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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1472**

James Klingelhutz, individually and o/b/o the
Klingelhutz Family Limited Partnership,
Appellant,

vs.

John Klingelhutz,
Respondent,

Gary Klingelhutz,
Respondent.

**Filed August 31, 2020
Affirmed
Johnson, Judge**

Carver County District Court
File No. 10-CV-18-355

James Klingelhutz, Waconia, Minnesota (*pro se* appellant)

Phillip R. Krass, Patrick B. Steinhoff, Malkerson Gunn Martin LLP, Minneapolis,
Minnesota (for respondent Gary Klingelhutz)

Considered and decided by Connolly, Presiding Judge; Johnson, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

A family limited partnership was established in 1994 with the primary purpose of
owning, managing, and potentially selling two farm properties located in Carver County.

The partnership sold the properties in three transactions in 2016, 2017, and 2018. One of the general partners sued the other two general partners, alleging, among other things, that they breached their fiduciary duties by agreeing to sell the properties for less than fair market value. The district court entered summary judgment in favor of the defendants. We affirm.

FACTS

In 1994, Daniel Klingelhutz, Mary Ann Klingelhutz, and six other persons entered into a written agreement to form the Klingelhutz Family Limited Partnership. At the time of its formation, the partnership had three general partners: Daniel, Mary Ann, and James Klingelhutz. Gary Klingelhutz and John Klingelhutz later replaced their parents, Mary Ann and Daniel, as general partners after they passed away in 2005 and 2010.

From the beginning, the partnership has owned two parcels of real property. The parties refer to the two properties as Farm 1 and Farm 2. Farm 1 consists of a farmhouse and 160 acres of land. Farm 2 consists of approximately 70 acres of land and has been treated as consisting of two sub-parcels, which we will call Farm 2A, which is approximately 34 acres in size, and Farm 2B, which is approximately 36 acres in size. The express purpose of the partnership is, among other things, “to acquire, farm, operate, lease, manage, own, sell, exchange, or otherwise dispose of or derive economic benefit from” the partnership’s properties. The partnership agreement provides that the partnership “shall be dissolved” upon the occurrence of any of six specified events, one of which is the sale or disposition of all or substantially all of the partnership’s assets.

In 2015, the partners collectively decided that they wanted to sell the properties and “cash out.” The partnership hired a former Chaska city administrator with experience in residential development to facilitate the sale of Farm 2. He negotiated an agreement by which the partnership would sell Farm 2A to a development company for \$1,950,000. The partners approved the sale, and the general partners executed a written agreement in February 2016.

In June 2016, all partners signed an agreement stating that they previously had “authorized the sale of the partnership assets” and that Gary was “designated as the managing general partner” and was “authorized to sign all documents to complete the sale of” the partnership’s properties. During the next year and a half, the partnership attempted to sell Farm 1 and Farm 2B. In early 2017, Gary executed an agreement to sell Farm 1 for \$1,600,000.

In December 2017, an attorney representing James sent a letter to Gary and John in which he demanded that “the Partnership bring claims against Gary and John Klingelhutz for their numerous breaches of the contractual and fiduciary duties that they hold towards the Partnership, as well as for conversion and misappropriation of Partnership assets.” The demand was based on the attorney’s assertion that Gary and John had “breached their fiduciary duties by negotiating sales of Farm 1 and Farm 2 . . . at sale prices far below market values.” The attorney stated that if the partnership did not comply with the demand, “James Klingelhutz [would] have no choice but to make derivative demands on the Partnership’s behalf, as well as claims individually.”

The partnership did not assert claims against Gary or John. In April 2018, James commenced this action against Gary and John. James alleged direct claims on his own behalf and derivative claims on behalf of the partnership. James pleaded legal theories of breach of fiduciary duty, breach of contract, judicial dissolution, unjust enrichment, and waste. Gary and John counterclaimed for a declaration that their actions were consistent with the partnership agreement and for a judicial dissolution.

While the lawsuit was pending in the district court, the partnership continued to try to sell Farm 2B. In July 2018, the partnership executed an agreement to sell Farm 2B to DDK Construction, Inc. (DDK) for \$1,360,000. DDK is a construction company owned by Durene Klingelhutz, who is a limited partner of the partnership and is John's wife.

In November 2018, Gary and John moved for summary judgment on all of James's claims except his claim for a judicial dissolution. In March 2019, the district court granted the motion in part and ordered the entry of partial summary judgment in favor of Gary and John. In July 2019, the parties stipulated to the dismissal of all of their remaining claims with prejudice.

James appeals. After James filed the notice of appeal, John filed a bankruptcy petition. This court stayed the appeal with respect to John. Nonetheless, we will proceed to consider the appeal with respect to James's claims against Gary.¹

¹James was represented by counsel on appeal during the briefing stage and at oral argument. His attorney filed a notice of withdrawal on August 17, 2020. See Minn. R. Civ. App. P. 143.05, subd. 2. Accordingly, James presently is *pro se*. We note the general rule that a limited partnership must be represented by a licensed attorney in any court proceeding. *Hinckley Square Assocs. v. Cervene*, 871 N.W.2d 426, 428-31 (Minn. App. 2015). But that requirement is not implicated here because the Klingelhutz Family Limited

DECISION

A district court “shall grant a motion for summary judgment if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). This court applies a *de novo* standard of review to the district court’s legal conclusions on summary judgment and views the evidence in the light most favorable to the party against whom summary judgment was granted. *Commerce Bank v. West Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015).

I. Claim of Breach of Fiduciary Duty

James argues that the district court erred by concluding that there is no genuine issue of material fact with respect to his claim of breach of fiduciary duty.

James seeks to prove that Gary breached his fiduciary duty by agreeing to sell Farm 2A and Farm 2B at prices below their fair market value. James relies on an exhibit that consists of excerpts of a written appraisal that was prepared for him in March 2017, approximately one year before this action was commenced. The appraiser valued Farm 2 (*i.e.*, Farm 2A and Farm 2B) at \$5,100,000 as of September 15, 2016. The district court considered the appraisal but determined that it did not create a genuine issue of material

Partnership is not a party to this appeal. James sought to assert derivative claims on behalf of the limited partnership, but the district court did not allow James to go forward on behalf of the limited partnership, and we have not disturbed that ruling.

fact for three reasons. First, the district court stated that James' exhibit is improper because it consists of "only four, non-sequential pages of [the] 115-page report." Second, the district court stated that the excerpts did not include "explanations of the appraisal procedures used" so as to enable the court "to determine the relevance of the report's conclusions." And third, the district court stated that James's deposition testimony "makes clear that the report's assumptions are erroneous" because the appraiser did not consider the fact that the amount of developable land was less than the amount of tillable farmland. The district court concluded that James had not submitted evidence sufficient to create a genuine issue of material fact that he had sustained damages, which the district court stated is "an essential element of the claim."

On appeal, James argues that the district court erred by rejecting the appraisal and concluding that he had insufficient evidence of damages. In response, Gary argues that the district court properly determined that James did not submit admissible evidence of damages. Gary argues in the alternative that James did not submit evidence sufficient to create a genuine issue of material fact as to whether Gary breached his fiduciary duties. James's reply brief does not address Gary's alternative argument. Gary's alternative argument aligns with his primary argument in the district court, which was that he is entitled to summary judgment on James's fiduciary-duty claim on the ground that he did not commit a breach of his fiduciary duties. On appeal, this court may affirm a grant of summary judgment if it can be sustained on any ground that was argued both to the district court and to this court. *Day Masonry v. Indep. Sch. Dist. No. 347*, 781 N.W.2d 321, 331 (Minn. 2010). Accordingly, we will first consider Gary's alternative argument.

“A breach of fiduciary duty claim consists of four elements: duty, breach, causation, and damages.” *Hansen v. U.S. Bank Nat’l Ass’n*, 934 N.W.2d 319, 327 (Minn. 2019). The fiduciary duties of a general partner of a limited partnership are constrained by the limited-partnership statute: “The only fiduciary duties that a general partner has to the limited partnership and the other partners are the duties of loyalty and care,” as those duties are described in the statute. Minn. Stat. § 321.0408(a) (2018). The statute provides,

A general partner’s duty of loyalty to the limited partnership and the other partners is limited to the following:

(1) to account to the limited partnership and hold as trustee for it any property, profit, or benefit derived by the general partner in the conduct and winding up of the limited partnership’s activities or derived from a use by the general partner of limited partnership property, including the appropriation of a limited partnership opportunity;

(2) to refrain from dealing with the limited partnership in the conduct or winding up of the limited partnership’s activities as or on behalf of a party having an interest adverse to the limited partnership; and

(3) to refrain from competing with the limited partnership in the conduct or winding up of the limited partnership’s activities.

Minn. Stat. § 321.0408(b) (2018). The statute also provides, “A general partner’s duty of care to the limited partnership and the other partners . . . is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.” Minn. Stat. § 321.0408(c) (2018).

These statutorily defined duties “govern[] relations among the partners and between the partners and the partnership” only “[t]o the extent the partnership agreement does not

otherwise provide.” Minn. Stat. § 321.0110(a) (2018). Subject to certain limitations, “the partnership agreement governs relations among the partners and between the partners and the partnership.” *Id.* One limitation is that a partnership agreement may not “eliminate the duty of loyalty under section 321.0408.” Minn. Stat. § 321.0110(b)(5) (2018). Nonetheless, a partnership agreement may “identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable.” Minn. Stat. § 321.0110(b)(5)(A). Another limitation is that a partnership agreement may not “unreasonably reduce the duty of care under section 321.0408(c).” Minn. Stat. § 321.0110(b)(6) (2018).

In this case, the partnership agreement contains at least two provisions that are pertinent to James’s claim of breach of fiduciary duty. Paragraph 6.5 provides:

In making any decision with respect to . . . the timing of any sale of Partnership Property, terms of sale of Partnership Property, . . . and other matters, each General Partner may consider such General Partner’s own business judgment and risk evaluation, the impact of such decision on such General Partner’s own financial interest in the Partnership, and other factors, all as evaluated in such General Partner’s sole discretion.

In addition, paragraph 6.2 provides, “The Partnership may contract or otherwise deal with any Partner or related Person without limitation.”

Together, the statute and the partnership agreement imposed few constraints on Gary’s management of the partnership and gave him broad discretion to enter into an agreement to sell partnership property. James offered no evidence that Gary breached his duty of loyalty in any of the three ways specified in the statute: by mishandling the

partnership's profits, by acting on behalf of a person whose interests are adverse to the partnership, or by competing with the limited partnership. See Minn. Stat. § 321.0408(b). James offered no evidence that Gary breached his duty of care by "engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law." See Minn. Stat. § 321.0408(c). The undisputed evidence indicates that Gary did not exceed the broad discretion granted to him in the partnership agreement to determine "the timing" and "terms" of a sale of partnership property based on his "business judgment and risk evaluation." Even his decision to sell Farm 2B to DDK, which is owned by Durene, is justified by the provision in the partnership agreement authorizing him to "contract or otherwise deal with any Partner or related Person without limitation." Accordingly, we conclude that there is no genuine dispute of material fact as to whether Gary breached his fiduciary duty by selling Farm 2A and Farm 2B. This conclusion is a sufficient basis for affirming the district court's grant of summary judgment on James's claim of breach of fiduciary duty. See *Day Masonry*, 781 N.W.2d at 331.

Thus, the district court did not err by granting Gary's motion for summary judgment with respect to James's claim of breach of fiduciary duty.

II. Claims of Unjust Enrichment and Waste

James also argues that the district court erred by concluding that there is no genuine issue of material fact with respect to his claims of unjust enrichment and waste.

The district court determined that these claims should fail for several reasons. First, the district court reasoned that James cannot prevail on his unjust-enrichment claim because the parties' relationship was governed by contract. Second, the district court

reasoned that Gary's actions did not confer any special benefit on himself. Third, the district court reasoned that James cannot prove that Gary sold partnership property for less than fair market value. Fourth, the district court reasoned that James did not establish that Gary obtained valuable personal property to which he was not entitled.

On appeal, James challenges only one of the district court's reasons for disposing of these claims—the third reason. Because he has not challenged the other three reasons, and because each reason independently is dispositive of his claims, he cannot establish that the district court erred. *See Hunter v. Anchor Bank, N.A.*, 842 N.W.2d 10, 17 (Minn. App. 2013), *review denied* (Minn. Mar. 18, 2014). In any event, these claims plainly are barred by paragraph 6.4 of the partnership agreement, which provides, “Neither the Partnership nor any partners shall have any claim against any General Partner by reason of any act or omission of any General Partner, except acts constituting gross negligence, or acts undertaken in bad faith or in breach of fiduciary duty.” The facts on which James's claims are based do not amount to gross negligence, bad faith, or breach of fiduciary duty.

Thus, the district court did not err by granting Gary's motion for summary judgment with respect to James's claims of unjust enrichment and waste.

III. Indemnification of Attorney Fees

James also argues that the district court erred by concluding that there is no genuine issue of material fact with respect to his claim Gary breached his fiduciary duty by arranging for the partnership to indemnify him for the attorney fees he has incurred in defending against this lawsuit.

The district court reasoned that this claim is without merit in light of paragraph 6.4 of the partnership agreement, which provides, in part,

The Partnership . . . shall indemnify, defend and hold the General Partners harmless against any claim, liability or expense (including attorneys' fees) incurred by them in connection with the organization, operation, management or liquidation of the Partnership, its business or Property, except liabilities which are the specific responsibility of the General Partners under this Agreement.

James argues that the district court erred on the ground that general partners are entitled to indemnification only with respect to “claims brought against them solely by the fact that they are general partners” but not with respect to “claims brought against [them] as a result of their specific responsibilities as general partners.” James’s argument is inconsistent with the plain language of paragraph 6.4, which requires the partnership to indemnify a general partner who is sued for actions taken “in connection with the organization, operation, management or liquidation of the Partnership, its business or Property.” James’s lawsuit against Gary is based on actions Gary took to sell real property owned by the partnership. The partnership plainly was obligated to indemnify Gary.

Thus, the district court did not err by granting Gary’s motion for summary judgment with respect to James’s claim that Gary breached his fiduciary duty by arranging for the partnership to indemnify him for the attorney fees he has incurred in defending against this lawsuit.

Before concluding, we note that James has made two additional arguments that need not be addressed in light of our disposition of the arguments discussed above. First, James argues that the district court erred by dismissing his derivative claims on the ground that

he does not have standing. That issue is moot because we have determined that all of the claims alleged by James fail on the merits. Second, James argues that the district court erred by not allowing him to supplement the record with additional evidence concerning the value of Farm 2. That issue also is moot because we have determined that James does not have evidence sufficient to create a genuine issue of material fact as to whether Gary breached his fiduciary duty, regardless of whether his evidence creates a genuine issue of material fact concerning damages.

In sum, the district court did not err by granting Gary's motion for partial summary judgment on James's claims.

Affirmed.