IN THE SUPREME COURT OF THE STATE OF NEVADA

ECOENERGY SOLUTIONS, INC.,
Appellant,
vs.
RUDOLF W. GUNNERMAN; PETER GUNNERMAN; SULPHCO, INC.; AND RWG, INC.,
Respondents.

No. 50324

FILED

JUL 3 1 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment in a contracts, torts, and fraud action. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

This appeal involves a district court judgment in a corporate contract action.[1] Ecoenergy Solutions, Inc., brought a claim against its former employees, Rudolf and Peter Gunnerman and their corporation, SulphCo, Inc., for breach of contract, breach of fiduciary duty, fraud, civil conspiracy, intentional interference with contractual relations, and unjust enrichment after Ecoenergy discovered that the Gunnermans patented a technology similar to one it claimed it had developed. The district court dismissed Ecoenergy's fraud and unjust enrichment claims. After trial, the jury returned a verdict for Ecoenergy for breach of contract, including bad faith and tortious breach, and for breach of fiduciary duty, but

[1]The initial complaint was filed by CFT, a Reno-based Delaware corporation involved in alternative energy. Several months after CFT brought the complaint, Ecoenergy, which is also a Delaware corporation based in Reno, became the real party in interest and was substituted for CFT as plaintiff.

awarded Ecoenergy $0 in damages. The district court further denied Ecoenergy equitable relief or attorney fees and instead awarded SulphCo attorney fees and costs. Ecoenergy now appeals, alleging the district court erred in (1) denying its request for equitable relief because the district court circumvented the jury's verdict in denying that request, and (2) sustaining the Gunnermans' objections and excluding testimony regarding the compensation that Rudolf and Peter received from SulphCo.[2] We disagree and conclude that Ecoenergy's arguments are without merit and therefore affirm the district court's judgment.

Pertinent facts

CFT, the predecessor to Ecoenergy, was a company in the development stages of producing cleaner burning fuels. CFT engaged in treating fuels by adding an additive and water to the fuel to create an emulsion known as "aqueous fuel." In 1994, Rudolf entered into an Exclusive License Agreement (ELA) with CFT regarding Rudolf's knowledge of the aqueous fuel process, in return for controlling ownership interest in the company. Rudolf co-founded CFT and was chief executive officer and chairman of its board of directors from its inception until April 23, 2003. Rudolf's son, Peter, was a director and officer of CFT for many years before becoming president of CFT, a position he held until 2004.

In late November 1998, the Gunnermans discovered the work of a University of Southern California engineering professor, T.F. Yen, through a scholarly article on the Internet. On December 2, 1998, Peter

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[2]Ecoenergy also argues that the district court erred in its grant of attorney fees and summary judgment on its fraud claim. We conclude that these arguments are without merit.

wrote a letter to Yen on CFT letterhead, inviting Yen to Reno to tour the CFT facilities and to get a "comprehensive overview of [CFT's] technology" as the Gunnermans were attempting to solve a technical problem with CFT's emulsion fuel formula. In the letter, Peter further inquired whether Yen's sulfur removal technology had an existing "through-put capacity" equal to that of CFT's emulsion technology. Within a few days, Peter arranged a meeting with Yen, during which there was discussion of a venture in which Yen would be paid to perform research and develop a new technology to remove sulfur from oil through the use of ultrasound (known as "Sulfur Removal Technology" (SRT)). According to Yen's testimony, aqueous fuel emulsions were essential to SRT.

Rudolf formed GRD, Inc., to pursue the Yen research. Rudolf thereafter told the CFT board of directors that the SRT was "not related to any technologies or intellectual property owned by and/or developed by CFT," that "no moneys have been expended by CFT in connection with [GRD's] affairs," and that "no CFT facilities or paid time of its employees have been utilized." Eventually, Yen's research materialized into a confidential patent application filed on June 11, 2002, on which a U.S. patent was later issued. GRD later became, and is now, SulphCo.

Jury verdict

Ecoenergy argues that the district court improperly reconsidered issues decided by the jury in denying its request for equitable relief. We disagree.

Standard of review

"A jury verdict is presumptively valid; absent a showing in the record, this Court will not read error into a general verdict." Bryan v. Allen, 96 Nev. 572, 573, 679 P.2d 412, 413 (1980). As such, we have held that "'the district court [is] prohibited from reconsidering any issues

necessarily and actually decided by the jury'" when deciding whether to grant equitable relief. Brown v. F.S.L.I.C., 105 Nev. 409, 414, 777 P.2d 361, 364 (1989) (quoting Hussein v. Oshkosh Motor Truck Co., 816 F.2d 348, 355 (7th Cir. 1987). In determining what a jury has decided, we look to pleadings, the evidence, and the instructions given to the jury, and will assume that the jury understood the instructions and correctly applied them to the evidence. See McKenna v. Ingersoll, 76 Nev. 169, 175, 350 P.2d 725, 728 (1960).

In 2003, CFT obtained a capital infusion from Capital Strategies on the condition that CFT sever all remaining involvement with Rudolf. The specific conditions precedent that Capital Strategies required prior to providing the capital infusion were that Rudolf would agree to: 1) terminate his existing consulting contract with CFT, 2) step down as chairman of the board of CFT, 3) assign a CFT Note to Capital Strategies with a face amount of more than $20 million in exchange for a payment from Capital Strategies of 10 percent of the face value of the note, and 4) transfer to Capital Strategies all his residual rights as the owner of any technology licensed to CFT under the ELA. In order to persuade Rudolf to agree to Capital Strategies' requests, CFT agreed to sign the acknowledgment that Rudolf was allowed to pursue SRT at SulphCo.

At trial, the Gunnermans and SulphCo defended against Ecoenergy's allegations of breach of contract by arguing that CFT waived its claim to any damages by refinancing with Capital Strategies in April 2003. Ecoenergy's damages expert, on the other hand, estimated that the company suffered damages ranging from $39.4 million to $125.4 million. It was undisputed that SulphCo owned the Yen patent. After the jury returned a verdict for $0 damages for Ecoenergy, and during the equitable

remedy phase of the case, respondents contended that the $0 damages award was a reflection of the jury's acceptance of the defense that any claims in CFT's favor had been waived as part of the April 2003 refinancing. In denying Ecoenergy's request for equitable relief, the district court found that CFT "for valuable consideration, knowingly consented to Defendants' development of the [SRT] and, therefore, waived any rights in the technology."

We conclude that the district court did not err in denying Ecoenergy's request for equitable relief because there was evidence presented to support the conclusion that any causes of action established by Ecoenergy took place prior to April 2003, thus supporting the contention that all damages were waived by the April 2003 refinancing. The district court explicitly rejected Ecoenergy's argument that the jury's verdict for Ecoenergy precluded a finding of waiver because the jury specifically found the respondents liable for $0 damages.

Here, we conclude that Ecoenergy's argument is without merit because it failed to show and specify which questions, if any, the district court reconsidered that were actually and necessarily decided by the jury in awarding Ecoenergy $0 in damages. We conclude that the district court did not err in denying Ecoenergy's requested equitable relief because substantial evidence supported a finding that the jury decided that Ecoenergy waived its claim for damages by refinancing in 2003.

Evidence of the Gunnermans' compensation

Ecoenergy contends that the testimony regarding the Gunnermans' compensation should have been admitted because that evidence was relevant to Ecoenergy's theory that the Gunnermans were

self-enriched through SulphCo. Therefore, Ecoenergy argues that the district court erred in excluding this evidence. We disagree.[3]

Standard of review

The district court has discretion to admit or exclude testimony. Hall v. SSF, Inc., 112 Nev. 1384, 1392-93, 930 P.2d 94, 99 (1996). We review the district court's decision whether to admit testimony under a "manifestly wrong" standard. Id. "If the trial court sustains an objection to testimony sought for consideration of the jury, it is the responsibility of the party against whom the objection is sustained to make an offer of proof that specifies what the party expects to prove by the proffered testimony." Burgeon v. State, 102 Nev. 43, 47, 714 P.2d 576, 579 (1986).

We conclude that the district court was not manifestly wrong in excluding further testimony regarding the Gunnermans' compensation for two reasons. First, Ecoenergy offers no concrete reason why the district court was manifestly wrong in excluding further testimony, aside from arguing that it would have demonstrated that Rudolf was compensated millions of dollars, and accordingly we conclude that Ecoenergy did not make an offer of proof as required. Second, a review of the record reveals that there was no relation between the Gunnermans' personal compensation from SulphCo and the damages requested by

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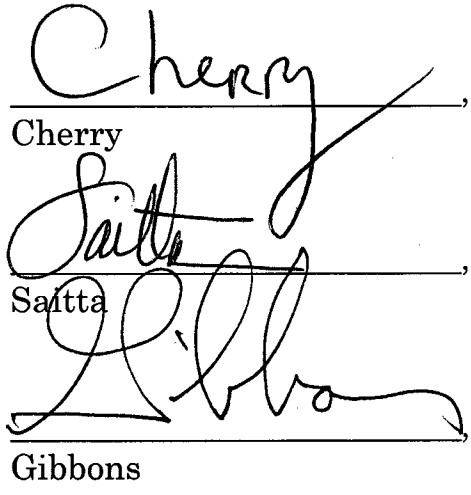
[3]We note here that the Gunnermans contend that Ecoenergy did not preserve this issue for appeal because Ecoenergy never made an offer of proof regarding the proposed testimony. We disagree and conclude that this issue was preserved for appeal because Ecoenergy did offer the testimony of David Nolte as an offer of proof regarding testimony of the Gunnermans' compensation.

Ecoenergy. Because of the high standard of "manifestly wrong" review for this issue, we conclude that the district court did not err in excluding such testimony. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



Cherry, J.

Saitta, J.

Gibbons, J.

cc: Hon. Brent T. Adams, District Judge
Patrick O. King, Settlement Judge
Jones, Walker, Waechter, Poitevent, Carrere & Denegre, LLP
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