

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1730**

Tal Sarusi individually and d/b/a Sealed Envelope LLC, et al.,
Appellants,

vs.

Todd Laughlin individually and d/b/a LB Spray Foam, LLC, et al.,
Respondents.

**Filed September 16, 2024
Affirmed
Bjorkman, Judge**

Hennepin County District Court
File No. 27-CV-21-9408

Erik F. Hansen, Elizabeth M. Cadem, Burns & Hansen, P.A., Minneapolis, Minnesota (for appellants)

Gregory M. Hanson, The Law Office of Gregory M. Hanson, Inver Grove Heights, Minnesota (for respondents)

Considered and decided by Worke, Presiding Judge; Bjorkman, Judge; and Smith, John, Judge.*

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

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellants challenge the judgment in favor of respondents following a jury trial on opposing claims related to a joint business. Appellants argue that the district court (1) erred by denying their posttrial motion for judgment as a matter of law (JMOL), and (2) abused its discretion by denying their motion for a new trial or remittitur. We affirm.

FACTS

Respondent Todd Laughlin co-founded respondent LB Spray Foam LLC in June 2020 to provide insulation and related services. Appellant Tal Sarusi has worked in garage-door repair and air-duct cleaning and owns various businesses, including appellant Back on Track Garage Doors LLC (Back on Track).

Laughlin and Sarusi met in January 2021. At the time, Laughlin was in the process of buying out his partner in LB Spray Foam; he completed the buyout in February. Also in February, Laughlin and Sarusi formed Sealed Envelope LLC to do insulation and air-duct work and provide other services. They planned for Sarusi to manage marketing and sales and, because Sealed Envelope did not have any of its own equipment, for Laughlin to perform the work using LB Spray Foam equipment.

On March 1, Sarusi gave Laughlin a check for \$50,000 made out to LB Spray Foam.¹ The parties dispute the purpose of the payment. Sarusi contends it was to purchase half of the ownership interest in LB Spray Foam. Laughlin contends it was for “building

¹ The check was issued by the sister of Sarusi’s rabbi as a loan to Sarusi.

the brand of Sealed Envelope,” use of LB Spray Foam’s website and equipment, and Laughlin’s “know-how.” Around the same time, Laughlin also prepared a list of LB Spray Foam’s equipment, with net values totaling nearly \$100,000. The two never executed a written contract for a sale of half ownership, and Laughlin did not sign over half of the company to Sarusi.

Sarusi and Laughlin’s relationship quickly soured. They did not open a bank account for Sealed Envelope until May. In the meantime, Sarusi obtained Laughlin’s agreement to sign over payments for work LB Spray Foam performed to Back on Track’s account to facilitate quicker access to the funds. Even after Sealed Envelope’s account was opened, Sarusi continued to deposit funds received from LB Spray Foam work into Back on Track’s account. Sarusi promptly withdrew funds deposited into Sealed Envelope’s account and directed Sealed Envelope’s customers to make payments directly to Back on Track. In mid-June, Sarusi changed the locks on the warehouse where the LB Spray Foam equipment was stored. He then moved the equipment to a separate storage facility and sold some of it, including an Isuzu truck and some smaller equipment.

Sarusi commenced this action in July 2021, alleging, in pertinent part, that Laughlin (1) agreed to sell him half of LB Spray Foam for \$50,000 and breached the contract by accepting the funds without signing over half of the business, and (2) was unjustly enriched by the payment and Sarusi’s efforts. Laughlin and LB Spray Foam asserted various counterclaims and cross-claims, including a replevin claim against Sarusi as to LB Spray Foam equipment and a claim against Sarusi and Back on Track for unjust enrichment based on diversion of payments for Laughlin’s work.

Following a four-day trial, the jury found, by special verdict, that (1) Sarusi and Laughlin did not form a contract for Sarusi to purchase a half interest in LB Spray Foam; (2) Laughlin was unjustly enriched and owes Sarusi \$29,199.18; (3) Sarusi was unjustly enriched and owes Laughlin \$405,194.60; (4) Back on Track was unjustly enriched and owes Laughlin \$43,045.09; and (5) Sarusi wrongfully detained various items of Laughlin's property, and Laughlin is entitled to their return or value. The district court adopted the jury's findings and directed entry of judgment in favor of Laughlin against Sarusi for the net amount of \$398,731.42, and in favor of Laughlin against Back on Track for \$43,045.09. Sarusi and Back on Track moved for JMOL, a new trial, or remittitur. The district court denied the motions.

Sarusi and Back on Track appeal.

DECISION

I. Sarusi is not entitled to JMOL on his breach-of-contract claim.

During a jury trial, a district court may decide an issue “against [a] party” and grant JMOL on a claim or defense if the party has been “fully heard” on the issue but “there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue.” Minn. R. Civ. P. 50.01(a). Following a jury trial, a district court considering a party's motion may “(1) allow the judgment to stand, (2) order a new trial, or (3) direct entry of [JMOL].” Minn. R. Civ. P. 50.02.

We review de novo a district court's denial of a postverdict motion for JMOL. *Vermillion State Bank v. Tennis Sanitation, LLC*, 969 N.W.2d 610, 618 (Minn. 2022). In doing so, “we view the evidence in the light most favorable to the prevailing party.”

Gieseke ex rel. Diversified Water Diversion, Inc. v. IDCA, Inc., 844 N.W.2d 210, 220 (Minn. 2014). We will reverse only if the evidence is “so overwhelming on one side that reasonable minds cannot differ as to the proper outcome.” *Vermillion State Bank*, 969 N.W.2d at 619 (quotation omitted). And we will affirm denial of a motion for JMOL if there is “any competent evidence” in the record “reasonably tending to sustain the verdict.” *Gieseke*, 844 N.W.2d at 220 (quotation omitted).

To prove breach of contract, a plaintiff must show (1) the parties formed a contract, (2) plaintiff performed any conditions precedent to the right to demand performance by the defendant, and (3) defendant breached the contract. *Lyon Fin. Servs., Inc. v. Ill. Paper & Copier Co.*, 848 N.W.2d 539, 543 (Minn. 2014). As to the first element, a contract is formed when the parties “exchange bargained-for promises, manifest mutual assent to the exchange, and support their promises with consideration.” *Vermillion State Bank*, 969 N.W.2d at 628.

Sarusi contends he is entitled to JMOL on his breach-of-contract claim because “reasonable minds could not differ as to whether a contract [for him to purchase half of LB Spray Foam] was formed.” In support of this contention, he emphasizes the evidence in his favor: he paid \$50,000 to Laughlin; this amount is approximately half of the value of the LB Spray Foam assets as indicated in the list that Laughlin prepared around the same time; Laughlin completed his purchase of the other half of LB Spray Foam from his initial partner shortly before Sarusi gave Laughlin the check; and shortly afterward, Laughlin disclosed to Sarusi the password for LB Spray Foam’s GoDaddy account, and Sarusi sent Laughlin a photo of his driver’s license, which Sarusi testified was for use in preparing a

written contract. Sarusi also emphasizes that two witnesses (his rabbi and his girlfriend) corroborated his testimony about an agreement to buy half of LB Spray Foam, while none corroborated Laughlin's contrary testimony. In short, Sarusi lays out a convincing argument that the jury had a substantial evidentiary basis to find that the two men entered into a contract for Sarusi to buy half of LB Spray Foam. But that is not the point.

On a postverdict motion for JMOL, the issue is whether the evidence, viewed in the light most favorable to the prevailing party, provides any reasonable basis for sustaining the jury's verdict. *Gieseke*, 844 N.W.2d at 220. Our review of the record confirms such a basis. Laughlin and Sarusi never executed a written contract. There is no evidence they even drafted a contract. Laughlin expressly denied agreeing to sell Sarusi half of LB Spray Foam. Rather, he explained that the \$50,000 check represented Sarusi's initial contribution to Sealed Envelope, balancing against Laughlin's contribution of LB Spray Foam's equipment and his "know-how." Laughlin's testimony is borne out by the hundreds of pages of text messages between the two of them; none of Laughlin's messages indicate his agreement to sell Sarusi half of LB Spray Foam. Because this record, viewed in the light most favorable to Laughlin, establishes a reasonable basis for the jury's determination that there was no contract to sell a half ownership interest in LB Spray Foam, Sarusi is not entitled to JMOL on his breach-of-contract claim.²

² Sarusi and Back on Track also argued in their brief that the district court erred by denying their motion for JMOL on Laughlin's unjust-enrichment claim because the damages are excessive. But they acknowledged during oral argument that the appropriate remedy for excessive damages is remittitur or a new trial.

II. The district court did not abuse its discretion by denying Sarusi and Back on Track’s motion for a new trial or remittitur on unjust enrichment.

Sarusi and Back on Track argue that the district court abused its discretion by denying their posttrial motions seeking relief based on attorney misconduct and excessive damages. We address each in turn.

Attorney Misconduct

A district court may grant a new trial based on attorney misconduct. Minn. R. Civ. P. 59.01; *Lake Superior Ctr. Auth. v. Hammel, Green & Abrahamson, Inc.*, 715 N.W.2d 458, 479 (Minn. App. 2006), *rev. denied* (Minn. Aug. 23, 2006). The decision whether to do so “rests almost wholly in the discretion of the [district] court,” and we will not reverse absent a “clear abuse” of that discretion. *Wild v. Rarig*, 234 N.W.2d 775, 785 (Minn. 1975).

Sarusi argues that the district court abused its discretion by not granting a new trial based on misconduct by Laughlin’s counsel. He points to counsel’s opening statement and closing argument, which involved a recurring baby theme—that LB Spray Foam was Laughlin’s baby and Sarusi killed it—and a single statement about Sarusi wanting more money and putting “every penny” he could into Back on Track’s account. He contends these statements invoked the anti-Semitic themes of “blood libel” and the “greedy Jew,” prejudicing the jury against him because he is Jewish. And he contends the high damages award for unjust enrichment can only be attributable to passion or prejudice. We are not persuaded for two reasons.

First, Sarusi never made this argument to the district court. An objection to “improper remarks” is generally a “prerequisite[] to the obtaining of a new trial on appeal,” and failure to object results in forfeiture of the argument. *Lake Superior Ctr. Auth.*, 715 N.W.2d at 479 (quoting *Hake v. Soo Line Ry. Co.*, 258 N.W.2d 576, 582 (Minn. 1977)). Sarusi did not object to counsel’s statements during either their opening statement or closing argument. Nor did he raise the issue in his posttrial motions. Instead, he advanced a different argument—that counsel improperly and falsely suggested to the jury that he was engaged in tax evasion. There was no mention of anti-Semitism. This failure to present the issue to the district court results in forfeiture of his misconduct argument.

Second, Sarusi’s failure to make the argument—even in his posttrial motion—undermines his contention that counsel’s statements are so flagrantly improper as to require relief in the absence of a timely objection. We will grant relief for unobjected-to misconduct only if it is “so flagrant as to require the [district] court to act on its own motion, or is so extreme that a corrective instruction would not alleviate the prejudice.” *Hake*, 258 N.W.2d at 582. We do not doubt that invoking anti-Semitic themes would constitute serious misconduct. But even if Laughlin’s counsel’s argument did invoke such themes, it did not do so in the “flagrant” manner Sarusi suggests. On appeal, Sarusi interprets use of the baby theme as referencing “blood libel,” and asserts that the single statement about Sarusi wanting money portrayed him as a “greedy Jew.” We are not convinced that counsel’s statements are reasonably interpreted in that manner. Indeed, the absence of an objection during trial and the absence of any mention of anti-Semitism in his posttrial motion reveal that neither Sarusi himself nor his counsel interpreted the remarks as anti-

Semitic. On this record, we discern no abuse of discretion by the district court in not granting a new trial for purported attorney misconduct that was neither brought to its attention nor obvious.

Excessive Damages

A district court also may grant a new trial based on excessive damages that “appear[] to have been given under the influence of passion or prejudice” or when the verdict “is not justified by the evidence, or is contrary to law.” Minn. R. Civ. P. 59.01. The district court has “large discretion” in determining whether damages are excessive and, if so, “whether the cure is a remittitur or a new trial.” *Hanson v. Chi., Rock Island & Pac. R.R. Co.*, 345 N.W.2d 736, 739 (Minn. 1984) (quotation omitted). In exercising this discretion, the district court “must leave the plaintiff with the highest amount permitted by the evidence,” *Thompson v. Hughart*, 664 N.W.2d 372, 378 (Minn. App. 2003), *rev. denied* (Minn. Sept. 16, 2003), and should set aside a jury’s award only if it “shocks the conscience,” *Johnson v. Washington County*, 518 N.W.2d 594, 602 (Minn. 1994) (quotation omitted). On appeal, we view the evidence “as a whole and in the light most favorable to the verdict.” *Myers v. Hearth Techs., Inc.*, 621 N.W.2d 787, 790 (Minn. App. 2001) (quotation omitted), *rev. denied* (Minn. Mar. 13, 2001). We will not reverse the denial of a motion for a new trial or remittitur unless the district court clearly abused its discretion. *Willis v. Ind. Harbor Steamship Co.*, 790 N.W.2d 177, 187 (Minn. App. 2010), *rev. denied* (Minn. Dec. 22, 2010).

Sarusi and Back on Track argue that the damages award is excessive in two respects. First, they contend it includes damages that are not recoverable under the law. They point

to two categories of claimed damages, totaling just under \$330,000: (1) the value of the specific items of property at issue in Laughlin’s replevin claims; and (2) lost future profits, expenses for this and other litigation, tax penalties, and other losses that Laughlin incurred that did not benefit Sarusi or Back on Track. We agree that the first category of damages would be an improper double recovery and the second would be unavailable because relief for unjust enrichment is “based on what the person allegedly enriched has received, not on what the opposing party has lost.” *Herlache v. Rucks*, 990 N.W.2d 443, 450 (Minn. 2023) (quotation omitted). But we are not convinced that the jury awarded such damages.

The district court guided the jury away from awarding improper damages, instructing that unjust enrichment occurs when a party improperly “gains a benefit” and “enrich[es] himself at the expense of another,” and that the items of personal property at issue in the replevin claims—which it listed out for the jury—were not to be included in damages for unjust enrichment. “We presume that juries follow the instructions they are given.” *Frazier v. Burlington N. Santa Fe Corp.*, 811 N.W.2d 618, 630 (Minn. 2012). Further, the jury awarded \$412,000 less than the damages Laughlin claimed, which reasonably suggests that the jury declined to award damages in the two challenged categories.

Second, Sarusi and Back on Track assert that the total damages award—\$448,239.69—is excessive because the record does not support it. To address this argument, we begin by reviewing the evidence Laughlin presented as to damages. He testified that Sarusi diverted funds from him and from their shared business, Sealed Envelope, and to Sarusi’s own business, Back on Track; unilaterally withdrew funds from

the Sealed Envelope account; and seized and sold LB Spray Foam equipment. Laughlin presented a chart indicating \$860,647 in damages, which the parties stipulated to admitting as Exhibit 236.³ That chart includes two line items totaling \$328,000 for funds “diverted” into Back on Track’s bank account as part of Sarusi’s “self-dealing” between February 2021 and December 2022. And Laughlin presented an exhibit comprising all of the bank statements from Back on Track’s account for that time period, which the parties stipulated to admitting as Exhibit 233.

Sarusi and Back on Track contend this evidence does not sustain the jury award, principally because they stipulated only to the foundation for Exhibits 236 and 233, not to the “reasonableness” of the dollar amounts reflected in those exhibits. We are not persuaded. At trial, they gave their unqualified agreement to the admission of the exhibits; the district court then admitted the exhibits without limitation. *Cf.* Minn. R. Evid. 105 (permitting district court, upon request, to “restrict” the scope of evidence and “instruct the jury accordingly”). Sarusi and Back on Track could have objected to the exhibits or offered evidence or argument tending to contradict or limit them, but they did not do so. This record persuades us that the district court did not abuse its discretion by permitting the jury to consider Exhibits 236 and 233 as evidence of damages. And the exhibits reasonably tend to support the jury’s damages award.

Sarusi and Back on Track also contend that Laughlin failed to demonstrate that the Back on Track deposits shown in Exhibit 233 were all diverted funds. But they fail to

³ The parties also stipulated to admitting Sarusi’s list of claimed damages as an exhibit.

substantiate this contention. They identify no authority for the proposition that the jury could not rely on (1) Exhibit 236 (the damages list), which identified those funds as “diverted” by Sarusi to the Back on Track account as part of Sarusi’s “self-dealing”; or (2) Exhibit 233 (the Back on Track statements), which tends to support the diverted-funds figures listed on Exhibit 236. And the record includes testimony from Laughlin and Sarusi that some payments for Laughlin’s work were deposited in the Back on Track account. Indeed, Sarusi expressly acknowledged that two such deposits occurred in May and June 2021. Further, there was no testimony or argument suggesting that any of these funds were not wrongfully diverted as Laughlin claimed.⁴ As such, Exhibit 233 also reasonably tends to support the jury’s damages award.

Finally, Sarusi and Back on Track argue that the damages award is excessive to the extent it includes unjust-enrichment damages for LB Spray Foam’s Isuzu truck that Sarusi took but was later repossessed, and that Laughlin improperly claimed damages for both the truck and the amount owed on the truck. But they did not present these arguments in their posttrial motions. Because we generally consider only those matters that were argued to and decided by the district court, the argument is not properly before us. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). And even if we considered these arguments for the

⁴ Notably, Sarusi and Back on Track argued in their posttrial motion and again on appeal that one of the deposits was plainly not diverted funds because it was an SBA loan to Back on Track. This argument appears to refer to a \$43,500 deposit labeled “Sbad Treas 310 Misc Pay.” But they presented no evidence or argument to the jury about any of the deposits listed in Exhibit 233 (except for the two acknowledged diversions noted above), let alone any suggestion that the \$43,500 deposit was an SBA loan properly paid to Back on Track. This omission undermines their argument that the jury could not reasonably conclude that the funds deposited into Back on Track’s account unjustly enriched them.

first time on appeal, the record contains Sarusi’s testimony that he kept the truck and other items “for a while” and sold the equipment from the truck for “20-something thousand” dollars, providing the jury an evidentiary basis for awarding damages related to the truck.

Moreover, while the jury’s total damages award does not neatly align with any obvious subset of Laughlin’s claimed damages, our careful review of the record confirms that it falls well below “the highest amount permitted by the evidence.” *See Thompson*, 664 N.W.2d at 378. Sarusi and Back on Track acknowledge that \$70,735.72 of Laughlin’s claimed damages—the value of personal property not part of the replevin claims and the two deposits they admittedly diverted from LB Spray Foam—have evidentiary foundation and are recoverable as damages for unjust enrichment. Adding to that the value of the disputed Isuzu truck (not the associated debt) and the deposits in the Back on Track account yields a total of \$503,424.70, which is more than \$55,000 greater than the total amount that the jury awarded to Laughlin. Further, because the funds diverted to Back on Track were portrayed as caused by and benefiting both Sarusi and Back on Track, the jury might reasonably have apportioned those claimed damages between the two.

In sum, the evidence, viewed as a whole and in the light most favorable to Laughlin, amply sustains the jury’s damages award. Accordingly, we discern no abuse of discretion by the district court in denying Sarusi and Back on Track’s motions for a new trial or remittitur.

Affirmed.