

IN THE SUPREME COURT OF THE STATE OF NEVADA

VINOD BHAN,
Appellant,
vs.
HEM CHANDRA DAS,
Respondent.

No. 60896

FILED

NOV 01 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a final judgment on a jury verdict in a defamation and breach of contract action and from a post-judgment order denying a new trial. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

Appellant Vinod Bhan owned a convenience store in Sparks, Nevada. Respondent Hem Chandra Das, Bhan's brother, served as manager of the store for seven years. In lieu of a regular paycheck, Bhan orally promised Das that he would receive half of the business profits upon the sale of the property which housed the business. However, when the business was sold, Das did not receive any of the profits. Das sued Bhan for breach of contract.

After trial, the jury found by special verdict that Bhan and Das had entered into a valid contract to share in the business's profits and that Bhan breached said contract. The jury's answers to the interrogatories indicated that it found that the contract did not provide for a payment of wages to Das. However, the jury's answers also show that it calculated damages by multiplying the hourly wage of \$8.50 by half the amount of hours that Das had worked. The jury explained that it did not see another way to calculate the profits owed to Das. The district court

entered judgment in the amount of damages found by the jury. This appeal followed.¹

On appeal, Bhan contends that the district court erred in entering judgment based on an alleged inconsistent special verdict.² We review a district court's decision concerning interrogatories and special verdicts for an abuse of discretion. *Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.*, 124 Nev. 1102, 1110, 197 P.3d 1032, 1037 (2008).

District courts are required by statute to enter judgment when the verdict and the interrogatory answers are harmonious. NRCP 49(b). However, when the interrogatory answers are inconsistent, courts "may return the jury for further consideration of its answers and verdict or may order a new trial." *Id.*; see *S. J. Amoroso Constr. Co. v. Lazovich & Lazovich*, 107 Nev. 294, 298, 810 P.2d 775, 777 (1991) (stating that a defect in a jury award may be cured by returning the verdict to the jury for further consideration). We have interpreted "the mandatory language of NRCP 49(b) to require the district court not to direct the entry of judgment when the interrogatory answers are inconsistent with each other and one or more is also inconsistent with the general verdict." *Lehrer McGovern*, 124 Nev. at 1111, 197 P.3d at 1038.

Here, Das argues that the jury answered the interrogatories inconsistently when it indicated that no wages were provided for in the contract, but then calculated contract damages based on estimated wages.

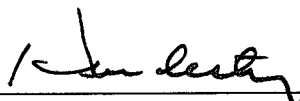
¹The parties are familiar with the facts and we do not recount them further except as is necessary for our disposition.

²We have considered Bhan's other arguments and conclude that they lack merit.

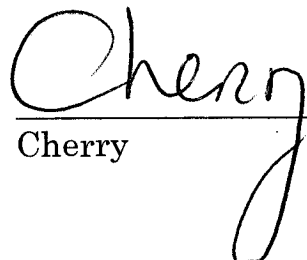
While it was unusual to calculate contract damages by using wages not provided for in the contract, it was permissible for the district court to salvage the verdict. *Carlson v. Locatelli*, 109 Nev. 257, 263, 849 P.2d 313, 316-17 (1993) (“Where possible, the verdict should be salvaged so that no new trial is required.”). In the first place, the district court satisfied NRCP 49(b)’s requirements by inviting the jury to explain its interrogatory answers in open court. *See* NRCP 49(b); *Locatelli*, 109 Nev. at 263, 849 P.2d at 316-17. Second, Das was not required to “prove [his] damages with mathematical precision; [he] need only establish a reasonable basis for ascertaining those damages.” *Central Bit Supply, Inc. v. Waldrop Drilling & Pump, Inc.*, 102 Nev. 139, 142, 717 P.2d 35, 37 (1986). Das provided a reasonable basis for ascertaining his damages by offering an estimate of the hours he worked. The jury multiplied half of those hours by an estimated wage to come up with the amount he was owed. “[O]nce the fact of damages has been established, some uncertainty in the amount is allowed.” *Mort Wallin of Lake Tahoe, Inc. v. Commercial Cabinet Co.*, 105 Nev. 855, 857, 784 P.2d 954, 955 (1989). Therefore, we conclude that the district court did not abuse its discretion in entering judgment in the amount of damages found by the jury.

Accordingly we,

ORDER the judgment AFFIRMED


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Cherry

cc: Hon. Jerome Polaha, District Judge
David Wasick, Settlement Judge
Hardy Law Group
O'Mara Law Firm, P.C.
Washoe District Court Clerk