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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-1858**

Pa D'or Manufacturing, Inc.,  
a Canadian corporation,  
Respondent,

vs.

Woodland Container Corporation, et al.,  
Defendants,

Packaging Solutions of Aitkin, Inc., et al.,  
Appellants.

**Filed August 19, 2008  
Affirmed in part as modified and reversed in part  
Johnson, Judge**

Roseau County District Court  
File No. 68-C6-05-000317

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Considered and decided by Toussaint, Chief Judge; Johnson, Judge; and Collins,  
Judge.\*

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

## UNPUBLISHED OPINION

**JOHNSON**, Judge

Woodland Container Corporation owed \$928,339.04 to Pa D'or Manufacturing, Inc., when Woodland became insolvent and discontinued operations. As an alternative means of recovering the money owed by Woodland, Pa D'or sued a number of individuals and entities affiliated with Woodland, including its former CEO, Richard Jordan, and a corporation formed by his daughter, Margo Jordan, called Packaging Solutions, Inc. A Roseau County jury found Richard Jordan liable for fraudulent misrepresentation and fraudulent transfer and found Packaging Solutions liable for conversion, each in the amount of \$928,339.04.

Richard Jordan and Packaging Solutions appeal, arguing that the evidence is insufficient to sustain the verdicts. We conclude that the evidence is sufficient to allow a recovery on the fraudulent transfer claim against Richard Jordan in the amount of \$200,000. We also conclude that the evidence is insufficient to allow a recovery on the fraudulent misrepresentation claim against Richard Jordan and the conversion claim against Packaging Solutions. Therefore, we affirm as modified with respect to the fraudulent transfer claim against Richard Jordan and reverse with respect to the other claims.

### FACTS

Before going out of business, Woodland manufactured wooden pallets and had plants in several locations, including Aitkin and Roseau. Woodland is owned via irrevocable trusts by Richard Jordan, its CEO, and his wife and children. Pa D'or is

based in Manitoba, Canada, and is owned by Paul Demare and his wife. For a number of years, Pa D'or supplied Woodland with lumber that was used to make pallets.

Woodland was unprofitable in 2003. In 2004, its financial woes intensified when its lumber costs increased significantly. In June 2004, Woodland hired a new CFO, Dave Kolkind, in an effort to address its financial problems. Soon after Kolkind joined the company, Woodland learned that its financial situation was even worse than previously understood.

Before experiencing financial difficulties, Woodland typically paid Pa D'or for lumber within 15 days of delivery. In the summer of 2004, however, Woodland began falling behind in its payments to Pa D'or. Demare was aware of Woodland's increasing debt but initially was not concerned because several Woodland employees told him that Woodland had raised its prices by 30 percent without losing any customers. In August or September of 2004, however, Demare began to express concern about the increasing receivables from Woodland, which by this time had risen to approximately \$759,000, of which almost \$400,000 was past due. In a meeting at Woodland's offices in Aitkin, Kolkind and Dave Gervenak, Woodland's COO, told Demare that Woodland intended to sell some real estate and that the first half million dollars of proceeds from the sale would be applied toward Woodland's debt to Pa D'or. Woodland later sold a small tract of land for \$160,000. Approximately \$66,000 was used to pay off mortgages on the property, and approximately \$18,000 was used to pay a judgment creditor, but none of the proceeds was used to pay Pa D'or.

By October 2004, Woodland owed Pa D'or approximately \$855,000. Woodland continued to make payments of approximately \$50,000 per week, and Pa D'or continued to ship lumber to Woodland. But Woodland failed to make any payments to Pa D'or in the last two weeks of December 2004, contrary to the promises of Woodland employees.

On January 20, 2005, Gervenak sent a letter to Pa D'or. Attached to the letter was a document entitled "Vendor repayment plan," which stated, among other things, that Woodland had "appropriate working capital." At that point in time, however, Woodland's board had made a decision to file a bankruptcy petition if an agreement could not be worked out with another creditor. Jordan admitted at trial that, at the time of Gervenak's letter, Woodland did not have enough cash to meet its obligations and had reached the limit of its line of credit with its bank. On February 16, 17, and 18, 2005, Woodland sent Pa D'or three separate checks totaling \$30,754.08, but all three checks were returned for insufficient funds. On March 10, 2005, Woodland sent Pa D'or a fourth check in the same amount as the total of the three prior checks, but the fourth check also was returned for insufficient funds.

In late March or early April of 2005, Woodland ceased operations. At that time, Woodland owed Pa D'or \$928,339.04. Within a few days, Packaging Solutions, a company started by Margo Jordan, Richard Jordan's daughter, was producing pallets at Woodland's Aitkin plant.

In April 2005, Pa D'or commenced this action against a number of defendants, including Woodland, Packaging Solutions, the trusts that own Woodland, and several members of Richard Jordan's immediate family. After a four-day trial in September

2006, a Roseau County jury returned a special verdict form in which it found Jordan liable for fraudulent representation and liable on a claim that was labeled “conversion” but which, for reasons explained below, we deem to be a claim of fraudulent transfer. The jury also found Packaging Solutions liable for conversion. The jury awarded damages of \$928,339.04 on each claim. The jury found Margo Jordan, Doreen Jordan (Richard Jordan’s wife), and Wade Jordan (Richard Jordan’s son) to be not liable.

In September 2006, Richard Jordan and Packaging Solutions moved for judgment as a matter of law or, in the alternative, for a new trial. Meanwhile, the district court considered certain equitable issues, including Pa D’or’s request to pierce the corporate veil of Woodland and to hold Packaging Solutions liable as a successor corporation to Woodland. In November 2006, the district court ruled in favor of the defendants on all equitable issues but denied Richard Jordan’s and Packaging Solutions’ motion for judgment as a matter of law or new trial. In December 2006, in response to the district court’s adverse rulings on the equitable issues, Pa D’or filed a motion for a new trial or amended findings, which the district court denied in September 2007. Pa D’or has not appealed from the district court’s rulings on the equitable issues. Richard Jordan and Packaging Solutions appeal from the district court’s denial of their post-trial motion challenging the jury’s verdict.

## **DECISION**

Judgment as a matter of law pursuant to Minn. R. Civ. P. 50.02 is appropriate if a jury’s verdict has no reasonable support in fact or is contrary to law. *Diesen v. Hessburg*, 455 N.W.2d 446, 452 (Minn. 1990). On appeal, the district court’s denial of such a

motion “must be affirmed, if, in the record, there is any competent evidence reasonably tending to sustain the verdict.” *Pouliot v. Fitzsimmons*, 582 N.W.2d 221, 224 (Minn. 1998) (quotation omitted). “[A] special verdict form is to be liberally construed to give effect to the intention of the jury and on appellate review it is the court’s responsibility to harmonize all findings if at all possible.” *Kelly v. City of Minneapolis*, 598 N.W.2d 657, 662 (Minn. 1999). If the jury’s answer to the special-verdict question “can be reconciled in any reasonable manner consistent with the evidence and its fair inferences, the jury verdict must be sustained.” *Id.* (quotation omitted). “The evidence must be viewed in a light most favorable to the jury verdict.” *Hanks v. Hubbard Broad., Inc.*, 493 N.W.2d 302, 309 (Minn. App. 1992), *review denied* (Minn. Feb. 12, 1993); *see also Domtar, Inc. v. Niagara Fire Ins. Co.*, 563 N.W.2d 724, 734 (Minn. 1997). The denial of a motion for judgment as a matter of law is subject to de novo review. *Gilbertson v. Leininger*, 599 N.W.2d 127, 130 (Minn. 1999).

We note at the outset that appellate review in this case has been significantly hampered by inadequate citations in the parties’ briefs. Counsel submitting briefs to this court are required to provide citations to the applicable legal authorities. Minn. R. Civ. App. P. 128.02, subd. 1(d). Appellant’s brief cites a handful of cases; respondent’s brief cites none apart from those concerning the standard of review. In addition, counsel submitting briefs to this court are required to provide specific citations to factual materials in the appendix and the district court record. Minn. R. Civ. App. P. 128.03. Citations to the factual record are especially important in a case in which the appellant has challenged the sufficiency of the evidence. Both briefs fail to comply with this rule

because they provide only a few citations to the evidentiary record and rarely do so with respect to the determinative facts. Yet at oral argument, both attorneys urged the court to carefully review the district court record. An appellate court may decline to review an assignment of error when parties fail to provide sufficient citations. *See State ex rel. Barrett v. Korbel*, 300 Minn. 563, 563, 221 N.W.2d 125, 125 (1974); *Schoepke v. Alexander Smith & Sons Carpet Co.*, 290 Minn. 518, 519-20, 187 N.W.2d 133, 135 (1971); *Brett v. Watts*, 601 N.W.2d 199, 202 (Minn. App. 1999), *review denied* (Minn. Nov. 17, 1999). In this case, however, the court has, in fairness to the parties, endeavored to find the evidence and the law that is pertinent to the issues that are fairly raised by the parties' briefs.

### **I. Claim of Fraudulent Misrepresentation Against Richard Jordan**

Richard Jordan argues that the evidence is insufficient to support the jury's verdict that he is liable to Pa D'or for fraudulent misrepresentation. The district court used the standard jury instruction for fraudulent misrepresentation. *See 4 Minnesota Practice*, 57.10 (2006). To prove a claim of fraudulent misrepresentation, the plaintiff must establish that

(1) there was a false representation by a party of a past or existing material fact susceptible of knowledge; (2) made with knowledge of the falsity of the representation or made as of the party's own knowledge without knowing whether it was true or false; (3) with the intention to induce another to act in reliance thereon; (4) that the representation caused the other party to act in reliance thereon; and (5) that the party suffer[ed] pecuniary damage as a result of the reliance.

*Specialized Tours, Inc. v. Hagen*, 392 N.W.2d 520, 532 (Minn. 1986) (quotation omitted); *see also Hoyt Props., Inc. v. Production Res. Group, L.L.C.*, 736 N.W.2d 313, 318 (Minn. 2007).

Pa D'or's complaint alleged only two types of fraudulent misrepresentations--the checks that Woodland sent to Pa D'or in February 2005 and March 2005 that were returned for insufficient funds and other unspecified promises of payment and adequate financing. But in closing arguments to the jury, Pa D'or identified additional statements as factual bases of its fraud claim. We construe the district court record as if those issues had been raised in the pleadings because they were tried by express or implied consent. *See* Minn. R. Civ. P. 15.02. Thus, the five allegedly fraudulent misrepresentations at issue are:

(1) the statements of various Woodland employees to Demare in the summer or fall of 2004 that Woodland would be able to pay its debt to Pa D'or because it had raised its prices without losing any customers;

(2) the statements by Kolkind and Gervenak in late 2004 to Demare that Woodland intended to sell real property and would use some of the proceeds of that sale to pay Pa D'or;

(3) the statements of various Woodland employees to Demare in early December that Woodland would make payments to Pa D'or of \$100,000 in the last two weeks of December;

(4) the January 20, 2005, letter from Gervenak to Demare stating that Woodland had "appropriate working capital"; and

(5) the four checks identified above that were issued in February 2005 and March 2005 but returned for insufficient funds.

Richard Jordan makes three arguments in response to the fraud claim: first, he did not make the statements on which Pa D'or's fraud claim is based and was not personally involved in them; second, the allegedly fraudulent statements do not concern past or present material facts that are susceptible of knowledge; and third, there was no reasonable reliance by Pa D'or.

**A. Representation by Richard Jordan**

To establish a claim of fraudulent representation, a plaintiff must prove that the false representation was made "by a party." *Specialized Tours*, 392 N.W.2d at 532. In this case, there simply is no evidence that Richard Jordan made any of the allegedly fraudulent misrepresentations.

The first, second, and third representations were made by other persons who were employees of Woodland. Demare testified at trial that although he sometimes saw Richard Jordan on his visits to Woodland, Richard Jordan was not involved in the discussions he had with Gervenak and Kolkind in late 2004. There is no evidence that Richard Jordan directed or authorized Gervenak and Kolkind to make the statements at issue. The statements of Woodland employees cannot give rise to personal liability for Richard Jordan, even though he was the CEO of Woodland.

The fourth representation, the January 20, 2005, letter, was signed by Gervenak. There is no evidence that Richard Jordan had any direct responsibility for sending the letter or its attachment to Pa D'or.

The fifth representation, the four bounced checks, were not statements by Richard Jordan. The checks bear his signature, but they are merely facsimiles of his signature that were applied either by a stamp or by a printer. There is no evidence that Richard Jordan performed the stamping or specifically instructed an employee to affix his signature to those checks.

Thus, there is no evidence in the record from which the jury reasonably could find that Richard Jordan made the representations that are the bases of Pa D'or's fraudulent misrepresentation claim.

**B. Representation of Past or Present Material Fact**

To constitute actionable fraud, “a false representation must relate to a matter of fact which either exists in the present or has existed in the past. It must also relate to a fact which is susceptible of knowledge.” *Kennedy v. Flo-Tronics, Inc.*, 274 Minn. 327, 329 n.1, 143 N.W.2d 827, 828 n.1 (1966) (quotation omitted).

Only one of the five alleged misrepresentations concerns a past or existing material fact. The fourth alleged misrepresentation, the January 20, 2005, letter, satisfies this requirement because the attachments to it state that Woodland has “appropriate working capital.” But four of the five types of allegedly fraudulent statements do not relate to past or present material facts. The first three types of statements identified above plainly are not statements concerning a “matter of fact which . . . exists in the present” or “existed in the past.” *Kennedy*, 274 Minn. at 329 n.1, 143 N.W.2d at 828 n.1. Although Pa D'or argues that the bounced checks constitute false statements of present or

past material facts, it has not cited any legal authority for that proposition, and we have been unable to identify any such authority.

An action for fraud sometimes may be based on a representation as to a future act, if it is proved that the promisor had no intention to perform at the time the promise was made. *Martens v. Minnesota Mining & Mfg. Co.*, 616 N.W.2d 732, 747 (Minn. 2000). Here, however, the jury was specifically instructed that “[a] representation regarding a future event or future profits are not treated as assertions of fact and amount to nothing more than conjecture.” Neither party has challenged the jury instructions. Thus, “the trial court’s charge, even if erroneous, becomes the law of the case, and whether the verdict is sustained by the evidence is then determined by application of the rules of law laid down in the charge.” *Coenen v. Buckman Bldg. Corp.*, 278 Minn. 193, 198, 153 N.W.2d 329, 334 (1967).

Thus, there is no evidence in the record from which the jury reasonably could find that the representations that are the bases of Pa D’or’s fraudulent misrepresentation claim relate to a matter of fact which either exists in the present or has existed in the past.

### **C. Reliance**

A party asserting a claim of fraudulent misrepresentation must show that it reasonably relied on the false representations. *Specialized Tours*, 392 N.W.2d at 532 “[I]t is for the injured party to prove that he [acted] in reliance upon the truthfulness of the representations.” *Gaertner v. Rees*, 259 Minn. 299, 306, 107 N.W.2d 365, 369 (1961).

Pa D'or's primary argument with respect to reliance is that, after receiving the allegedly fraudulent misrepresentations, Pa D'or continued to ship more lumber to Woodland for which it did not receive payment. The evidence, however, does not support this argument. Demare testified that Pa D'or did not rely on the January 20, 2005, letter or the checks and did not extend more credit to Woodland after January 2005. Rather, after the January 20, 2005, letter, Pa D'or shipped lumber to Woodland only in exchange for cash on delivery. Demare also testified that all shipments of lumber in February and March of 2005 "were paid for." The total debt owing to Pa D'or reached \$960,172.96 on January 1, 2005, and the balance thereafter went down. Thus, Pa D'or cannot prove reliance in the form of continued shipments after January 20, 2005.

The representations that are the first, second, and third alleged bases of the fraud claim, however, occurred earlier in time. Pa D'or did introduce evidence sufficient to establish the element of reliance with respect to the alleged misrepresentations occurring prior to January 20, 2005.

Pa D'or also argues that it relied on the alleged misrepresentations by refraining from making efforts to collect the amounts owed by Woodland through legal action. But Pa D'or did not introduce any evidence of actions that it would have taken or intended to take but refrained from taking because of the allegedly fraudulent misrepresentations. This appears to be solely an argument by counsel. It is mere speculation that Pa D'or, but for the alleged misrepresentations, would have pursued collection and would have done so successfully.

#### **D. Summary**

The evidence is insufficient to prove the first alleged fraudulent misrepresentation (the statements by Woodland employees about the company's improved financial condition due to its increase in prices) because the representation was not made by Richard Jordan and because the representation did not relate to a past or present material fact.

The evidence is insufficient to prove the second alleged fraudulent misrepresentation (the statements by Kolkind and Gervenak about the company's plans to sell real estate and use the proceeds to pay Pa D'or) because the representation was not made by Richard Jordan and because the representation did not relate to a past or present material fact.

The evidence is insufficient to prove the third alleged fraudulent misrepresentation (the statements by Woodland employees about the company's plans to make payments to Pa D'or in late December 2005) because the representation was not made by Richard Jordan and because the representation did not relate to a past or present material fact.

The evidence is insufficient to prove the fourth alleged fraudulent misrepresentation (Gervenak's January 20, 2005, letter) because the representation was not made by Richard Jordan and because Pa D'or did not reasonably rely on the representation.

The evidence is insufficient to prove the fifth alleged fraudulent misrepresentation (the four bounced checks in February and March of 2005) because the representation was

not made by Richard Jordan, because the representation did not relate to a past or present material fact, and because Pa D'or did not reasonably rely on the representation.

Thus, there is no “competent evidence reasonably tending to sustain the verdict” on the claim of fraudulent misrepresentation against Richard Jordan. *Pouliot*, 582 N.W.2d at 224 (quotation omitted). Therefore, the district court erred in denying Richard Jordan’s motion for judgment as a matter of law on that claim.

## **II. Claim of Fraudulent Transfer Against Richard Jordan**

Richard Jordan argues that the evidence is insufficient to support the jury’s verdict that he is liable to Pa D'or on the claim that was submitted as one for “conversion.” Because the district court record is ambiguous concerning Pa D'or’s legal theory, we first must determine the nature of the cause of action.

Although the special verdict form uses the term “conversion,” the special interrogatories are phrased more in terms of a statutory claim of fraudulent transfer. *See* Minn. Stat. §§ 513.44, .45 (2006). The special verdict form asks two questions regarding transactions between Richard Jordan and Packaging Solutions: “Did Richard Jordan, as CEO of Woodland Container Corporation, convey assets owned by Woodland Container Corporation to Packaging Solutions for no consideration?” “Was the transfer of assets to Packaging Solutions made with actual intent to hinder and delay creditors including Pa D'or Manufacturing, Inc.?” The jury answered both of these questions in the affirmative.

Although the jury instructions include the elements of common-law conversion, the instructions also include references to the law concerning fraudulent transfers,

including verbatim quotations from sections 513.44 and 513.45 of the Minnesota Statutes, which are key parts of the Minnesota Uniform Fraudulent Transfer Act. The district court record is somewhat confusing because the district court also considered the law of fraudulent transfer in its post-trial order concerning equitable issues that were submitted to the district court. We must assume that the district court conducted that analysis in response to a request by Pa D'or for an equitable remedy on the fraudulent transfer claim, such as the return of certain assets to Woodland or another defendant for purposes of making payment to Pa D'or. *See Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 43-49; 109 S. Ct. 2782, 2791-94 (1989) (recognizing that nature of relief sought in fraudulent transfer action determines whether action is in law or equity). In construing the district court proceedings, we must “liberally construe[.]” the special verdict form to harmonize the record to the extent possible. *Kelly*, 598 N.W.2d at 662. The primary factor here is that the special verdict form distinctly reflects the elements of a fraudulent transfer claim. It would not make sense to apply the common law of conversion to the special verdict form that was considered and completed by the jury. If we were to construe the claim as a true conversion claim, it would easily fail because, as discussed below in part III, conversion requires evidence that the defendant converted *the plaintiff's* property, but Pa D'or sought to prove that Richard Jordan converted *Woodland's* property. Thus, we will construe the second claim against Richard Jordan to be a claim of fraudulent transfer.

In addition to language taken directly from the Minnesota Uniform Fraudulent Transfer Act, the jury instructions include the following language:

Shareholders may also be held personally liable if they, while the corporation is insolvent, repay old debts to themselves or transfer corporate assets to others without fair consideration and with the intent to defraud creditors. An improper preference is one which enables the director or officer to recover a greater percentage of his debt than general creditors. Reimbursing officers for paying current corporate debt is not a preference.

It is not an improper transfer if the asset transferred is not available to creditors. An example given by the courts is that an unsecured creditor cannot complain about the valid repayment of secured debt rather than paying unsecured creditors. In other words, proper value is given if the transfer is made as part of a regularly conducted repossession by a secured creditor.

It is not a transfer according to the fraudulent conveyance act if the only transfer is a transaction made pursuant to a valid security interest.

It is not even an asset to consider under the fraudulent conveyance act if the asset is properly encumbered by a mortgage or security interest.

Neither party has challenged the jury instructions. Thus, the instructions are “the law of the case.” *Coenen*, 278 Minn. at 198, 153 N.W.2d at 334.

Pa D’or’s complaint alleged that Jordan, through Woodland, transferred “assets, customers and proprietary information” to Packaging Solutions. At trial, Pa D’or identified additional assets that allegedly were transferred away from Woodland. We construe the district court record as if those issues had been raised in the pleadings because they were tried by express or implied consent. *See* Minn. R. Civ. P. 15.02. Thus, the three types of assets at issue are: (1) inventory, (2) proceeds from the sale of real estate, and (3) goodwill.

With respect to the first type of asset, Woodland's inventory, we struggle to find any evidence in the trial record that any specific asset was transferred from Woodland to Packaging Solutions. Pa D'or relies heavily on a single Woodland document that refers to inventory valued at more than a million dollars, none of which was present after Woodland ceased operations. Pa D'or asked the jury to find that lumber and other materials were present at an earlier point in time and that the materials later disappeared. Thus, Pa D'or essentially argues that it proved fraudulent transfers indirectly with evidence of the aggregate value of assets and an inference that the materials were transferred to Packaging Solutions.

Richard Jordan argues, however, that all of Woodland's tangible assets were encumbered by a security agreement with Woodland's bank and, in fact, were repossessed by the bank. The district court instructed the jury to not consider assets that are encumbered by a security interest of a third party. This instruction is consistent with Minnesota law. Minn. Stat. § 513.41(2)(i) (2006). The evidence conclusively establishes that Woodland's entire inventory was secured by the Peoples National Bank of Mora. A voluntary surrender agreement, which was a trial exhibit, states that Woodland previously had granted Peoples National Bank a "security interest in all receivables, inventory, equipment, investment property, deposit accounts, commercial tort claims and general intangibles." A vice president of Peoples National Bank gave testimony that corroborates the exhibit. Pa D'or did not introduce any evidence to contradict this evidence. Thus, in light of the instructions, there is no "competent evidence" to support Pa D'or's claim of

fraudulent transfer based on Jordan's alleged transfers of Woodland's inventory to Packaging Solutions. *Pouliot*, 582 N.W.2d at 224 (quotation omitted).

With respect to the second type of asset, cash proceeds from Woodland's sale of real estate, Pa D'or relies on evidence that approximately \$74,437.90 was transferred to Margo Jordan Enterprises, LLC, which was created by Margo Jordan in early 2005 in an attempt to ensure that money was available to Woodland to purchase lumber to make pallets for Woodland's largest customer, Kawasaki. The evidence, however, conclusively establishes that all money transferred from Woodland to Margo Jordan Enterprises, LLC, was used to pay creditors of Woodland. None of the money was transferred to Margo Jordan, Richard Jordan, other members of the Jordan family, or other entities that were not creditors of Woodland. This type of disposition of assets is not considered a fraudulent transfer under the jury instructions.

With respect to the third type of asset, "goodwill," Pa D'or relied at trial on evidence that Richard Jordan participated in the creation of Packaging Solutions. The jury instructions did not mention this form of property. In Minnesota, it is an open question whether "goodwill" may be considered an asset that is subject to the fraudulent transfer act. Neither party has cited any caselaw on the issue. Some states have recognized that goodwill may be an asset for purposes of the uniform act. *See, e.g., Stanley v. Mississippi State Pilots, Inc.*, 951 So. 2d 535, 539-40 (Miss. 2006); *Preferred Funding, Inc. v. Jackson*, 61 P.3d 939, 943 (Or. Ct. App. 2003); *Airflow Houston, Inc. v. Theriot*, 849 S.W.2d 928, 933 (Tex. App. 1993). We are not aware of any caselaw to the

contrary. Thus, for purposes of this appeal, we will accept the proposition that Pa D'or may seek to prove a fraudulent transfer of Woodland's goodwill to Packaging Solutions.

Pa D'or relies primarily on a Packaging Solutions balance sheet that appears to have been created on April 8, 2005, shortly after Woodland had shut down. In that financial statement, Packaging Solutions recognized "goodwill" as an asset valued at \$200,000. Margo Jordan testified that she supplied the estimated value of \$200,000, even though, due to Woodland's poor situation, she did not believe that there was any goodwill to be transferred. Other testimony, including that of Margo Jordan, however, showed that Packaging Solutions was able to retain at least two profitable customers that previously were serviced by Woodland. Although Packaging Solutions paid Peoples National Bank \$300,000 for tangible assets of Woodland that the bank had repossessed, there is no evidence that Packaging Solutions paid Woodland for the value of Woodland's goodwill. The general thrust of Pa D'or's evidence and argument to the jury was that Richard Jordan hoped to keep the family business going in some way as Woodland was failing and did so by working with Margo Jordan to set up a new company, which took advantage, to some extent, of intangible benefits of Woodland's business, such as its expertise and customers. Thus, viewing the evidence in the light most favorable to the verdict, and in light of the jury instructions, the evidence is sufficient to establish that Richard Jordan transferred goodwill worth \$200,000 from Woodland to Packaging Solutions for no consideration.

A reviewing court may set aside a jury verdict on damages if "it is manifestly and palpably contrary to the evidence viewed as a whole and in the light most favorable to the

verdict.” *Raze v. Mueller*, 587 N.W.2d 645, 648 (Minn. 1999) (quotation omitted). Here, the only asset that was transferred in violation of the fraudulent transfer act was Woodland’s goodwill. The evidence supports a conclusion that the goodwill was worth \$200,000, which exceeds the profits Packaging Solutions derived from its business before experiencing losses and going out of business.

In sum, there is “competent evidence reasonably tending to sustain the verdict” of liability on the claim of fraudulent transfer against Richard Jordan in the amount of only \$200,000. *Pouliot*, 582 N.W.2d at 224 (quotation omitted). Thus, the district court should have granted in part Richard Jordan’s motion for judgment as a matter of law on that claim.

### **III. Claim of Conversion Against Packaging Solutions**

Packaging Solutions argues that the evidence is insufficient to support the jury’s determination that it should be held liable for conversion. The first interrogatory on the special verdict form asked, “Did Packaging Solutions convert assets belonging to Woodland Container to itself for no consideration?” The jury also was instructed concerning conversion as follows:

Personal property is converted if a person exercises control over an owner’s personal property in a way that:

1. Is contrary to the owner’s right to the personal property, or
2. Intentionally destroys or changes the personal property, or

3. Intentionally deprives the owner of possession of the property permanently or for an indefinite period of time.

Unlike the claim against Richard Jordan bearing the same label, this claim is more in the nature of a true common-law conversion claim. But a conversion claim assumes, and requires, that the property that has been converted belongs to the plaintiff. *Olson v. Moorhead Country Club*, 568 N.W.2d 871, 872 (Minn. App. 1997), *review denied* (Minn. Oct. 31, 1997). Here, Pa D’or sought to prove that Packaging Solutions converted property belonging to Woodland. There was no evidence that Pa D’or had a property interest in the assets of Woodland, such as a security interest on Woodland’s assets. *See* Minn. Stat. §§ 336.9-312(a), 336.9-501(b) (2006). “A plaintiff’s lack of an enforceable interest in the subject property is a complete defense against conversion.” *Lassen v. First Bank Eden Prairie*, 514 N.W.2d 831, 838 (Minn. App. 1994) *review denied* (Minn. June 29, 1994); *see also* *Larson v. Archer-Daniels-Midland Co.*, 226 Minn. 315, 317, 32 N.W.2d 649, 650 (1948).

We note that the second interrogatory on the special verdict form asked, “Was this conversion of assets made with actual intent to hinder or delay creditors including Pa D’or Manufacturing, Inc.?” This interrogatory raises the possibility that the district court intended to submit to the jury a fraudulent transfer claim against Packaging Solutions. In that event, the claim still fails. The district court instructed the jury that a fraudulent transfer must be “made . . . by a debtor.” This principle also is found in the text of Minn. Stat. § 513.45. Packaging Solutions was not a debtor of Pa D’or. Thus, a

fraudulent transfer claim against Packaging Solutions also is without support in the evidentiary record.

In sum, there is no “competent evidence reasonably tending to sustain the verdict” on the claim of conversion against Packaging Solutions. *Pouliot*, 582 N.W.2d at 224 (quotation omitted). Thus, the district court erred in denying Packaging Solutions’s motion for judgment as a matter of law on that claim.

**Affirmed in part as modified and reversed in part.**