Larson and MAAC for unjust enrichment. At the punitive-damages phase, the jury found that respondents were also entitled to $475,000 in

punitive damages against Larson and MAAC based on its finding that Larson and MAAC acted with "deliberate disregard for the rights" of Monson and 71 Aggregate. The district court affirmed the award in a posttrial order, in which it made numerous factual findings relating to the reasonableness of the award.

Availability of Punitive Damages

Appellants first argue punitive damages are not recoverable as a matter of law when the underlying recovery is based solely on a claim of unjust enrichment. Initially, we note that appellants did not raise this issue until their posttrial motion for a new trial or JMOL.[7] An issue raised for the first time in a posttrial motion is not timely raised. *Allen v. Cent. Motors*, 283 N.W. 490, 492 (Minn. 1939) (holding defense raised for the first time in motion for amended findings was raised "too late"); *Antonson v. Ekvall*, 186 N.W.2d 187, 189 (Minn. 1971) (holding claim came "too late when suggested for the first time" in motion for a new trial); *Grigsby v. Grigsby*, 648 N.W.2d 716, 726 (Minn. App. 2002) ("We initially note that an issue first raised in a posttrial motion is not raised in a timely fashion."), *rev. denied* (Minn. Oct. 15, 2002). Appellants have raised this issue too late, and we therefore need not consider it on appeal.

[7] When respondents moved to amend their complaint to include punitive damages, appellants opposed the motion but only argued that the record "lack[ed] any evidence that any of the [appellants] acted with deliberate disregard for the rights or safety of [respondents]." Appellants did not contend that punitive damages were not available based on unjust enrichment. Then, after Larson and MAAC were found liable only for unjust enrichment, appellants did not move for a directed verdict on respondents' claim for punitive damages against Larson and MAAC. Instead, appellants waited until after the jury had already awarded punitive damages to raise the issue.

Even if we were to consider appellants' argument, Minnesota law does not support their position. The parties do not dispute that there is no Minnesota caselaw directly on point as to whether a standalone claim for unjust enrichment can provide the basis for punitive damages. And the legislature has provided that punitive damages "shall be allowed" in civil actions upon a showing that the defendant acted with deliberate disregard for the rights or safety of others. Minn. Stat. § 549.20, subd. 1(a) (2022). Section 549.20 was intended to codify the common law on punitive damages in Minnesota. *Jensen v. Walsh*, 623 N.W.2d 247, 249 (Minn. 2001). Caselaw suggests that punitive damages are only recoverable when the plaintiff is found entitled to actual or compensatory damages. *Jacobs v. Farmland Mut. Ins. Co.*, 377 N.W.2d 441, 444 (Minn. 1985). Several places in the record indicate that respondents were awarded "compensatory" damages for their claim of unjust enrichment.[8] Appellants did not challenge this characterization below, nor do they challenge it on appeal. Because it is undisputed that the damages awarded for unjust enrichment were compensatory, and absent any binding authority limiting the recovery of punitive damages when the underlying recovery is only for unjust enrichment, we discern no legal error in the award of punitive damages.

Evidence Supporting Punitive Damages

Appellants also argue the evidence was insufficient to establish a claim for punitive damages, contending that the evidence did not establish that Larson and MAAC "acted with deliberate disregard." Punitive damages may be recovered when the defendant's

[8] The district court identified the unjust-enrichment damages as compensatory in its posttrial orders.

conduct shows "deliberate disregard for the rights or safety of others." Minn. Stat. § 549.20, subd. 1(a). Recovery of punitive damages requires a showing by "clear and convincing evidence." *Id.* A verdict on damages should be overturned only when "manifestly and palpably contrary to the evidence" considered in the light most favorable to the verdict. *Engquist v. Loyas*, 787 N.W.2d 220, 226 (Minn. App. 2010), *aff'd as modified*, 803 N.W.2d 400 (Minn. 2011).

At trial, there was sufficient evidence for the jury to find Larson and MAAC acted in "deliberate disregard" of respondents' rights. In its order making specific findings of fact regarding punitive damages,[9] the district court noted that evidence showed "Larson [and] MAAC received more than they were entitled to" by controlling Egge and two other 71 Aggregate directors in Monson's absence. Wielding this influence, Larson obtained agreements from 71 Aggregate "to forgo collection of accounts due from MAAC, Inc. to 71 Aggregate, Inc. and to transfer 71 Aggregate, Inc. property to him/MAAC." The district court found that Larson's and MAAC's actions "were more than poor recordkeeping" and allowed Larson and MAAC to "strangle 71 Aggregate financially." The district court found Larson's and MAAC's conduct to be "morally wrong and intentional." And, in its order for judgment, the district court specifically found that Larson acted with "deliberate disregard for the rights of [respondents]." These findings are consistent with the statutory considerations outlined in section 549.20. And appellants do not dispute that the district court properly applied section 549.20 in making its findings. Additionally, the district

[9] Under the punitive-damages statute, the district court "shall make specific findings" considering factors outlined in the statute. Minn. Stat. § 549.20, subds. 3, 5 (2022).

court's findings are based on the same record as was presented to the jury. Viewing the record in a light most favorable to respondents, this court will not disturb the jury's verdict because it was reasonable to conclude that there was clear and convincing evidence of Larson's and MAAC's deliberate disregard for the respondents' rights.

Having concluded the district court did not err in denying appellants' motion for JMOL, we next turn to appellants' contention that the district court abused its discretion in denying their motion for a new trial.

II. Appellants are not entitled to a new trial.

Appellants challenge the district court's denial of their motion for a new trial, arguing that trial errors by the district court warrant a new trial. A district court may order a new trial for, among other reasons: (1) irregularity in the proceedings, whereby the moving party was deprived of a fair trial, (2) errors of law, or (3) insufficient evidence to support the verdict. Minn. R. Civ. P. 59.01. We review a district court's denial of a motion for a new trial for an abuse of discretion. *Christie v. Est. of Christie*, 911 N.W.2d 833, 838 (Minn. 2018). "[W]e 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. Cnty. Schs.*, 652 N.W.2d 9, 21 (Minn. 2002) (quotation omitted).

Appellants contend that a new trial is warranted because the district court abused its discretion with regard to its evidentiary rulings, jury instructions, and special-verdict form. We are not persuaded and conclude that appellants are not entitled to a new trial.[10]

A. Evidentiary Decisions

Appellants argue that the district court erred both by admitting evidence relating to Monson's foreclosure and by excluding testimony from two witnesses. We review a district court's ruling on evidentiary matters for an abuse of discretion. *Doe 136 v. Liebsch*, 872 N.W.2d 875, 879 (Minn. 2015). We are bound by the results of an evidentiary ruling absent indication that the district court exercised its discretion "arbitrarily, capriciously, or contrary to legal usage." *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 46 (Minn. 1997). We conclude that the district court's evidentiary decisions were not abuses of discretion, as follows.

Evidence of Monson's Foreclosure

Appellants argue that the admission of evidence regarding the foreclosure of Monson's home permitted a collateral attack on the foreclosure judgment. "A collateral attack is an attack on a judgment in a proceeding other than a direct appeal." *Aaron Carlson Corp. v. Cohen*, 933 N.W.2d 63, 71 (Minn. 2019) (quotation omitted). But the record does

[10] Appellants also argue that the cumulative effect of the alleged errors warrants a new trial. Appellants cite a criminal case, *State v. Williams*, 908 N.W.2d 362, 366 (Minn. 2018), for the principle that "a defendant is entitled to a new trial if the cumulative effects of the errors that occurred during the trial denied him a fair trial." Even assuming without deciding that the cumulative-error doctrine applies to civil cases, the doctrine does not warrant a new trial in this case because, as follows, appellants have failed to demonstrate any errors at trial or that they were denied a fair trial.

not reflect that there was a foreclosure judgment to attack, and appellants only point to inconclusive testimony in support of their position, namely (1) Monson's testimony that a "foreclosure action" on his home "went through" and (2) Larson's testimony that he foreclosed on the home and that the "court of law gives [him] possession of that property." The only exhibits produced at trial regarding the foreclosure appear to be a "Notice of Default" letter sent to Monson and a newspaper clipping containing Larson's "Notice of Mortgage Foreclosure Sale." At most, the record reflects that there was a foreclosure by advertisement. Foreclosure by advertisement is a statutory process devised to avoid the delay and expense associated with judicial proceedings. *Ruiz v. 1st Fidelity Loan Servicing, LLC*, 829 N.W.2d 53, 56 (Minn. 2013). But a foreclosure by advertisement does not result in a judgment, and thus there is no judgment to attack. *See Stone v. Jetmar Props., LLC*, 733 N.W.2d 480, 489 (Minn. App. 2007). We conclude that the district court did not abuse its discretion by admitting the evidence of Monson's foreclosure.

Excluded Witness Testimony

Appellants also argue that the district court abused its discretion by excluding the testimony of the trustee during Monson's bankruptcy and Monson's ex-wife. The district court excluded the trustee's testimony after finding it was repetitive, would not be helpful to the jury, and that its risk for unfairly prejudicing Monson outweighed its probative value. The district court excluded Monson's ex-wife's testimony because appellants failed to disclose the substance of her testimony.

Appellants have not demonstrated that the district court abused its discretion in its decision to exclude the testimony of either witness, particularly given that neither witness

had any involvement in 71 Aggregate or the business dealings at issue in this case. Regarding the trustee, the district court determined, in relevant part, that any probative value of the trustee's testimony was outweighed by the danger of unfair prejudice because the jury might give his testimony undue weight based on his status as a Chapter 7 bankruptcy trustee. The district court also noted that there was "no finding" by the trustee that Monson "did anything wrong." We discern no abuse of discretion in the district court's decision to exclude the trustee's testimony.

Likewise, we discern no abuse of discretion in the district court's decision to exclude the testimony of Monson's ex-wife. On appeal, appellants do not dispute the reason given by the district court for excluding the testimony of Monson's ex-wife—that appellants failed to disclose the substance of her testimony. Instead, they argue that she was listed as a potential witness in appellants' answers to interrogatories. But they provide no support for their contention that the district court's decision to exclude the witness was an abuse of discretion when the substance of the witness's testimony was not disclosed prior to trial. Nor have they demonstrated that they were prejudiced by the exclusion of Monson's ex-wife. We have previously affirmed a district court's exclusion of a witness for the proponent's failure to comport with procedural requirements, absent a showing of prejudicial error. *In re Conservatorship of Smith*, 655 N.W.2d 814, 820-21 (Minn. App. 2003). We conclude that it was not an abuse of discretion for the district court to exclude the testimony of Monson's ex-wife in this case.[11]

[11] Appellants also argue that Monson's ex-wife should not have been excluded because her testimony about Monson's "history of hiding assets" tended to prove that Monson

B. The Jury Instructions

Appellants argue the jury instructions regarding the "services agreement" between Egge, Ryan, and 71 Aggregate warrant a new trial because the instructions did not include language that reflected appellants' theory of the case regarding the "services agreement." We are not persuaded.

We review a district court's jury instructions for an abuse of discretion. *Hilligoss v. Cargill, Inc.*, 649 N.W.2d 142, 147 (Minn. 2002). A district court has "considerable latitude in selecting language used in the jury charge and determining the propriety of a specific instruction." *Morlock v. St. Paul Guardian Ins. Co.*, 650 N.W.2d 154, 159 (Minn. 2002). But jury instructions must "fairly and correctly state the applicable law." *Hilligoss*, 649 N.W.2d at 147. In addition, "a party is entitled to an instruction setting forth his theory of the case if there is evidence to support it and if it is in accordance with applicable law." *Poppenhagen v. Sornsin Const. Co.*, 220 N.W.2d 281, 286 (Minn. 1974) (quotation omitted). Even if an instruction "materially misstates the law, we need not grant a new trial unless the error was prejudicial." *Vermillion State Bank*, 969 N.W.2d at 629 (quotation omitted).

The jury instruction regarding the "services agreement" stated in relevant part, "This case involves a question of whether a contract called a services agreement was validly

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"absconded with 71 Aggregate's assets." On this point, the district court ruled that Monson's ex-wife could testify only about particular assets that were involved in this case. The district court determined that testimony more generally about Monson's "nefarious business practices" would not be helpful to the jury. Appellants do not point to any specific assets that Monson's ex-wife was not permitted to testify about and do not explain why the district court's determination was an abuse of discretion.

formed between directors/officers Thomas J. Egge and Matthew M. Ryan and 71 Aggregate, Inc." Appellants' theory at trial was that Egge and Ryan had the "services agreement" drafted in 2018 by 71 Aggregate's attorney to pay Egge and Ryan for wages dating back to 2013 when they worked for Monson at a different company. They claimed that, in 2013, Monson offered his employees the option "to take pay cuts to someday be reimbursed." Even assuming Monson made such a promise in 2013, Egge and Ryan's theory of the case requires that the 2018 "services agreement" with 71 Aggregate be a valid contract. Otherwise, 71 Aggregate would not be required to pay Egge or Ryan under the contract. Therefore, even accepting appellants' theory of the case, it was not error for the district court to require the jury to find whether the "services agreement" was a valid agreement.

The jury instructions also stated that even if the jury found that the parties had validly entered into the "services agreement," it was void unless it was fully disclosed to the board of directors and the board authorized it by a majority vote, but without Egge or Ryan being able to vote. Appellants argue that this instruction was erroneous because Monson's promise ran to Ryan and Egge individually, meaning Egge could vote on Ryan's right to reimbursement, and vice versa. This argument is unavailing primarily because the jury found that there was no valid "services agreement." Therefore, the jury never reached the question on the special verdict form corresponding to this instruction. Moreover, even if the jury had found the "services agreement" was a valid contract, the exhibit in the record containing the unsigned "services agreement" shows that it is "between 71 Aggregate . . . and Matthew Ryan *and* Thomas Egge." (Emphasis added.) Therefore,

there is no support in the record for appellants' contention that the instruction regarding board approval was in error. We therefore discern no abuse of discretion in the district court's jury instructions.

C. The Special-Verdict Form

Appellants argue that respondents presented no evidence in support of their tortious-interference claim, and that the district court erred by including the claim on the special-verdict form. An appellant must establish *both* error and prejudice to prevail on appeal. *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 237 N.W.2d 76, 78 (Minn. 1975). Here, the jury found for appellants on the tortious-interference claim. Thus, appellants have failed to show prejudice.

Affirmed.