STATE OF MINNESOTA
IN COURT OF APPEALS
A07-679

Brunswick Corporation,
Appellant,

vs.

Genmar Holdings, Inc., et al.,
Respondents,

AND

Carver Boat Corporation, LLC, et al.,
Respondents,

vs.

Brunswick Corporation,
Appellant.

Filed June 10, 2008
Affirmed in part, reversed in part, and remanded
Worke, Judge

Hennepin County District Court
File Nos. 27-CV-05-002040, 27-CV-04-011086

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Considered and decided by Worke, Presiding Judge; Hudson, Judge; and Crippen, Judge.[*]

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

WORKE, Judge

On appeal in this dispute over whether respondent breached the noncompete agreement in the parties' stock-purchase agreement, appellant argues that (1) it is entitled to pursue damages resulting from respondents' breach of contract because judicial estoppel bars respondents from denying the availability of damages and the stock-purchase agreement does not bar appellant from an effective remedy for respondents' breach; (2) the stock-purchase agreement does not preclude it from seeking specific performance and the equitable remedy of disgorgement; (3) genuine issues of material fact preclude summary judgment on damages arising from respondents' breach of the covenant of good faith and fair dealing; and (4) the magistrate erred by limiting the award of attorney fees and by imposing sanctions. By notice of review, respondents argue that (1) appellant is not entitled to damages for breach of the covenant of good faith and fair dealing because the alleged behavior in fact constitutes an express covenant and damages are barred by the stock-purchase agreement's exclusive-remedies provision; (2) appellant is not entitled to summary judgment on the claim of violation of the covenant of good faith and fair dealing; (3) the award of nominal damages is not an indemnifiable item of damages permitting appellant to an award of attorney fees; and (4) the magistrate

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

disallowed appellant's claim for damages and, therefore, erred in awarding nominal damages as a vindication of appellant's claim. We affirm in part, reverse in part, and remand.

FACTS

In 2001, appellant Brunswick Corporation purchased the capital stock of Hatteras Yachts, Inc.—a subsidiary of respondent Genmar Holdings, Inc., et al. that manufactured and sold luxury yachts. The agreement was memorialized in a stock-purchase agreement (the SPA). The SPA contains an express noncompete agreement in which Genmar agreed not to engage in "competitive business" with Brunswick for a period of three years. "Competitive business" is defined in the SPA as

> (i) in the case of a newly formed or acquired business, a business that engages in the manufacture, sale or distribution of yachts in excess of sixty (60) feet in length or with minimum Base Price[] (as herein defined) in excess of $1,200,000, (ii) in the case of the business of Carver Boat Corporation, a subsidiary of [Genmar], the manufacture, sale and distribution of yachts in excess of sixty-five (65) feet in length or with minimum Base Price [] in excess of $1,300,000, and (iii) in the case of the business of Wellcraft Marine Corporation, a subsidiary of [Genmar], the manufacture, sale or distribution of yachts in excess of sixty (60) feet in length or with minimum Base Price[] in excess of $1,200,000.

The SPA defines base price as the "retail base price before the addition of optional equipment," and "length" as a measurement from transom to bow. "Optional equipment" is not defined.

Section 8.3(b) of the SPA details an indemnification remedy for Brunswick for "any breach by [Genmar] of, or failure of [Genmar] to comply with, any of the covenants

or obligations under this Agreement to be performed by [Genmar] (including, without limitation, its obligations under this Article VIII[.]" Section 8.4(d)(i) limits Brunswick's indemnification remedy by providing that Brunswick "shall not be entitled to recover under Section 8.3:(i) with respect to consequential damages of any kind, damages consisting of business interruption or lost profits (regardless of the characterization thereof), or punitive damages[.]" Finally, Section 8.9 provides that the indemnification provisions set forth in Article VIII "shall be the exclusive remedy for monetary damages available to the parties with respect to any breach of any representation, warranty or covenant contained herein[.]"

Several months after the parties signed the SPA, respondent Carver Boat Corporation, LLC (Carver), a Genmar subsidiary, provided its board of directors with a comprehensive plan called "Large Yacht Project" for Carver's "rapid entry into the larger yacht market." The board approved the proposal. Genmar also formed a new company, named Carver Italia, to purchase the assets of a bankrupt Italian large-yacht manufacturer. In early 2003, Genmar announced the launch of its Nuvari, Marquis, and American Marquis luxury yachts.

In May 2004, Brunswick filed a lawsuit against Genmar, asserting claims for breach of contract. The complaint alleged that the Carver 65 Marquis violated the noncompete agreement because while Genmar set the base price below the base-price restriction, it listed standard equipment as optional. Brunswick sought a temporary injunction preventing Genmar from manufacturing, selling, or distributing the Carver 65 Marquis. Brunswick later amended its complaint to include claims for breach of the

covenant of good faith and fair dealing, interference with business relations, deceptive trade practices, misrepresentation, and for violation of the Minnesota Consumer Fraud Act. The case was filed and a consensual special magistrate (magistrate) was appointed.

In July 2004, the magistrate granted Brunswick's motion for a temporary injunction. Brunswick did not challenge the length of the Carver 65 Marquis, just the base price. The magistrate found that "after a review of all the evidence presented, it appears to the Court there are features listed for the Carver 65 Marquis as optional, which, under generally-accepted industry practice, are deemed standard" and that the base price for the Carver 65 Marquis "is appreciably in excess of $1.3 million." The magistrate enjoined Genmar from manufacturing, selling, or distributing the Carver 65 Marquis until December 1, 2004, but allowed Genmar to complete the nine pending orders for the Carver 65 Marquis. All further sales and advertising of the Carver 65 Marquis were also suspended until December 1, 2004. Genmar was allowed to continue to build the Carver 65 Marquis for later sale after the injunction expired.

Genmar moved to dismiss Brunswick's complaint or, in the alternative, for summary judgment. The magistrate granted Genmar's motion to dismiss Brunswick's claims for deceptive trade practices, misrepresentation, and violation of the Minnesota Consumer Fraud Act. The magistrate denied Genmar's alternative motion for summary judgment on the breach-of-contract claim, Genmar's motion to dismiss Brunswick's claims for breach of implied covenant of good faith and fair dealing and interference with business relations, and Genmar's alternative motion for summary judgment on the interference-with-business-relations claim. On the claim of breach of the covenant of

good faith and fair dealing, the magistrate found that "[i]t is not entirely clear from the pleadings in what respect it is claimed the covenant has been violated. . . . There appears to be fact issues here and, at least until more is known, [Genmar's] motions are denied."

In November 2004, the magistrate granted Genmar's motion for partial summary judgment on the issue of damages, with the exception of Brunswick's "claim for equitable relief in the form of an accounting for profits wrongfully obtained by [Genmar]" and Brunswick's claim for attorney fees, expenses, and costs, which the magistrate found were still at issue. The magistrate found that section 8.3 requires Genmar to indemnify and save Brunswick harmless from all damages resulting from breach of the noncompete agreement. But the magistrate found that section 8.4 precludes Brunswick from recovering damages and limits Brunswick to injunctive relief. The magistrate further found that section 8.9 provides that indemnification under Article VIII is the exclusive remedy available to Brunswick. Brunswick argued that it was still entitled to damages for "lost sales, lost market share, price reductions to compete with the Carver 65 [Marquis's] fictitious base price, increased monetary expenses, lost opportunity to position Hatteras's own product, lost repeat business, lost step-up business, lost production efficiencies, and lost goodwill." The magistrate found that "[i]t would seem many of these claims are quite speculative and vulnerable to summary judgment, but, more to the point, they are—regardless of the characterization thereof—simply a variation on the theme of lost profits and business interruption expenses; therefore, their recovery is precluded by 8.4(d)(i)." Finally, while the magistrate found that Brunswick is not entitled to recover consequential damages of any kind, Brunswick

would be entitled to obtain an equitable remedy, as well as attorney fees, expenses, and costs.

The magistrate also denied Brunswick's motion to extend the temporary injunction, finding that the "apparent purpose of the non-compete covenant is not to allow time for Hatteras to become established in the luxury yacht line because Hatteras was already established in that business. The purpose of the covenant, rather, is mainly to silence a competitor for three years." The magistrate found that it was not appropriate to extend the injunction beyond the period of the covenant. The magistrate also, in connection with a motion by Brunswick, found Genmar in contempt for violating the injunction by advertising its yachts, imposed a $10,000 fine, and ordered Genmar to pay $28,381.20 in attorney fees and costs incurred by Brunswick in connection with the contempt motion.

Carver then filed a declaratory-judgment action against Brunswick, seeking a declaration that the Nuvari 65 did not violate the SPA (Nuvari case). Brunswick moved to dismiss or, in the alternative, to consolidate the cases before the magistrate. The district court denied Brunswick's motion to dismiss and consolidated the cases before the magistrate.

In late 2005, Genmar moved to dismiss Brunswick's claim for equitable relief in the form of disgorgement of profits and Brunswick's claim for attorney fees and expenses. The magistrate granted Genmar's motions, finding that an "obligation" is essentially no different from a "covenant," and there is nothing in the way the two terms are used in Articles VI and VIII of the SPA that suggests that the exclusive

indemnification remedy of section 8.9 should not apply to Brunswick's breach-of-contract claim. The magistrate further found that "[i]f the parties had intended to use the terms 'covenant' and 'obligation' . . . to distinguish between contractual promises having different legal consequences for their breach, those terms would have been defined in the [SPA], but this, significantly, did not happen." The magistrate found that "[i]njunctive relief, being non-monetary, is 'opposed to' monetary relief, and, therefore, available to [Brunswick]. . . . While disgorgement is an equitable remedy, it offers the recovery of money, which is plainly not opposed to monetary relief." Therefore, the magistrate found that Brunswick was not entitled to disgorgement. Finally, because the claim for equitable relief was dismissed, the claim for attorney fees, costs, and expenses was also dismissed.

In December 2005, Brunswick filed a second amended complaint and its answer and counterclaim in the Nuvari case. Genmar moved to dismiss the second amended complaint and counterclaim. In March 2006, Brunswick moved: (1) to renew and extend the temporary injunction; (2) to enjoin Genmar from manufacturing, selling, or distributing the 63 Nuvari, 64 Nuvari, 78 Nuvari, and the 86 Nuvari for 36 months; (3) to enforce the no-economic-benefit promise in the SPA through specific performance; (4) for partial summary judgment on the breach-of-contract claim; (5) for partial summary judgment on the entitlement to attorney fees based on the relief already obtained in the action; (6) for partial summary judgment affirming its entitlement to certain damages; (7) for a ruling that the breach of the covenant of good faith and fair dealing is a fraud-based claim outside the scope of limitation on remedies in the SPA; (8) for discovery of

certain e-mails; and (9) for an order to show cause why Genmar should not be held in contempt.

The magistrate denied Genmar's motion to dismiss the second amended complaint and the counterclaim with respect to Brunswick's claim for breach of the covenant of good faith and fair dealing, and granted Genmar's motion to dismiss Brunswick's other claims, finding them moot. With respect to Genmar's motion, the magistrate first addressed the issue of judicial estoppel. Brunswick claimed that Genmar opposed the temporary injunction based on the argument that the "injunction was unnecessary because Brunswick had an adequate remedy in damages[.]" Later, when addressing the issue of damages, however, Genmar changed its position and argued that Brunswick was not entitled to monetary damages under the SPA. The magistrate found that "Brunswick was not really prejudiced by Genmar's change of position. . . . The lack of clarity in the contract is to blame for Genmar's change of position, not any bad faith motivation." On the issue of Brunswick's claim for breach of the covenant of good faith and fair dealing, the magistrate found that "[w]hether there are accepted industry practices regarding standard/optional features sufficient to imply a covenant of good faith and fair dealing, and whether such a covenant was breached, are fact issues for trial." The magistrate also found that the cause of action for a violation of a covenant of good faith and fair dealing is neither a tort action for fraud nor misrepresentation, but rather a contract-based cause of action arising from a fraud-based claim. Therefore, the issue was not moot and escaped the exclusivity remedy of section 8.9.

The magistrate denied Brunswick's motions (1) to renew and extend the injunction; (2) to enjoin Genmar from manufacturing, selling, or distributing the 63 Nuvari, 64 Nuvari, 78 Nuvari, and the 86 Nuvari for 36 months; (3) to enforce the no-economic-benefit promise in the SPA by specific performance; (4) for partial summary judgment on the claims for breach of contract and entitlement to certain damages; (5) for an order to show cause why Genmar should not be held in contempt for representations made about the Nuvari yachts; and (6) for discovery of certain e-mails. The magistrate deferred Brunswick's motion for partial summary judgment on its entitlement to attorney fees based on the relief already obtained in the action, and granted Brunswick's motion for a ruling that the breach of the covenant of good faith and fair dealing is a fraud-based claim outside the scope of any limitation on remedies in the SPA.

Brunswick then moved for summary judgment regarding the Carver 65 Marquis and to dismiss Genmar's counterclaim as moot. Genmar moved for summary judgment on Brunswick's claim for breach of the covenant of good faith and fair dealing and for sanctions against Brunswick for the March motions.

The magistrate denied Genmar's motion for summary judgment on Brunswick's claim for breach of the covenant of good faith and fair dealing, and sua sponte entered summary judgment in favor of Brunswick and awarded Brunswick nominal damages in the amount of $1. In denying the motion, the magistrate ruled as a matter of law that "the term 'optional equipment' in Section 6.8's definition of retail base price means those particular features and equipment that industry custom and practice generally consider to be optional, as opposed to those which are considered to be standard and covered by the

retail base price." The magistrate found that "[t]he implied good-faith covenant imposes on Genmar a duty 'to refrain from arbitrary and unreasonable conduct which has the effect of preventing the other party to the contract from recovering the fruits of the contract.'" The magistrate found that these were "two experienced boat companies, knowledgeable in their industry's practice. Clearly, if they had thought their definition needed further refinement, they would have taken care of it." The magistrate noted that the difficulty with this case is that Brunswick's damages must be measured by its own loss, not Genmar's gain. The magistrate found that "Brunswick may have suffered, but it has not made any showing how its suffering can be monetarily measured." The magistrate found that even though Brunswick failed to show damages, under Delaware law, Brunswick was entitled to at least nominal damages and awarded Brunswick $1 "for the purpose of declaring an infraction of Brunswick's rights and the commission of a wrong[.]" The magistrate also dismissed Brunswick's motion for summary judgment regarding the Carver 65 Marquis as moot, and granted Brunswick's motion to dismiss Genmar's counterclaim and Genmar's motion for sanctions in connection with Brunswick's motions filed in March 2006. The magistrate later ordered Brunswick to pay $7,500 in sanctions.

The magistrate dismissed the complaint in the Nuvari case and amended the entry of summary judgment to include an award of attorney fees, costs, and expenses to Brunswick in the amount of $787,820.99. The district court adopted the rulings and the findings of the magistrate without modification, and this appeal follows.

D E C I S I O N

Pursuant to the SPA and the agreement of the parties, the magistrate applied Delaware substantive law and Minnesota procedural law to the issues. We review the decisions of a magistrate the same as we review district court decisions in other civil matters. Minn. Stat. § 484.74, subd. 2a (2006).

Breach-of-Contract Claim

Brunswick argues that it is entitled to pursue damages resulting from Genmar's breach of contract, and, therefore, the magistrate erred in dismissing its breach-of-contract claim. "When reviewing [claims] dismissed for failure to state a claim on which relief can be granted, the only question before us is whether the complaint sets forth a legally sufficient claim for relief." *Barton v. Moore*, 558 N.W.2d 746, 749 (Minn. 1997).

Judicial Estoppel

Brunswick first argues that Genmar is judicially estopped from arguing that the SPA bars Brunswick from recovering monetary damages. "Whether to apply the doctrine of judicial estoppel is a question of law, reviewed de novo." *State v. Pendleton*, 706 N.W.2d 500, 507 (Minn. 2005). In order for judicial estoppel to apply, three requirements must be met: (1) a party must take a later position that is clearly inconsistent with an earlier position, (2) the facts at issue should be the same in both cases, and (3) the party must have prevailed on its earlier position. *Bauer v. Blackduck Ambulance Ass'n*, 614 N.W.2d 747, 749-50 (Minn. App. 2000). While Brunswick argues that "[b]ecause of the obvious benefits of the doctrine in terms of fairness and judicial economy, Minnesota has long enforced this rule[,]" the Minnesota Supreme Court has

expressly declined to recognize the doctrine of judicial estoppel. *Pendleton*, 706 N.W.2d at 507. Accordingly, we decline to apply the doctrine of judicial estoppel here.

The SPA does not bar breach-of-contract damages

Brunswick next argues that the magistrate erred in concluding that the SPA imposed an absolute bar to breach-of-contract damages. Specifically, Brunswick argues that the exclusive-remedy limitation in the SPA does not apply to the breach of the noncompete agreement because it constitutes an obligation rather than a covenant. In construing a contract, we must "give effect to the intention of the parties as expressed in the language they used in drafting the whole contract." *Art Goebel, Inc. v. N. Suburban Agencies, Inc.*, 567 N.W.2d 511, 515 (Minn. 1997). Whether a contract is ambiguous is a question of law. *Id.* "Because a word has more than one meaning does not mean it is ambiguous. The sense of a word depends on how it is being used; only if more than one meaning applies within that context does ambiguity arise." *Bd. of Regents v. Royal Ins. Co. of Am.*, 517 N.W.2d 888, 892 (Minn. 1994).

Based on the plain and ordinary language of the SPA, the exclusive-remedy limitation applies to the noncompete agreement. Section 8.9 provides that the indemnification provisions set forth in Article VIII "shall be the exclusive remedy for monetary damages available to the parties with respect to any breach of any representation, warranty or *covenant* contained herein[.]" (Emphasis added.) First, while the word "covenant" does not actually appear in section 6.8 of the SPA, the noncompete agreement is a covenant. *See Grobow v. Perot*, 526 A.2d 914, 928 (Del. Ch. 1987) (referring to an agreement not-to-compete as a "covenant" not-to-compete), *aff'd*, 539

A.2d 180 (Del. 1988), *overruled on other grounds*, *Brehm v. Eisner*, 746 A.2d 244 (Del. 2000). "Obligation" is defined as "[a] formal and binding agreement . . . [to] do a certain thing." *Black's Law Dictionary* 1074 (6th ed. 1990). "Covenant" is broadly defined as "any agreement or contract." *Id.* at 363. The magistrate correctly found that the terms "obligation" and "covenant" are essentially the same thing—an agreement. Brunswick also concedes that the terms obligation and covenant are often used interchangeably because an obligation arises from the covenant. Brunswick's argument that the noncompete agreement constitutes an obligation rather than a covenant fails based on the plain and ordinary meaning of the terms. Therefore, the magistrate did not err in concluding that the exclusive-remedy-limitation of the SPA barred damages on Brunswick's breach-of-contract claim.

Direct Damages

Finally, Brunswick argues that the SPA does not foreclose recovery of direct damages, rather it bars only consequential damages in the form of business interruption and lost profits. Genmar argues that the magistrate correctly found that all of the damages Brunswick sought fell within the category of lost profits or business-interruption expenses. Section 8.4(d)(i) limits Brunswick's indemnification remedy by providing that Brunswick "shall not be entitled to recover under Section 8.3:(i) with respect to consequential damages of any kind, damages consisting of business interruption or lost profits (regardless of the characterization thereof), or punitive damages[.]" "Consequential damages" is defined as "losses or injuries which are a result of an act but are not direct and immediate." *Black's Law Dictionary* 390 (6th ed. 1990). "Direct

damages" is defined as "[d]amages which arise naturally or ordinarily from breach of contract[.]" *Id.* The damages sought by Brunswick constitute consequential damages because, while they are the result of a breach of the noncompete agreement, they are not direct and immediate. The magistrate correctly concluded that these claimed damages are simply a variation on the theme of lost profits and business-interruption expenses.

Because the complaint does not set forth a legally sufficient claim for relief on the breach-of-contract claim, the magistrate did not err in dismissing the breach-of-contract claim and in finding that Brunswick was not entitled to damages in connection with the that claim.

Equitable Relief

Brunswick argues that it is entitled to equitable relief for Genmar's breach of the noncompete agreement; specifically, the equitable remedies of disgorgement and specific performance. "Granting equitable relief is within the sound discretion of the [district] court. Only a clear abuse of that discretion will result in reversal." *Nadeau v. County of Ramsey*, 277 N.W.2d 520, 524 (Minn. 1979). Brunswick sought only injunctive relief in its complaint, not disgorgement or specific performance.

Disgorgement

Brunswick argues that the disgorgement remedy does not seek "monetary damages." As previously discussed, the magistrate found that Brunswick is not entitled to disgorgement. "Damages" is defined as "[m]oney compensation sought or awarded as a remedy for a breach of contract or for tortious acts." *Black's Law Dictionary* 389 (6th ed. 1990). "Disgorgement" is defined as "[t]he act of giving up something (such as

profits illegally obtained) on demand or by legal compulsion." *Id.* at 501 (8th ed. 2004). Based on the plain and ordinary meaning of the terms, disgorgement—while in the form of money—is not the equivalent of damages. But, as the magistrate correctly found, section 8.9(b) provides an exception to the indemnification remedy for claims "where equitable (as opposed to monetary) relief is available." Based on this language, the magistrate concluded that even though disgorgement is an equitable remedy, it comes in the form of money and, therefore, it was not available under section 8.9(b). Because the language of the parties' agreement barred monetary damages, the magistrate's conclusion that Brunswick was not entitled to the equitable remedy of disgorgement was not an abuse of discretion.

Specific Performance

Brunswick also argues that it is entitled to the equitable remedy of specific performance. Section 6.8 of the SPA provides that Genmar shall not "engage in, control, advise or receive any economic benefit from any Competitive Business (as herein defined)." In addressing the no-economic-benefit agreement, the magistrate stated that

> even if the no-economic-benefit language is a separate contractual promise, which it certainly appears to be, it provides its own measure of expectancy damages for breach, entitling [Brunswick] to recover [Genmar's] profit as the measure of his own loss—a quite different situation than disgorgement; this breach, however, is no help to Brunswick because indemnification under §§ 8.3 and 8.9 would be the only remedy available to Brunswick for expectancy damages from a contract breach.

Brunswick moved to enforce the no-economic-benefit agreement in section 6.8 by specific performance. In denying the motion, the magistrate found that "[a]fter further

consideration, the Court concludes that the words 'control,' 'advise' and 'receive any economic benefit from' are simply amplifications of the term 'engage in,' and are not independent promises." In other words, the magistrate found that "to receive an economic benefit from a business, is to engage in that business." The magistrate concluded that Brunswick's claim for specific performance is in the form of recovering the ill-gotten profits of Genmar in breaching the noncompete agreement, "[b]ut this is a form of disgorgement, which the Court has already disallowed." Again, because the language of the parties' agreement barred monetary damages, the magistrate's conclusion that Brunswick was not entitled to the equitable remedy of specific performance was not an abuse of discretion.

Covenant of Good Faith and Fair Dealing

Brunswick argues that genuine issues of material fact preclude summary judgment on the issue of damages. Genmar argues that Brunswick is not entitled to summary judgment because genuine issues of material fact exist regarding the base price for the Carver 65 Marquis. "On an appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact, and (2) whether the [district] court[] erred in [its] application of the law." *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). "On appeal, [we] must view the evidence in the light most favorable to the party against whom judgment was granted." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

Damages

Brunswick first argues that it did not have a meaningful opportunity to respond to the sua sponte summary judgment. A district court may grant summary judgment sua sponte if, under the same circumstances, it would grant summary judgment on motion of a party. *Del Hayes & Sons, Inc. v. Mitchell*, 304 Minn. 275, 280, 230 N.W.2d 588, 591-92 (1975). "Unless an objecting party can show prejudice from lack of notice or other procedural irregularities, or was not afforded a meaningful opportunity to oppose summary judgment, the [district] court's judicious exercise of its inherent power to grant summary judgment in appropriate cases should not be disturbed." *Fed. Land Bank of St. Paul v. Obermoller*, 429 N.W.2d 251, 255 (Minn. App. 1988), *review denied* (Minn. Oct. 26, 1988). "Prejudice is unavoidable when a [district] court denies any opportunity to marshall evidence in opposition to a basis for summary judgment raised sua sponte." *Doe v. Brainerd Int'l Raceway, Inc.*, 514 N.W.2d 811, 822 (Minn. App. 1994), *rev'd on other grounds*, 533 N.W.2d 617 (Minn. 1995).

Brunswick also claims that it did not have a meaningful opportunity to oppose the award of nominal damages based on Brunswick's alleged inability to provide evidence of the amount of its damages. The magistrate granted Brunswick's motion for a ruling that Brunswick's claim for breach of the covenant of good faith and fair dealing, as pleaded, is a fraud-based claim outside the scope of the exclusivity remedy of section 8.9 of the SPA. But the magistrate later found that Brunswick's suggested damages were speculative in nature and that Brunswick failed to show how its injury could be measured monetarily. Genmar's motion for summary judgment on Brunswick's claim of breach of

good faith and fair dealing did not raise the issue of the amount of damages, and the issue of the amount of damages was not raised at the motion hearing. Therefore, Brunswick was unaware of the need to address the issue of damages in either its response to the summary judgment motion or at the hearing. Based on the record, we conclude that Brunswick was not provided a meaningful opportunity to address the issue of damages and was prejudiced by the lack of an opportunity to present evidence of its damages when the magistrate awarded nominal damages in the amount of $1.

It should also be noted that the magistrate found that because the implied covenant of good faith and fair dealing is a contract cause of action arising from a fraud-based claim, it escapes the exclusivity remedy of section 8.9; in other words, if Brunswick can prove damages, it would be entitled to them on this claim. Therefore, Genmar's argument that the magistrate erred in awarding even nominal damages to Brunswick in light of the magistrate's decision disallowing damages fails. Because Brunswick was denied a meaningful opportunity to present evidence on the amount of damages, the magistrate's grant of sua sponte summary judgment in favor of Brunswick on the issue of breach of the covenant of good faith and fair dealing, as well as the award of nominal damages in the amount of $1, are reversed. We also remand for Brunswick to be afforded a meaningful opportunity to develop the record on the amount of damages for breach of the covenant of good faith and fair dealing.

Base Price

Genmar argues that the magistrate relied on contested exhibits in concluding that Genmar had breached the covenant of good faith and fair dealing. Therefore, Genmar

argues, genuine issues of material fact exist regarding how Genmar arrived at the base price of $1,299,995 for the Carver 65 Marquis. The magistrate found that "uncontroverted evidence" existed to show that Genmar was selling its Carver 65 Marquis "for $5 under the $1.3 million ceiling by telling its dealers and customers that for the purchase of a yacht at the retail base price, the customer must choose to buy, in addition, certain 'optional equipment,' which was really standard equipment and should have been included in the retail base price." It is certainly uncontroverted that Genmar was listing the Carver 65 Marquis for $5 under the base-price restriction contained in the SPA. Further, there is uncontroverted evidence that Genmar listed "standard" equipment as "optional," thereby increasing the true price of the Carver 65 Marquis over the base-price restriction. "[T]he party resisting summary judgment must do more than rest on mere averments[,]" which Genmar has failed to do. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). Therefore, we find that no genuine issues of material fact exist regarding the base price of the Carver 65 Marquis.

Attorney Fees

Brunswick argues that the magistrate erred in reducing its claim for attorney fees by 55% based on a finding that a substantial portion of Brunswick's fees was incurred pursuing contract claims that the magistrate viewed as moot. Genmar argues that the magistrate's award of attorney fees to Brunswick was an abuse of discretion because Brunswick did not state a claim for breach of the covenant of good faith and fair dealing in its second amended complaint and that attorney fees were not allowed pursuant to Article VIII of the SPA. "On review, this court will not reverse a [district] court's award

or denial of attorney fees absent an abuse of discretion." *Becker v. Alloy Hardfacing & Eng'g Co.*, 401 N.W.2d 655, 661 (Minn. 1987). When the question on appeal is "the legal standard to apply to calculate [] attorney fees, our review is de novo." *In re L-tryptophan Cases*, 518 N.W.2d 616, 619 (Minn. App. 1994). Based on the decision regarding Genmar's breach of the covenant of good faith and fair dealing and Brunswick's entitlement to damages on that claim, we conclude that Brunswick is also entitled to an award of attorney fees in this case; but, in light of our remand on the issue of damages, we decline to address the appropriateness of a specific amount. On remand, the magistrate may determine whether the amount of fees previously awarded is appropriate or if the award should be increased or decreased.

Sanctions

Brunswick also argues that the magistrate erred in ordering sanctions against it for the numerous motions filed in March 2006. We review a rule 11 sanction under an abuse-of-discretion standard. *Leonard v. Nw. Airlines*, 605 N.W.2d 425, 432 (Minn. App. 2000), *review denied* (Minn. Apr. 18, 2000). Brunswick argues that the magistrate did not suggest that the motions were frivolous, unsupported by evidence, or offered for "any improper purpose." Minn. R. Civ. P. 11.02. Brunswick also argues that the assumptions on which the magistrate rested his finding of unreasonableness does not survive the substantive arguments in this appeal. The magistrate merely concluded that Brunswick "acted unreasonably" in bringing all of the motions together at that point in the litigation. Genmar argues that the magistrate properly sanctioned Brunswick based on its filing of 299 pages of memoranda and hundreds of pages of exhibits, in violation of

the court's scheduling order. The magistrate found that five of the motions "re-visited the law of the case and dealt with moot issues." Further, the magistrate found that the motions were an "unnecessary duplication of briefing and a needless increase in the cost of the litigation in violation of Minn. R. Civ. P. 11 and Minn. Stat. § 549.211." There is nothing in the record to show that the magistrate's imposition of sanctions was an abuse of discretion.

Affirmed in part, reversed in part, and remanded.