IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE

TOOBAROO, LLC,

Respondent,

v.

WESTERN ROBIDOUX, INC.,

Appellant.

DOCKET NUMBER WD83169
(Consolidated with WD83182)

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: September 22, 2020

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable S. Margene Burnett, Judge

JUDGES

Division One: Newton, P.J., and Pfeiffer and Ardini, JJ. CONCURRING.

ATTORNEYS

Paul A. Maddock, St. Louis, Missouri, Joseph K. Eischens, N. Kansas City, MO, and Martin M. Meyers and Leonard Stephens, Kansas City, MO, Attorneys for Respondent.

Daniel E. Blegen and Breanna R. Spackler, Kansas City, MO, Attorneys for Appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

TOOBAROO, LLC, Respondent,
v.
WESTERN ROBIDOUX, INC., Appellant.

WD83169 (Consolidated with WD83182) **Jackson County**

Before Division One Judges: Thomas H. Newton, Presiding Judge, and Mark D. Pfeiffer and Edward R. Ardini, Jr., Judges

Western Robidoux, Inc. ("WRI") appeals the judgment of the Circuit Court of Jackson County, Missouri ("trial court"), following a jury verdict in favor of TooBaRoo, LLC ("Toobaroo") on Toobaroo's claim that WRI breached a joint venture agreement, awarding damages of $1,134,372. On appeal, WRI raises sufficiency of the evidence, evidentiary error, and instructional error challenges to the judgment.

WRI was a family business that a mother, three sons, and a daughter-in-law were all highly involved with running and making a success. One of the sons also formed and wholly owned two technology companies, Toobaroo and InfoDeli, LLC. Toobaroo, through the son, entered a joint venture agreement with WRI, through the mother, by which it was agreed that son would contribute his software and services through his solely-owned corporate entity, Toobaroo, to WRI and WRI agreed to compensate Toobaroo the identical amount it paid to that son's brothers, such that each brother would receive the identical WRI compensation on an annual basis.

The joint venture was immediately highly successful for WRI and for Toobaroo, and grew in clients, services, and profits. During this growth and success, two of the brothers and the sister-in-law took increases in their salaries as well as bonuses at multiple points in time without notifying Toobaroo or matching compensation to Toobaroo. Toobaroo noticed and requested the joint venture agreement be honored with back payments more than once. Eventually the conflict between the parties to the joint venture became more unmanageable, as WRI was actively and covertly planning to oust Toobaroo from the joint venture and replace his software and services with a different vendor, then made such replacement and continued the joint venture without Toobaroo, continuing to profit in the following years.

Toobaroo filed suit against WRI for breach of the joint venture agreement. At trial, an economist provided expert witness testimony for Toobaroo detailing the damages caused by the breach of the joint venture agreement. The jury found in favor of Toobaroo on the breach of joint venture claim and awarded Toobaroo $1,134,372 in damages. The trial court entered judgment in accordance with the verdict and denied WRI's Motion for Judgment Notwithstanding the Verdict, a New Trial, or to Amend the Judgment and Plaintiffs' Motion to Amend Judgment, except to change the date range for prejudgment interest. WRI timely appealed.

AFFIRMED.

Division One holds:

Toobaroo made a submissible case of joint venture and damages from WRI's breach thereof. In addition to being evident from the conduct and circumstances following the parties entering the agreement, there was testimony establishing an express joint venture agreement. WRI conceded the proof as to the common purpose element of joint venture. The evidence gave rise to the reasonable inference that each of the parties to the joint venture shared in the profits of the joint venture through increases in weekly draws and payment of bonuses, which increased as the joint venture experienced greater success. And, likewise, in at least one instance when the profits did *not* justify bonuses, none were had. There was equal right of control in the enterprise by Toobaroo and WRI.

Evidence regarding the damages arising from WRI's breach of the joint venture agreement with Toobaroo included son's testimony as to compensation differences he found out about, emails addressing his concerns, documents showing compensation of each of the brothers and sister-in-law, documents showing WRI's financial information including changes in revenue, cash flow, and profits, and testimony and a demonstrative exhibit from Toobaroo's expert witness economist. Toobaroo made a submissible case establishing damages from WRI's breach of their joint venture agreement with legal and substantial evidence.

Because no real estate conveyances were part of the joint venture agreement in question, the burden of proof standard was preponderance of the evidence. As such, the trial court's denial of WRI's motion for new trial based on the use of the instruction on the burden of proof for joint venture was not an abuse of discretion.

Toobaroo's expert witness testimony was admissible and each of the challenges thereto posed by WRI on appeal go to the weight of the opinions reflected in that testimony, which the trial court properly allowed the jury to determine. As such, the trial court's denial of WRI's motion for new trial was based on findings substantially supported by the record and was not an abuse of discretion.

Opinion by: Mark D. Pfeiffer, Judge September 22, 2020

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