STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0248
A23-0268

Bren Road LLC,
Respondent,

vs.

Talon OP, LP, et al.,
Defendants (A23-0248),
Appellants (A23-0268),

Talon First Trust LLC,
Defendant,

and

Bren Road LLC,
Respondent,

vs.

Kris Wyrobek,
Appellant (A23-0248),

Eun Stowell, et al.,
Third-Party Defendants.

Filed February 12, 2024
Affirmed
Bjorkman, Judge

Hennepin County District Court
File No. 27-CV-19-12830

Skip Durocher, Eric A.O. Ruzicka, Mike Stinson, Ian Blodger, Dorsey & Whitney LLP, Minneapolis, Minnesota (for respondent)

Daniel M. Gallatin, Gallatin Law, PLLC, Hugo, Minnesota (for appellants Talon OP, LP, et al.)

John N. Bisanz, Jr., Benjamin J. Hamborg, Henson & Efron, P.A., Minneapolis, Minnesota (for appellant Kristian Wyrobek)

Considered and decided by Bjorkman, Presiding Judge; Worke, Judge; and Ede, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

These consolidated appeals are taken from judgment in favor of respondent following a bench trial. Appellants challenge a number of the district court's rulings and argue that the evidence cannot sustain the judgment against them. We affirm.

FACTS

This matter stems from a business transaction in which respondent Bren Road LLC (Bren Road) contributed real estate to appellant Talon Bren Road LLC (Talon BR) in exchange for, in part, a limited-partnership interest in appellant Talon OP LP (Talon OP). Years later, after Talon OP failed to respond to Bren Road's multiple requests for books and records, Bren Road commenced this action, ultimately asserting breach of fiduciary duty and other claims against Talon OP, Talon BR, and numerous related entities and individuals. During discovery, a special master ordered an adverse evidentiary inference based on the spoliation of the Talon entities' books and records. Based on the adverse inference and the evidence presented during a bench trial, the district court ordered judgment in favor of Bren Road and against Talon OP, Talon BR, and other appellants. The following recitation of facts is stated in the light most favorable to that judgment.

The Talon Entities, First Tracks LLC, and Wyrobek

In 2013, appellant Matthew Kaminski (Kaminski) created Talon Real Estate Holding Company (TREHC) through a reverse merger with a publicly traded company. TREHC was the corporate general partner of Talon OP, which purchased real estate through numerous subsidiaries, each of which was designed to hold a single property and pass profits up to Talon OP. Talon BR was created as one of those subsidiaries to hold property received from the Bren Road transaction described further below. Other Talon entities that are appellants are: 5130 Industrial Street LLC, Talon Management Services LLC, Talon Hotels LLC, Talon Antigua, and 350 Bud LLC.

Kaminski was the CEO of TREHC. Although they were separate legal entities, Kaminski acknowledged that he operated the Talon entities as an "enterprise." He saw no distinction between the entities in day-to-day operations, characterizing them as "all one in the same company."

Kaminski and his family directly and indirectly owned about 90 percent of TREHC's stock. Kaminski's wife, Brenda Kaminski, owned appellant First Tracks, which held a substantial interest in TREHC. Shares were also held by trusts, including appellant The Kaminski Trust, which was created for the benefit of the Kaminskis and their children. We refer collectively to the Talon entities, First Tracks, Matthew Kaminski, Brenda Kaminski, and The Kaminski Trust as the Talon appellants. We refer separately to appellant Kris Wyrobek, a close friend of Kaminski's who served on TREHC's board of directors.

The Bren Road Transaction

In May 2014, Bren Road, Talon OP, and Talon BR consummated the transaction underlying this litigation (the Bren Road transaction), which involved numerous agreements. Through a Contribution Agreement, Bren Road agreed to convey certain real property (the Bren Road property) to Talon BR in exchange for Talon's assumption of an $11.5 million mortgage and grant to Bren Road of 5.2 million Talon OP limited partnership units valued at $6.5 million. Through an NOI [Net Operating Income] Payment Agreement between Bren Road and Talon BR, Bren Road agreed to pay deficiencies between expected and actual operating incomes from the property for a period of three years. And through a Pledge Agreement, Bren Road granted Talon BR a security interest in its Talon OP partnership units to secure Bren Road's performance of its obligations.

Talon's Post-Transaction Operations

In the years following the Bren Road transaction, insiders became concerned that the Talon entities were not properly tracking expenses and that Kaminski was diverting Talon funds for personal use. In late 2016, TREHC's chief financial officer (CFO) and two of its directors resigned, leaving Kaminski as the sole director and interim CFO. Wyrobek and Marc Agar were then elected to join the board. Agar learned of the financial concerns from TREHC accounting employee Ryan Voorhies, who told Agar that Kaminski used the company debit card for what Voorhies believed to be "very questionable business expenses" and for personal expenses. According to Voorhies, the debit card use "sky

rocketed" after the former CFO left and there were "no checks and balances."[1] Voorhies resigned in October 2016 because he "didn't think the longevity of the business was there any longer" and "overall didn't feel comfortable with some of the transactions and things that were happening there."

Agar developed his own concerns about Kaminski's actions and attempted to impose some internal controls, including limiting Kaminski's ability to spend Talon funds without board approval. But Agar's efforts were thwarted by Wyrobek, who voiced general support for internal controls while refusing to approve the specific measures Agar proposed. During the time that Agar was on the board, the Talon entities completed multiple financial transactions through which First Tracks was paid guarantor fees. The first, a sale of receivables, was completed without board approval and resulted in a $75,000 guarantor fee to First Tracks. Agar and Wyrobek approved the second transaction—an approximately $50 million refinancing transaction that included a $750,000 guarantor fee. Agar consented based on representations that the transaction would allow the Talon entities to pay all outstanding debts and that First Tracks was guaranteeing the entire loan. Those representations turned out to be false: the Talon entities did not pay all outstanding payables, and Agar learned after the loan closed that First Tracks guaranteed only $5 million of the loan. When Kaminski proposed another refinancing transaction with a $150,000 guarantor fee in mid-2017, Agar refused to approve it but believes that Kaminski

[1] Voorhies also reported that Talon was "living receipt to receipt"; that Kaminski failed to obtain board approval before taking on more debt; and that he was "hearing rumbling that [Kaminski was] searching for another sale of future receipts," a loan that Voorhies characterized as a "very damaging kick of the can."

and Wyrobek went ahead with the transaction.[2] Agar resigned from the TREHC board in March 2019, communicating in his resignation letter that management had "a history of refusing to provide [him] with the information necessary for performance of [his] oversight role."

During the same period that Agar was questioning the Talon entities' financial activities, TREHC stopped making required filings with the Securities and Exchange Commission (SEC). And Agar's concerns were echoed by TREHC's independent public registered accounting firm, Baker, Tilly, Virchow, Krauss LLP (Baker Tilly). In a September 2017 letter, Baker Tilly summarized efforts to complete an audit of TREHC's consolidated financial statements for the year ending December 31, 2016. The letter identified multiple deficiencies in internal controls that, in Baker Tilly's judgment, were material weaknesses, including TREHC's inability to "execute a timely and accurate close of its books and records"; failure to disclose information to its audit committee; and failure to segregate financial reporting duties, "creat[ing] a condition which is conducive to management override."[3] Two months later, Baker Tilly resigned from representing

[2] Because the guarantor fee involved a party related to Kaminski, the transaction required both Agar and Wyrobek's approval. Agar told Wyrobek he was a "firm NO" and was "[n]ot compensating [Kaminski] and or Brenda any further." Wyrobek responded that the transaction could be a "win-win way forward" because it would "give the BOARD solid ground to immediately implement the strong policies, procedures, and controls that need to be fully put into place" and "[Kaminski] needs to feed his family." Agar responded, referring to the previous guarantor fee: "[H]e has already taken $750k and he can't feed his family? How about stop living the lifestyle of the rich and famous and pay people back[?]"

[3] Baker Tilly cited specific examples of the deficiencies, including: $25,518 in unreimbursed, non-business-related expenses charged by Kaminski to TREHC's credit

TREHC. In September 2018, the SEC took action to revoke TREHC's public securities registration based on its failure to make required filings. The revocation of TREHC's securities registration became final in November 2019.

Bren Road's Requests for Books and Records

TREHC's disclosure failures extended to Bren Road's repeated requests for TREHC's books and records. Bren Road submitted its first such request in October 2016; TREHC did not respond. In May 2019, Bren Road submitted another request, this time through correspondence from its counsel to TREHC's counsel. TREHC again failed to respond.

This Litigation[4]

In July 2019, Bren Road initiated this action, in its capacity as a limited partner of Talon OP, alleging breach-of-fiduciary-duty and related claims against TREHC, Talon OP, Talon BR, and Kaminski. Through subsequent pleadings, Bren Road added claims against other entities and individuals, including Wyrobek. The Talon defendants asserted

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card during 2016; judgments and notices of default against TREHC that constitute events of default under its loan agreements and "were not identified by management through timely monitoring"; and a $75,000 guarantor fee paid to First Tracks during 2016, for which "there was no documentation . . . as to how the amount was determined or evaluated for reasonableness."

[4] This is not the first lawsuit stemming from the Bren Road transaction. *See Trooien v. Talon OP, L.P.*, No. A19-1541, 2020 WL 2840230, at *1 (Minn. App. June 1, 2020) (affirming judgment in favor of Bren Road owner for amounts due under consulting-services agreement), *rev. denied* (Minn. Aug. 25, 2020); *Talon Bren Road, LLC v. Bren Road, LLC*, No. A18-0278, 2018 WL 3826277, at *1 (Minn. App. Aug. 13, 2018) (affirming judgment in favor of Talon BR for unpaid deficiency payments under NOI agreement).

counterclaims against Bren Road. The gist of Bren Road's claims is that the value of its interest in Talon OP had been eviscerated through diversion of assets by Kaminski. Bren Road sought to pierce the corporate veil to hold all of the Talon appellants jointly and severally liable. And Bren Road sought to hold Wyrobek liable on claims for breaches of fiduciary duty, fraud by omission, and aiding and abetting breaches by TREHC and Kaminski.[5] The Talon defendants sought a judicial declaration that Bren Road had no standing to sue following Talon's purported foreclosure of Bren Road's partnership interest in Talon OP under the Pledge Agreement.

The district court addressed some of the parties' claims in a pretrial order on cross-motions to dismiss. As relevant to this appeal, the district court denied Wyrobek's motion to dismiss the claims against him on the ground that they were derivative claims belonging to Talon OP and granted Bren Road's motion to dismiss the Talon defendants' declaratory-judgment claim that Bren Road was no longer a partner in Talon OP.

During discovery, a special master appointed by the district court determined that Bren Road is entitled to an adverse inference as a sanction for spoliation of evidence. The special master found that (1) the Talon entities' books and financial records were maintained by a third-party vendor; (2) the Talon entities took no steps to preserve them when it decided not to renew its contract with the vendor in December 2019; and (3) despite Bren Road serving discovery requests for books and records at that time, the Talon entities made no attempt to obtain the data from the vendor until November 2020, by which time

[5] Bren Road also sued other former TREHC officers and directors, but the claims against those individuals are not at issue on appeal.

the data had been destroyed pursuant to the vendor's data destruction policies. After finding that destruction of the data prejudiced Bren Road's ability to prove that the Kaminskis had diverted funds from the Talon entities, the special master granted Bren Road's request that the fact-finder be required to "presume that the spoliated information was unfavorable to Talon OP, L.P.; TREHC; Talon Bren Road, LLC; and Matthew Kaminski."

Following the close of discovery, the parties' remaining claims were tried to the court over six days. Before trial, the district court issued an order stating that it would "presume that the spoliated evidence was unfavorable to Talon OP, TREHC, Talon Bren Road and Mr. Kaminski" and that it would not allow the Talon appellants or Wyrobek "to introduce evidence that would have been reflected in the spoliated financial books and records." At trial, the district court heard testimony from Kaminski, Bren Road owner Gerald Trooien, Voorhies, Agar, and Jeffrey Gendreau, a certified public accountant who handled TREHC's account with Baker Tilly.[6] And the court considered numerous exhibits, including documents related to Baker Tilly's resignation and the SEC's revocation of TREHC's securities registration, as well as emails exchanged between Voorhies, Agar, Kaminski, Wyrobek, and others.

The district court found in favor of Bren Road on all of its remaining claims against the Talon appellants and Wyrobek, ordering a monetary judgment as follows:

- for failure to provide partnership records (in violation of statute and the partnership agreement), against Talon OP

[6] Neither Wyrobek nor Brenda Kaminski testified at trial.

and TREHC, in the amount of Bren Road's attorney fees incurred in bringing that claim ($39,405.10);

- for breach of fiduciary duty, against TREHC and Kaminski, in the amount of $14.5 million;

- for fraud by omission, against Talon OP, TREHC, Kaminski, and Wyrobek, in the amount of $14.5 million; and

- for aiding and abetting breaches of fiduciary duty, against Wyrobek, in the amount of $14.5 million.

The district court also pierced corporate veils to hold all of the Talon appellants jointly and severally liable.

Wyrobek (A23-0248) and the Talon appellants (A23-0268) commenced separate appeals, which this court consolidated.

DECISION

Although the factual and procedural history of this matter is complex, the issues raised on appeal are discrete. TREHC and Talon OP do not deny their liability for failing to provide partnership records to Bren Road. And no party challenges the district court's findings that TREHC and Kaminski breached fiduciary duties owed to Bren Road or that TREHC, Talon OP, and Kaminski committed fraud by omission. In section I, we address issues that Wyrobek raises regarding his liability. And in section II, we turn to issues raised by the Talon appellants regarding the damages awarded and liability against First Tracks and Brenda Kaminski.

I. The district court did not err by finding Wyrobek jointly and severally liable for the damages award because he aided and abetted Kaminski's fiduciary breaches.

Wyrobek argues that the district court erred in (1) denying his motion to dismiss Bren Road's aiding-and-abetting claim against him as derivative, (2) finding against him on that claim; and (3) calculating damages and imposing joint-and-several liability against him for the entire damages award. We address each argument in turn.[7]

A. Any error by the district court in characterizing the aiding-and-abetting claim as a direct claim is harmless.

Wyrobek first asserts that judgment on the aiding-and-abetting claim must be reversed because the district court erred by denying his motion to dismiss the claim as derivative. Like corporations, limited partnerships are entities that exist separate from their owners and can sue in their own capacity. Minn. Stat. § 321.0105 (2022). A limited partner seeking to assert a "direct action" against the partnership or another partner must "plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited partnership." Minn. Stat. § 321.1001(b) (2022). And a limited partner may only maintain a derivative action—one that is the result of an injury suffered first by the partnership—if they (1) make a demand to the general partners that the limited partnership pursue the action and the partnership fails to do so within a reasonable time, or (2) such a demand would be futile. Minn. Stat. § 321.1002 (2022). "In a derivative action, a complaint must state with particularity: (1) the date and content of plaintiff's demand and the general partners' response to the demand; or (2) why demand

[7] Wyrobek also argues that the district court erred by finding against him on Bren Road's fraud-by-omission claim. Because that claim supported the same $14.5 million damages award, and because we reject Wyrobek's assertions of error regarding the aiding-and-abetting claim, we do not reach Wyrobek's arguments regarding the fraud-by-omission claim.

should be excused as futile." Minn. Stat. § 321.1004 (2022); *see also In re Medtronic, Inc. S'holder Litig.*, 900 N.W.2d 401, 406 (Minn. 2017) (defining direct and derivative actions and summarizing comparable requirements for bringing derivative claim against corporation).

The issues of whether the allegations of a complaint state claims on which relief may be granted and whether claims against a partnership are direct or derivative present legal questions that we review de novo. *Medtronic*, 900 N.W.2d at 405. But any error by the district court in answering these questions does not warrant reversal if it is harmless. *See* Minn. R. Civ. P. 61 (requiring this court to disregard harmless error); *Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 98 (Minn. 1987) (stating that "[a]lthough error may exist, unless the error is prejudicial, no grounds exist for reversal"). That is the case here.

As noted above, a limited partner may maintain a derivative action if a demand to the partnership to assert the action would have been futile. *See* Minn. Stat. § 321.1002. In opposing the motion to dismiss, Bren Road argued that it pleaded facts sufficient to show futility because (1) the wrongdoers constituted a majority of the board, (2) the Talon appellants took the position that Bren Road was no longer a limited partner, and (3) the Talon entities had failed to observe corporate formalities. This argument is persuasive. We agree that Bren Road satisfied the pleading requirements for a derivative claim. And Bren Road presented supporting evidence through motion practice and at trial, including evidence that Kaminski and Wyrobek constituted a majority of TREHC's board, that the Talon entities purported to foreclose on Bren Road's interest in Talon OP, and that Talon OP did not respond to Bren Road's requests for access to books and records.

On this record, we have no trouble concluding that the futility requirement was met. *See, e.g.*, *Barry v. Curtin*, 993 F. Supp. 2d 347, 352-53 (E.D.N.Y. 2014) (explaining that demand by member of limited liability company would be futile because defendant—the sole other member and the managing member—could not be expected to take action to sue himself). Accordingly, any error by the district court in mischaracterizing the aiding-and-abetting claim as direct is harmless and does not provide a basis for reversal. *Cf. Winter v. Farmers Educational & Coop. Union of Am.*, 107 N.W.2d 226, 232-34 (Minn. 1961) (rejecting argument for reversal based on direct nature of claims where allegations of complaint were sufficient to support futility and defendant failed to move to dismiss the complaint).

B. The district court did not err in finding Wyrobek liable for aiding and abetting breaches of fiduciary duty.

Wyrobek next challenges the district court's determinations that Bren Road proved its claim against him for aiding and abetting breaches of fiduciary duty. We review this argument de novo to the extent that it asserts legal error and for clear error to the extent that it assails the evidentiary support for the district court's findings. *See Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002) (discussing standard of review in appeal following court trial), *rev. denied* (Minn. June 26, 2002); *see also* Minn. R. Civ. P. 52.01 (governing review of factual findings).

To prevail on its aiding-and-abetting claim, Bren Road was required to prove three elements:

> (1) the primary tort-feasor must commit a tort that causes an injury to the plaintiff;

> (2) the defendant must know that the primary tort-feasor's conduct constitutes a breach of duty; and
> (3) the defendant must substantially assist or encourage the primary tort-feasor in the achievement of the breach.

Witzman v. Lehrman, Lehrman & Flom, 601 N.W.2d 179, 187 (Minn. 1999). The knowledge and substantial-assistance elements of an aiding-and-abetting claim are evaluated "in tandem." *Id.* at 188 (quotation omitted). "[W]here there is a minimal showing of substantial assistance, a greater showing of scienter is required." *Id.* (quotation omitted).

> Whether the requisite degree of knowledge or assistance exists depends in part on the particular facts and circumstances in each case. Factors such as the relationship between the defendant and the primary tortfeasor, the nature of the primary tortfeasor's activity, the nature of assistance provided by the defendant, and the defendant's state of mind all come into play.

Id.

Wyrobek does not challenge the district court's findings that TREHC and Kaminski breached fiduciary duties to Bren Road. But he argues that Bren Road failed to prove that he had actual knowledge that TREHC's and Kaminski's conduct breached fiduciary duties or that he substantially assisted those breaches.

1. Knowledge Element

Wyrobek argues that Bren Road failed to prove the knowledge element because "the trial record . . . contains no direct evidence that Wyrobek *actually knew* that any of Kaminski's conduct amounted to a breach of fiduciary duty." But Bren Road faced no requirement in this civil case to prove Wyrobek's knowledge through direct, as opposed to circumstantial, evidence. *See Friend v. Gopher Co.*, 771 N.W.2d 33, 40 (Minn. App.

2009), *rev. denied* (Minn. Nov. 23, 2010); *Ill. Farmers Ins. Co. v. Brekke Fireplace Shoppe, Inc.*, 495 N.W.2d 216, 220 (Minn. App. 1993). And the district court's factual finding on the knowledge element is supported by Agar's testimony that he discussed his concerns with Wyrobek, as well as multiple emails in which Agar communicated to Wyrobek and others his concerns about Kaminski's conduct and the transactions he was proposing. At one point, Agar even warned Wyrobek that he "need[ed] to get on board with the proper oversight and [he was] complicit with the illegal behavior and [would] be held accountable." All of this evidence supports the inference that Wyrobek was aware of Kaminski's breaches of fiduciary duty.

2. Substantial-Assistance Element

Wyrobek contends that Bren Road failed to prove the substantial-assistance element, because his conduct did not constitute "substantial assistance." We agree with Wyrobek that substantial assistance means more than "the mere presence of the particular defendant at the commission of the wrong, or his failure to object to it." *Witzman*, 601 N.W.2d at 189 (quotation omitted). Indeed, our supreme court has endorsed the view that "'substantial assistance' means something more than the provision of routine professional services." *Id.* But we reject Wyrobek's argument—that his *inaction* in relation to TREHC and Kaminski's conduct cannot amount to substantial assistance—for two reasons. First, the argument fails to take into account relevant factors such as Wyrobek's relationships with TREHC and Kaminski and the fact-specific manner in which his failure to exercise oversight enabled the breaches of fiduciary duty. *See id.* at 188 (identifying relationships and nature of assistance as factors to consider in evaluating knowledge and substantial-

assistance elements). Second, the district court found that the substantial-assistance element was met by evidence including Agar's testimony that Kaminski and Wyrobek were best friends of 30-plus years and that Wyrobek voted to approve Kaminski's misconduct and thwarted Agar's attempts to impose greater internal controls. And the district court found that "these actions were deliberate on Wyrobek's part and that Wyrobek substantially assisted Kaminski in committing breach of fiduciary duty." Because the record evidence supports this factual finding, we will not disturb it.

In sum, we discern no legal error in relation to Bren Road's aiding-and-abetting claim, and the evidence supports the district court's findings in favor of Bren Road and judgment against Wyrobek on this claim.

C. The district court did not err in awarding damages.

In the alternative to his arguments regarding liability, Wyrobek challenges the damages award. He asserts that the district court erred because the damages award exceeds the amount sought by Bren Road and that he should not be jointly and severally liable for the entire award because certain fiduciary breaches pre-date his service as a director. Wyrobek provides no legal authority to support either of these arguments. Thus, to the extent that Wyrobek argues that the award lacks a legal basis, those arguments are forfeited. *See In re Civ. Commitment of Kropp*, 895 N.W.2d 647, 653 (Minn. App. 2017) ("Minnesota appellate courts decline to reach an issue in the absence of adequate briefing." (citing *State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997)), *rev. denied* (Minn. June 20, 2017).

To the extent that Wyrobek asserts that the award lacks a factual basis, we disagree. The district court determined that Bren Road's damages were the lost value of its interest in Talon OP, but that there was insufficient evidence—because of the spoliation of the Talon entities' financial records—to determine that value. The district court thus relied on the value of the Bren Road property, reduced by the mortgage held by Bren Road at the time it transferred the property, as a proxy for determining what the value of Bren Road's interest in Talon OP would have been absent the fiduciary breaches. The district court's calculation was consistent with general principles regarding proof of damages. *See, e.g.*, *Leoni v. Bemis Co.*, 255 N.W.2d 824, 826 (Minn. 1977) ("Once the fact of loss has been shown, the difficulty of proving its amount will not preclude recovery so long as there is proof of a reasonable basis upon which to approximate the amount."). In sum, we discern no error in the district court's damages award.

II. The district court did not err by allowing Bren Road to pursue its claims against the Talon appellants or abuse its discretion in holding Brenda Kaminski personally liable.

The Talon appellants argue that the district court erred in (1) dismissing a claim seeking a declaration that Bren Road was no longer a limited partner of Talon OP, (2) extending the spoliation sanction to First Tracks, and (3) piercing First Tracks's corporate veil to hold Brenda Kaminski personally liable.[8] We consider each of these arguments in turn.

[8] The Talon appellants echo Wyrobek's argument that the district court erred by awarding damages in excess of the amount sought by Bren Road. But like Wyrobek, they cite no legal authority to support this argument, and it is therefore not properly before us. *Kropp*, 895 N.W.2d at 653.

A. The district court did not err in dismissing the Talon appellants' counterclaim for a declaratory judgment that Bren Road was no longer a limited partner in Talon OP.

We review the dismissal of the Talon appellants' declaratory-judgment counterclaim de novo. *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014).

The counterclaim was based on the Talon appellants' contention that Talon BR had disposed of the Talon OP stock that Bren Road had pledged as collateral for its obligation to satisfy deficiencies in net operating income from the Bren Road property. Talon BR purported to dispose of the collateral by purchasing it and notified Bren Road of the purchase after the fact. The Talon appellants assert that, following Talon BR's purchase of Bren Road's pledged partnership interest, Bren Road was no longer a limited partner in Talon OP and thus lacked standing to bring this action.

Under Minnesota's Uniform Commercial Code, "a secured party that disposes of collateral" must give notice before such disposition with three exceptions. Minn. Stat. § 336.9-611(b) (requiring reasonable notice of disposition), (d) (providing exceptions to notice requirement) (2022); *see also* Minn. Stat. § 336.9-612 (2022) (providing that notice in nonconsumer transactions is given within reasonable time if given ten days before disposition). One of the exceptions excuses pre-sale notice if the collateral "is of a type customarily sold on a recognized market." Minn. Stat. § 336.9.611(d). It is undisputed that the Talon appellants did not provide pre-sale notice under Minn. Stat. § 336.9-611(b), (d), before disposing of Bren Road's shares. And the Talon appellants do not deny that a lack of pre-sale notice, if required, defeats their assertion that Bren Road is no longer a limited partner.

The Talon appellants argue that the exception for collateral "of a type customarily sold on a recognized market" applies because Bren Road had the right to exchange its Talon OP membership units for common stock in TREHC, which was publicly traded. Minn. Stat. § 336.9-611(d). But it is undisputed that Bren Road never made such an exchange. And, as the district court explained: "The Talon defendants have not shown that Talon OP, L.P. units are sold on any market whatsoever." The Talon appellants urge us to conclude that the district court was required to accept as true its allegation that a recognized market existed for Bren Road's interest. But courts are not required to accept *legal* conclusions as true. *Halva v. Minn. State Colleges & Univs.*, 953 N.W.2d 496, 501 (Minn. 2021). And the district court correctly concluded that the Talon appellants had not pleaded *facts* that would support the *legal conclusion* that there was a market for Talon OP membership interests. Accordingly, we reject the Talon appellants' argument that the district court erred by dismissing their declaratory-judgment claim.

B. Any error in the district court's findings in relation to the scope of the spoliation sanction is harmless.

The Talon appellants argue that the district court impermissibly extended the spoliation sanction to First Tracks, pointing to a single reference in the district court's order to sanctions being awarded against "the Talon defendants," which the district court had defined to include First Tracks. Bren Road concedes that the district court mistakenly referenced the sanction as being against all Talon defendants but argues that the error is clerical and not prejudicial. We agree with Bren Road. Critically, the Talon appellants do not explain how the district court's mistaken reference to the scope of the spoliation

sanction was tantamount to imposing that sanction against First Tracks. Nor do they assert what relief should follow from the error. Accordingly, we reject the Talon appellants' arguments on this issue. *See* Minn. R. Civ. P. 61; *Kallio*, 407 N.W.2d at 98 (requiring prejudicial error to justify reversal).

C. The district court did not abuse its discretion by piercing the corporate veil of First Tracks to hold Brenda Kaminski jointly and severally liable.

Finally, the Talon appellants argue that the district court abused its discretion because its findings on piercing First Tracks's corporate veil are inadequate and the evidence at trial is insufficient to support that remedy. We review the decision whether to pierce the corporate veil for abuse of discretion. *Equity Tr. Co. Custodian ex rel. Eisenmenger IRA v. Cole*, 766 N.W.2d 334, 339 (Minn. App. 2009).

"Piercing the corporate veil is an equitable remedy that may be applied in order to avoid an injustice." *Id.* In determining whether to pierce the corporate veil, Minnesota courts consider factors including:

> insufficient capitalization for purposes of corporate undertaking, failure to observe corporate formalities, nonpayment of dividends, insolvency of debtor corporation at time of transaction in question, siphoning of funds by dominant shareholder, nonfunctioning of other officers and directors, absence of corporate records, and existence of corporation as merely façade for individual dealings.

Victoria Elevator Co. of Minneapolis v. Meriden Grain Co., 283 N.W.2d 509, 512 (Minn. 1979). "Disregard of the corporate entity requires not only that a number of these factors be present, but also that there be an element of injustice or fundamental unfairness." *Id.* The supreme court in *Victoria Elevator* explained the basis for these requirements:

> Where the above factors are present, to allow an individual to escape liability because he does his business under a corporate form is to allow him an advantage he does not deserve. Doing business in a corporate form in order to limit individual liability is not wrong; it is, in fact, one purpose for incorporating. But where the formalities of corporate existence are disregarded by one seeking to use it, corporate existence cannot be allowed to shield the individual from liability for damages incurred by those dealing with the corporation.

Id.

The district court pierced the veils of the Talon entities and First Tracks. Although the district court made few findings specific to piercing the corporate veil of First Tracks, it did find that "[Matthew] Kaminski, and Brenda Kaminski, as dominant shareholders, siphoned funds from TREHC individually and through First Tracks." The record supports this finding. Agar testified that First Tracks had no business operations and no assets other than its interest in TREHC. Moreover, there was evidence from which it could be inferred that loan-guarantee payments to First Tracks were, in reality, being used by the Kaminski family. In an email proposing the 2017 refinancing transaction, Kaminski requested that, "to sign this loan guaranty . . . *and be personally* liable for the entire balance of the loan, *I* would request to be compensated $150,000 and 500,000 shares of stock for this transaction." (Emphasis added.) But Agar testified to his expectation that the 2017 guarantor fee would, like the previous fees, be paid to First Tracks, rather than Kaminski. Voorhies and Agar explained that Kaminski faced a wage levy that caused him to avoid receiving funds directly. Wyrobek perhaps most directly indicated the true purpose for the guarantor fees when he stated, in an email supporting the 2017 transaction: "[Kaminski] needs to feed his family." Taking this evidence together, and given the equitable nature of

the veil-piercing remedy, we conclude that the district court did not abuse its discretion by piercing First Tracks's corporate veil.

In sum, we discern no prejudicial error in the district court's denial of Wyrobek's motion to dismiss the aiding-and-abetting claim, and the evidence is sufficient to support the district court's judgment in favor of Bren Road on that claim; the district court did not err by dismissing the Talon appellants' declaratory-judgment claim; any error by the district court in referring to First Tracks when discussing the spoliation sanction is harmless; and the district court did not err or abuse its discretion by piercing the corporate veil of First Tracks to hold Brenda Kaminski jointly and severally liable. Accordingly, we affirm the judgment in favor of Bren Road.

Affirmed.