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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-1406**

Camas, Inc.,  
Co-Appellant,

Blue Lily Farms, LLC,  
Appellant,

vs.

Peter Nash, et al.,  
Respondents.

**Filed April 26, 2011  
Affirmed in part, reversed in part, and remanded  
Collins, Judge\***

LeSueur County District Court  
File No. 40-CV-08-138

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Considered and decided by Wright, Presiding Judge; Ross, 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## **UNPUBLISHED OPINION**

**COLLINS**, Judge

In this corporate dispute, the district court rejected the claims of appellants Blue Lily Farms LLC (BLF) and Camas Inc.; found that respondents Ronald Schmidt and Peter Nash proved their counterclaims against BLF and Camas; and awarded Schmidt and Nash attorney fees and equitable relief. BLF argues that the district court erred by (1) terminating its lease with Schmidt, (2) awarding Schmidt a 55% interest in BLF, (3) awarding Schmidt ownership and possession of BLF's buildings and fixtures, and (4) awarding attorney fees. Camas argues that the district court erred by (1) dismissing its claims against Schmidt and Nash, (2) enforcing a draft version of corporate documents rather than the executed version, (3) finding BLF in breach of the Schmidt-BLF lease because of Camas, and (4) awarding Nash relief because he was not prejudiced by Camas's stock-sale notice violations and the record does not support the finding that Camas acted in an unfairly prejudicial manner toward Nash. We affirm in part, reverse in part, and remand.

### **FACTS**

The four parties to this appeal are related companies and their shareholders. Camas is a Minnesota corporation that produces livestock feed additives using the eggs of vaccinated chickens, and BLF owns and vaccinates the chickens that produce the eggs for Camas. Nash has been a Camas shareholder since 1988 and was named Camas president and CEO in 1998. Schmidt is a Minnesota farmer and a Camas employee shareholder since 2001. Camas and Schmidt are the sole members of BLF.

This corporate dispute between Camas and BLF, on the one hand, and Schmidt and Nash, on the other, arises out of a complex series of corporate interactions that span more than one decade.

Starting in the late 1990s and continuing into 2010, Camas began selling stock to new shareholders to fund its operations. During this time, Camas never sent notice to its shareholders prior to the sale of additional stock, as required by Minn. Stat. § 302A.413, subd. 7 (2010). Among the new Camas shareholders were Scott Simplot, who became a shareholder in 1997, and Brad Mitteness, who became a shareholder in 1998. Virtually all of the stock issued between 1997 and 2010 was issued to Simplot. Consequently, the ownership percentage of Simplot continually increased—from approximately 35% in 2001 to 76.6% in April 2009—while the ownership percentage of all other shareholders decreased. For example, Nash’s ownership percentage decreased from 16% in 1996 to 2.5% in 2009.

In 1998, shortly after Camas began selling shares to Simplot, Camas decided to move its business operations from the Twin Cities metropolitan area to LeCenter, Minnesota. After several years, Camas decided to set up its own facility to produce the eggs it needed and approached Schmidt, who worked for Camas and farms in LeCenter, to form a joint venture for the production of eggs. They agreed to call the venture Blue Lily Farms, but could not readily agree on the ownership percentage each party would have in BLF. Schmidt’s counsel advised him not to agree to an arrangement in which he would have less than 51% ownership interest, and Schmidt rejected all drafts of organizational documents that afforded him less than 51% ownership interest. The

negotiations between Camas and Schmidt extended for approximately 18 months. In September 2002, Camas sent Schmidt a draft of BLF organizational documents proposing a compromise on the ownership issue. The draft member control agreement afforded Camas an initial financial interest of 76.6% and Schmidt an initial financial interest of 23.4%, with an annual transfer of a percentage of financial interest from Camas to Schmidt “until such time that Ron Schmidt’s financial interest reaches 51%. At no time shall these transfers result in Ron Schmidt’s financial interest exceed[ing] 55%.” Under the terms of the draft, Schmidt was expected to own at least 51% of BLF by October 2007. Schmidt agreed to the proposal.

On or about November 20, 2002, Schmidt accompanied Nash and Don Robinson, a Camas officer and director, to the offices of Camas’s counsel and signed a BLF member control agreement and a BLF operating agreement. Robinson told Schmidt that the documents were the draft BLF organizational documents he agreed to in September. BLF’s first governors were Schmidt, Nash, and Robinson. Schmidt also signed a 30-year lease with BLF for the buildings Camas had constructed and the portion of Schmidt’s land on which the buildings are located. Schmidt was not given a copy of any of the documents immediately after signing and only later discovered that the member control agreement he signed did not contain the interest-transfer provision from the September draft. Robinson assured Schmidt that the documents would be corrected, but they were not.

BLF was fully operational by November 2002. BLF purchased chickens, placed them in the buildings Camas had constructed, and began caring for the chickens. BLF

vaccinated the chickens with vaccine Camas provided, maintained vaccination records, collected eggs, and delivered eggs to Camas. But BLF never operated at a profit. BLF relied solely on revenue from Camas, and Camas never paid BLF more than was needed to cover BLF's cost of operations. BLF sometimes produced more eggs than Camas could use, but BLF was not permitted to sell the eggs; excess eggs were discarded. The member control agreement required that a production contract be put in place between Camas and BLF, but no such contract was ever prepared.

In 2006, Camas began experiencing regulatory problems. In anticipation of Camas sales to foreign countries, Mitteness, acting as Camas director of sales/marketing, retained a consultant to apply to the Minnesota Department of Agriculture (MDA) for a free sale certificate, which Camas could present to foreign countries to certify that its products can be legally sold in Minnesota. Based on Camas marketing and promotional materials that Mitteness had prepared, the MDA denied the free sale certificate, explaining that the information available for the products established "the intended purpose of the products as New Animal Drugs" and that the products had not been approved as such. Neither Schmidt nor Nash knew of the application or its denial.

Around the same time, the United States Department of Agriculture (USDA) also concluded, based on the marketing and promotional materials Mitteness prepared, that Camas was manufacturing and distributing veterinary biologic products without required licenses. The USDA notified Nash of the violation in February 2006 and conducted a surprise inspection of the Camas facility in June 2006. As a result of and shortly after the inspection, Nash, Mitteness, and other Camas representatives agreed to voluntarily stop

the sale and distribution of its product called NP Coat, which the USDA considered to be an unlicensed veterinary biologic.

Notwithstanding the agreement to stop the sale and distribution of NP Coat, Nash discovered several instances of Camas employees and directors participating in sales and shipments of NP Coat under different product names. Nash addressed the improper sale and distribution issue at a September 2007 Camas board-of-directors meeting. The board subsequently fired Nash as president and CEO, removed Nash from the board of directors, and installed Mitteness as Camas CEO.

In December 2007, Nash and Schmidt met with an MDA representative regarding their personal exposure to liability for the NP Coat shipments Nash had discovered. Nash was concerned because he was CEO when the shipments were made, and Schmidt was concerned because he owned the underlying farm land on which the prohibited activity occurred. The MDA representative advised Nash and Schmidt that they could be held personally liable for the regulatory violations.

After consulting with an attorney, Schmidt and Nash, who were still on the BLF board of governors, called a special meeting of the BLF board of governors. At the January 15, 2008 meeting, Schmidt and Nash proposed two resolutions: (1) to terminate the lease between Schmidt and BLF, and (2) to redistribute the membership interests in BLF so that Schmidt would be the majority member and Camas the minority member. Robinson, the third member of the board, opposed the resolutions, but Schmidt and Nash voted in favor of both, passing the resolutions.

Shortly thereafter, Camas called a meeting of the members of BLF—Schmidt and Camas. Asserting that its majority membership in BLF remained intact, despite the previous resolution, Camas voted to remove Schmidt and Nash from the board and replace them. The new board then removed Schmidt and Nash as officers and employees of BLF and reversed the two resolutions that had been approved at the January 15 meeting.

In February 2008, Camas initiated this action against Schmidt and Nash under the Minnesota Limited Liability Company Act (LLCA), Minn. Stat. §§ 322B.01-.975 (2010), and the Minnesota Business Corporation Act (BCA), Minn. Stat. §§ 302A.001-.92 (2010), alleging (1) wrongful distribution of BLF assets, (2) ultra vires acts as officers and fiduciaries of BLF, (3) violations of statutory standards of conduct and conflict of interest, (4) attempted improper transfer of BLF assets, and (5) waste of BLF assets. Camas also alleged that Nash acted outside his authority as director and CEO of Camas and that Nash and Schmidt converted Camas’s tangible and intangible assets.

BLF intervened and joined Camas as a plaintiff in the action in July 2008. BLF alleged under the LLCA that Schmidt and Nash had (1) wrongfully distributed BLF assets, (2) acted outside their authority as fiduciaries of BLF, (3) violated their statutory fiduciary responsibilities, (4) attempted to transfer substantially all of the assets of BLF without approval of BLF members, (5) wasted BLF assets, and (6) breached the provisions of the BLF member control agreement in attempting to increase Schmidt’s membership interests.

Nash and Schmidt denied Camas's and BLF's allegations and asserted LLCA and BCA counterclaims. Nash alleged that Camas (1) failed to provide him prior notice of stock sales and (2) acted in an unfairly prejudicial manner toward him by exposing him to civil and criminal liability for violations of state and federal law. Schmidt alleged that (1) BLF breached the lease with him, (2) Camas breached the BLF member control agreement by, among other things, failing to transfer a controlling interest in BLF to him and failing to enter into a production contract with him, and (3) Camas failed to provide him with prior notice of stock sales.

Before trial, the district court dismissed five of Camas's claims as derivative claims of BLF, leaving only Camas's claims against Nash for conversion of intangible corporate assets and ultra vires acts and its claim against Schmidt for conversion of tangible corporate assets. After a February 2010 trial, the district court found all of BLF's claims and Camas's remaining claims unsubstantiated. The district court also found that (1) Camas failed to provide its shareholders, including Nash and Schmidt, with the notice required by Minn. Stat. § 302A.413, (2) Nash believed in good faith that Camas's violations of state and federal laws exposed him to civil and criminal liability, (3) Camas's directors acted in a manner that was unfairly prejudicial toward Nash in his capacity as a shareholder, director, and officer of Camas, (4) BLF breached its lease with Schmidt by installing the Camas operation on the leased property without Schmidt's consent or the required conditional use permit and by permitting Camas to make illegal shipments of NP Coat, which entitled Schmidt to terminate the lease, (5) the BLF organizational documents and agreements that formed the contractual relationship



between Camas and Schmidt were those drafted in September 2002, and (6) Camas breached the September 2002 member control agreement by failing to transfer its financial interest in BLF to Schmidt and by failing to enter into a production contract. The district court also found the conduct of Camas and BLF warranted an award of attorney fees and costs to Nash and Schmidt.

The district court emphasized the difficulty it faced in “fashioning a remedy that adequately addresses the Findings and Conclusions and provides meaningful redress.” The district court noted its broad discretion to order appropriate equitable relief under the LLCA and the BCA, and ordered:

- A. That the lease between Ron Schmidt and Blue Lily Farms, LLC be, and hereby is, terminated.
- B. That Schmidt is the owner of 55% financial and governance membership interest in Blue Lily Farms, LLC.
- C. That Ron Schmidt is awarded ownership and possession of the buildings constructed on the property leased by Schmidt to Blue Lily Farms and is entitled to ownership and possession of all fixtures installed in those buildings.
- D. That Peter Nash is awarded Judgment against Camas, Inc. in the amount of \$25,000.00 as and for repurchase of his stock in Camas, Inc. Upon entry of Judgment herein, Peter Nash shall transfer to Camas, Inc. all stock he owns in Camas, Inc. and Camas, Inc. shall pay Peter Nash the sum of \$25,000.00 for said stock. The Court makes this Order under its equitable powers provided for in Minn. Stat. § 302A.751 taking into consideration all the evidence presented at the trial of this matter and taking into consideration the duties, obligations and rights of all the shareholders of Camas, Inc. In the event Camas, Inc. does not promptly pay the \$25,000.00 to Peter Nash, the amount shall be added to the judgment awarded to Peter Nash in Paragraph F.

E. That Ron Schmidt shall be awarded joint and several judgments against Camas, Inc. and Blue Lily Farms, LLC as and for costs and attorneys' fees incurred herein in the total amount of \$167,014.22.

F. That Peter Nash shall be awarded joint and several judgments against Camas, Inc. and Blue Lily Farms, LLC as and for costs and attorneys' fees incurred herein in the total amount of \$81,686.45.

G. That Schmidt and Nash are hereby awarded a security interest in all the equipment owned by Camas, Inc. and Blue Lily Farms, LLC and an order of attachment to all of said equipment to sell said equipment, or so much thereof as is necessary to satisfy the judgment for costs and attorneys' fees. The Court makes this Order based on all the evidence at trial that the primary, controlling shareholder of Camas, Inc. provides only the funds necessary to pay operational costs to operate the corporation and Blue Lily Farms with no profit.

H. That Camas, Inc. and Blue Lily Farms, LLC are hereby ordered to immediately vacate the real property owned by Ron Schmidt . . . and further ordered to leave all furniture, fixtures, equipment and real property improvements on the property and in good working order doing no damage to said property.

Camas and BLF moved the district court for amended findings or a new trial, which the district court denied. They also sought a stay of judgment pending appeal, which the district court also denied.<sup>1</sup> Camas and BLF appealed.

## **DECISION**

In reviewing the decision of a district court sitting without a jury, we defer to the district court's credibility determinations and will set aside the district court's factual

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<sup>1</sup> By separate orders, we affirmed the district court's denial of the stay pending appeal, with the exception of its order granting Schmidt a controlling interest in BLF, which we stayed.

findings only if they are clearly erroneous. *Patterson v. Stover*, 400 N.W.2d 398, 400 (Minn. App. 1987) (citing Minn. R. Civ. P. 52.01). “Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made.” *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted). We review de novo questions of law, such as the construction of statutes and contracts. *See Rosenberg v. Heritage Renovations, LLC*, 685 N.W.2d 320, 324 (Minn. 2004).

## I.

We first address the district court’s pretrial decision to dismiss five of Camas’s claims as derivative. We review de novo a district court’s decision as to whether a claim is direct or derivative. *Blohm v. Kelly*, 765 N.W.2d 147, 153 (Minn. App. 2009) (citing *Wessin v. Archives Corp.*, 592 N.W.2d 460, 463-64 (Minn. 1999)). The central inquiry in determining whether a claim is direct or derivative is “whether the complained-of injury was an injury to the shareholder directly, or to the corporation.” *Wessin*, 592 N.W.2d at 464.

The district court dismissed counts one through five of Camas’s complaint “as derivative,” based on the “reasons set forth in [Schmidt and Nash’s] brief.” Although Schmidt and Nash initially sought dismissal of all five claims as derivative, they subsequently acknowledged that at least one claim was direct. Nonetheless, they argued that Camas’s claims “should be dismissed, whether or not they are derivative claims,” because Camas could not prove any direct injury.

Our review of the record reveals no error in the district court's dismissal of Camas's claims. Camas's claims of wrongful distribution of company assets, transfer of assets not in the usual course of business, and waste of company assets all refer solely to the assets of BLF. Because Camas has no direct interest in protecting the assets of BLF, those claims are plainly derivative. And although Camas, as one of two members of BLF, could be directly injured by Schmidt's alleged ultra vires actions or alleged violations of the standards of conduct and conflict of interest, the district court properly determined that Camas provided no evidence of such an injury. Both claims are based on Schmidt's conduct in voting to pass the lease-termination and contribution-revision resolutions at the January 15, 2008 board meeting. Camas effectively overturned both resolutions days later, with no negative repercussions. Camas claims that it incurred the costs of litigation in determining the validity of its efforts to invalidate the January 15 resolutions. But incurring attorney fees on a claim is not enough to establish damages for that claim. *See Blohm*, 765 N.W.2d at 158 (stating that attorney fees may be available to a claimant if there is an independent right to relief but "the prospect of a recovery of fees does not independently permit [the claimant] to go forward with the claim"). Accordingly, even if the district court erred in concluding that some of the dismissed claims are derivative, such an error was harmless because the district court did not err in dismissing Camas's first five claims.

## II.

We next address the district court's dismissal of Camas's three remaining claims during or after trial for lack of evidence. Camas challenges the district court's rejection

of its claims against Nash for wrongful conduct of a corporate officer and director, and conversion of intangible property, and its claim against Schmidt for conversion of tangible personal property.

If a plaintiff fails to present evidence demonstrating a right to relief, the district court may dismiss the claim after the close of the plaintiff's case or after trial. Minn. R. Civ. P. 41.02(b). The district court "as trier of the fact" must then make factual findings and render judgment against the plaintiff. *Id.* We review a district court's dismissal of a claim with prejudice under an abuse-of-discretion standard. *Minn. Humane Soc'y v. Minn. Federated Humane Soc'ys*, 611 N.W.2d 587, 590 (Minn. App. 2000). We will not set aside the district court's findings underlying such a dismissal unless clearly erroneous. *Poured Concrete Founds. Inc. v. Andron, Inc.*, 507 N.W.2d 888, 891 (Minn. App. 1993), *review denied* (Minn. Jan. 27, 1994).

#### **A. Wrongful conduct**

To establish that Nash violated the standard of conduct expected of him, Camas was required to prove that Nash failed to "discharge the duties of [his] office in good faith, in a manner [he] reasonably believe[d] to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances." *See* Minn. Stat. § 302A.361.

Camas argues that Nash violated this standard by falling short in his duties as CEO and director of technology. But even if Nash fell short in his duties by failing to more actively participate in the negotiations between Camas and Schmidt, failing to develop trade secrets for the company, or failing to notice regulatory violations sooner, as Camas

asserts, those deficiencies do not establish that Nash failed to act in good faith and in a manner he reasonably believed to be in the best interest of the company. And the district court's determination that Nash "consistently acted in the best interest of Camas" rests upon an implicit credibility determination to which we defer. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (requiring deference to a district court's credibility determinations); *Tonka Tours, Inc. v. Chadima*, 372 N.W.2d 723, 728 (Minn. 1985) (stating that whether a party acts in good faith is, essentially, a credibility determination). The district court properly determined that the evidence is insufficient to establish a violation of Nash's obligations under Minn. Stat. § 302A.361.

**B. Conversion of intangible property**

Camas claims that Nash converted its intangible property by misappropriating trade secrets. To establish that Nash misappropriated trade secrets, Camas was required to prove improper acquisition, disclosure, or use of a "trade secret." *See* Minn. Stat. § 325C.01, subd. 3 (2010) (defining "misappropriation"); *Electro-Craft Corp. v. Controlled Motion, Inc.*, 332 N.W.2d 890, 897-98 (Minn. 1983) (requiring proof of both the existence and the misappropriation of the trade secret). A "trade secret" is information not generally known or readily ascertainable that derives independent economic value from secrecy and is the subject of reasonable efforts to maintain its secrecy. Minn. Stat. § 325C.01, subd. 5 (2010).

Camas argues that Nash misappropriated trade secrets by taking information about Camas products to the company he worked for after being discharged from Camas. Camas sought to substantiate its claim with a two-page printout from the website of the

company Nash worked for, describing one of its products, and a press release from the company describing another product. But these two pieces of evidence do not demonstrate that Nash misappropriated Camas's trade secrets, because they cannot demonstrate that the products depend upon information that was not generally known, that Nash was responsible for providing the information, or that he acted improperly in doing so. Accordingly, the district court did not err in dismissing Camas's claim that Nash misappropriated trade secrets.

### **C. Conversion of tangible property**

Conversion is "an act of willful interference with personal property, done without lawful justification by which any person entitled thereto is deprived of use and possession." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997) (quotation omitted). "To make out a prima facie claim for conversion, a party must show it had a right to the use, possession, or ownership of the property converted." *General Cas. Co. of Wis. v. Mid-Continent Agencies, Inc.*, 485 N.W.2d 147, 149 (Minn. App. 1992), *review denied* (Minn. July 16, 1992). The measure of damages for conversion is the fair market value at the time of conversion, plus interest from that date. *Bloomquist v. First Nat'l Bank of Elk River*, 378 N.W.2d 81, 86 (Minn. App. 1985), *review denied* (Minn. Jan. 31, 1986).

The record supports the district court's findings that Schmidt took one container partially full of excess "product" from Camas that he otherwise would have been required to dispose of by dumping it on a field. Schmidt gave a portion of the product to his cows but, upon discovering that there was "hollering about taking product off the place," dumped the product on the field as he otherwise would have done. The only evidence

Camas presented as to the value of the product addressed the retail value of the product for sale but did not establish that there was any fair market value for the unidentified quantity of excess product that Schmidt took. The record, therefore, does not establish that Schmidt willfully interfered with Camas's property or that Camas is entitled to any damages. The district court did not err in dismissing Camas's conversion claim.

### **III.**

Camas and BLF challenge the equitable relief the district court ordered on Schmidt's and Nash's claims. Under the BCA and the LLCA, the district court may "grant any equitable relief it deems just and reasonable in the circumstances" based upon a showing of fraudulent, illegal, unfairly prejudicial, or wasteful conduct. Minn. Stat. §§ 302A.751, subd. 1, 322B.833, subd. 1. We review the grant of equitable relief for an abuse of discretion. *Nadeau v. County of Ramsey*, 277 N.W.2d 520, 524 (Minn. 1979).

#### **A. Termination of the Schmidt-BLF lease**

BLF argues that the district court erred by terminating its lease with Schmidt because Schmidt's claim that it breached the lease should have been dismissed under the lease's arbitration clause. We review de novo the denial of a motion to compel arbitration. *Cnty. Partners Designs, Inc. v. City of Lonsdale*, 697 N.W.2d 629, 632 (Minn. App. 2005). A written agreement to submit a controversy to arbitration is valid, and a court must compel arbitration when the parties previously agreed to arbitrate. Minn. Stat. §§ 572.08, .09(a) (2010). However, the contractual right to arbitration may be waived, and whether a party has waived its right to arbitration generally is a fact



question for the district court. *See Fedie v. Mid-Century Ins. Co.*, 631 N.W.2d 815, 819 (Minn. App. 2001), *review denied* (Minn. Oct. 16, 2001).

BLF moved for partial summary judgment on Schmidt's claim in July 2009, arguing that the lease required arbitration of any disputes. The Schmidt-BLF lease provides that "[a]ny controversy or claim arising out of this Lease Agreement which cannot be settled by the parties hereto shall be settled by arbitration in accordance with the rules of the American Arbitration Association then in effect." The district court denied BLF's motion, apparently finding that BLF had waived the right to arbitration because BLF and Camas "commenced this action alleging breach of lease without resort to the arbitration clause in the lease." This finding is clearly erroneous.

BLF and Camas did not assert any claims under the lease. Rather, BLF and Camas asserted that Schmidt acted improperly in trying to cancel the lease on January 15, 2008, and BLF requested a judicial declaration that the January 15, 2008 termination of lease agreement is invalid. In fact, BLF supported its motion to intervene by arguing that it needed to protect itself against Schmidt's claim that it breached the lease, which could not be adequately addressed without BLF in the action. Because the record does not support the district court's waiver determination, the district court erred in denying BLF's request to have this claim dismissed in favor of arbitration. We, therefore, reverse the district court's order terminating the lease between Schmidt and BLF.<sup>2</sup>

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<sup>2</sup> BLF also argues that the district court erred by terminating its lease with Schmidt because (1) the January 15, 2008 resolution to terminate the lease was void or voidable, and (2) Schmidt did not comply with the terms of the lease for termination because of an

**B. Enforcement of the draft member control agreement to award Schmidt 55% of BLF**

We next address the district court's order "[t]hat Schmidt is the owner of 55% financial and governance membership interest in Blue Lily Farms, LLC." The district court based this award on its determination that the September 2002 draft member control agreement, not the signed November 2002 member control agreement, represented the parties' agreement, and that Camas breached that agreement by failing to transfer a 55% financial interest in BLF to Schmidt. BLF and Camas argue that the district court erred in awarding Schmidt a 55% interest in BLF because the award amounted to an improper reformation of the November 2002 member control agreement.<sup>3</sup> We agree.

A written and signed member control agreement is enforceable against the parties to it. *See* Minn. Stat. § 322B.37 (addressing scope, validity, and enforceability of member control agreements). However, a district court may reform a written agreement if it finds clear and convincing evidence that (1) there was a valid agreement between the parties expressing their real intentions, (2) the written instrument failed to express the real intentions of the parties, and (3) this failure was due to a mutual mistake of the parties or a unilateral mistake accompanied by fraud or inequitable conduct by the other party. *Nichols v. Shelard Nat'l Bank*, 294 N.W.2d 730, 734 (Minn. 1980). A finding of fraud

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alleged breach. Because we agree that the lease required arbitration of Schmidt's claim, we decline to address BLF's other arguments.

<sup>3</sup> BLF also argues that the district court erred in awarding Schmidt a 55% financial and governance interest in BLF because the January 15, 2008 resolution transferring the interest was void or voidable. But the district court did not rely on the January 15, 2008 resolution in awarding Schmidt the 55% interest. The validity of the resolution, therefore, does not affect the validity of the district court's decision.

requires (1) 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 suffered pecuniary damage as a result of the reliance. *Hoyt Props., Inc. v. Prod. Res. Grp., L.L.C.*, 736 N.W.2d 313, 318 (Minn. 2007)

The district court did not make the findings necessary to warrant reformation of the member control agreement. While the district court found that the parties agreed to the September 2002 draft of the member control agreement and that Robinson assured Schmidt that he was signing the September 2002 documents, it did not explicitly find that the November 2002 member control agreement was the result of mutual mistake or fraud. The absence of such a finding precludes effective appellate review. *See Friend v. Gopher Co.*, 771 N.W.2d 33, 35 (Minn. App. 2009) (“Because the district court’s findings are insufficient to permit reasoned appellate review, we reverse and remand for further findings.”). We reverse and remand for the district court to make findings supporting or reconsidering its reformation order.

### **C. Award to Schmidt of BLF’s buildings and fixtures**

BLF argues that the district court erred in awarding Schmidt “ownership and possession of the buildings constructed on the property leased by Schmidt to Blue Lily Farms and . . . ownership and possession of all fixtures installed in those buildings.” Although the district court found that Schmidt successfully proved his claims against

BLF and Camas, the district court did not identify which claim the award to Schmidt of BLF's buildings and fixtures was intended to remedy. We observe that the award may stand or fall with other aspects of the district court's order. But without findings articulating the basis for the award, we cannot effectively review the district court's award of BLF's buildings and fixtures to Schmidt. *See id.* We, therefore, remand for further findings.

**D. \$25,000 buy-back of Nash's Camas stock**

We next address the district court's order "[t]hat Peter Nash is awarded Judgment against Camas, Inc. in the amount of \$25,000.00 as and for repurchase of his stock in Camas, Inc." The district court did not identify which claim this award was intended to remedy. However, the record supports the district court's determination that Nash proved both of his claims against Camas—failure to provide prior notice of stock sales and unfairly prejudicial conduct. Because either amply supports the award, we discern no abuse of discretion in ordering Camas to pay Nash \$25,000 for repurchase of his stock.

**1. Stock-sale notice violation**

Under the BCA, a shareholder of a corporation has the right to acquire a certain fraction of the corporation's unissued shares "before the corporation may offer them to other persons" whenever the corporation proposes to issue new or additional shares. Minn. Stat. § 302A.413, subds. 2, 3. To effectuate this right, the BCA requires corporations to provide its shareholders notice of any proposed issuance of shares "at least ten days before the date by which the shareholder must exercise a preemptive right." *Id.*, subd. 7.

The district court found that Camas violated Minn. Stat. § 302A.413, by failing to provide its shareholders, including Nash, notice of stock sales before it sold them. Camas concedes as much, but argues that this violation of the notice requirement does not warrant relief because (1) compliance was not feasible, (2) Camas proposed a reasonable remedy, and (3) Nash was not prejudiced by the violation. We disagree.

Camas seeks to excuse its admitted violation of the notice requirement by asserting that compliance was not feasible. But the statute does not afford a feasibility exception, nor did the district court find that Camas's deliberately minimal capitalization requiring frequent stock sales justifies an exception to the notice requirement.

Camas also asserts that it attempted to remedy the violations by offering shareholders opportunities, after the fact, to purchase sufficient shares to restore their percentage ownership. But the district court found that this happened twice, at most. And even if it had occurred more regularly, the district court did not abuse its discretion in determining that, under the circumstances, permitting Nash to purchase sufficient stock to restore his ownership percentage would not be equitable. *See Pooley v. Mankato Iron & Metal, Inc.*, 513 N.W.2d 834, 837 (Minn. App. 1994) (stating that a district court “may fashion equitable remedies based on the exigencies and facts of each case so as to accomplish justice”), *review denied* (Minn. May 17, 1994).

Finally, Camas argues that no remedy is warranted because there was no specific evidence of prejudice to Nash from the violations. While we agree with Camas that an equitable remedy should not be afforded in the absence of harm, the preemptive-rights statute implicitly recognizes, by requiring notice *before* the sale of new shares, that the

harm done by permitting unnoticed sales may be difficult to quantify. *See* Minn. Stat. § 302A.413, subd. 7. And the record here reflects that Camas sold stock without prior notice many times between 1997 and 2010, resulting in a dramatic shift in the ownership of Camas. By excluding Nash from this process along the way, Camas prevented him from protecting his interest in the company. The district court acted within its discretion in awarding Nash \$25,000 for the repurchase of his Camas stock as a remedy for Camas’s repeated notice violations.

## **2. Unfairly prejudicial conduct**

A district court may order equitable relief in an action by a shareholder when it is established that “the directors or those in control of the corporation have acted in a manner unfairly prejudicial toward one or more shareholders in their capacities as shareholders or directors of a corporation that is not a publicly held corporation, or as officers or employees of a closely held corporation.” Minn. Stat. § 302A.751, subd. 1(b)(3). Whether conduct is unfairly prejudicial is a question of fact. *Gunderson v. Alliance of Computer Prof’ls, Inc.*, 628 N.W.2d 173, 186 (Minn. App. 2001), *review granted* (Minn. July 24, 2001) *and appeal dismissed* (Minn. Aug. 17, 2001). Unfairly prejudicial conduct is “conduct that frustrates the reasonable expectations of all shareholders in their capacity as shareholders or directors of a corporation that is not publicly held or as officers or employees of a closely held corporation.” *Id.* at 184.

The district court found that those in control of Camas acted in an unfairly prejudicial manner toward Nash because “Camas was, in several instances, in violation of state and federal laws or regulations and . . . Nash’s belief that the violative acts of Camas

subjected him to civil and criminal liability was a good faith belief.” Camas argues that the district court erred in finding unfairly prejudicial conduct because (1) the district court should have dismissed or stayed the claim on primary-jurisdiction grounds and (2) the evidence does not support the finding. We disagree.

“The primary jurisdiction doctrine provides that a court can stay judicial proceedings ‘in cases raising issues of fact not within the conventional experience of judges or cases requiring the exercise of administrative discretion’ to permit agency consideration of the matter.” *Siewert v. N. States Power*, 793 N.W.2d 272, 283 (Minn. 2011) (quoting *Minn.-Iowa Television v. Watonwan T.V. Imp. Assn.*, 294 N.W.2d 297, 302 (Minn. 1980)). The doctrine proposes to strike a balance between courts and agencies, especially when an issue before the court requires agency expertise. *City of Rochester v. People’s Coop. Power Ass’n*, 483 N.W.2d 477, 480 (Minn. 1992). A court’s determination of primary jurisdiction is subject to an abuse-of-discretion standard of review. *Env’tl. Tech. Council v. Sierra Club*, 98 F.3d 774, 789 (4th Cir. 1996).

The district court did not abuse its discretion by not dismissing Nash’s claim of unfairly prejudicial conduct based on primary jurisdiction. Although Nash alleged that Camas violated state and federal regulations, the critical issue was not whether the violations occurred, but whether Camas’s conduct—illegal or not—was unfairly prejudicial toward Nash. That Camas disputes that violations occurred does not preclude the district court’s decision of the issue. Moreover, the crux of Camas’s primary-jurisdiction argument is that its conduct could not be illegal because no regulatory agency had taken action against it. But this assertion, if true, actually undermines Camas’s

argument, because the district court has no reason to decline to address an issue on primary-jurisdiction grounds when there is no current administrative proceeding against a party. *See AAA Striping Serv. Co. v. Minn. Dep't of Transp.*, 681 N.W.2d 706, 714 (Minn. App. 2004). Accordingly, the district court did not abuse its discretion by not dismissing Nash's claim of unfairly prejudicial conduct.

Nor did the district court err in finding that those in control of Camas acted in an unfairly prejudicial manner toward Nash. Without Nash's knowledge, Camas representatives made multiple unauthorized distributions of NP Coat under different names despite its stop-distribution agreement with the USDA. When Nash learned of the violations in September 2007, he presented his concerns to the Camas board and was fired. He then consulted a representative of the MDA and an attorney, who both told Nash that he could be subject to personal liability because he was the Camas CEO at the time of the distributions. That advice was consistent with information Camas had received from the USDA about licensing requirements for distribution of NP Coat. Based on all of that information, Nash believed that he could be facing civil or criminal liability for the distributions, and the district court plainly credited Nash in finding his belief to be in good faith. *See Sefkow*, 427 N.W.2d at 210 (stating that this court defers to a district court's credibility determinations).

On this record, the district court did not clearly err in finding that Nash reasonably and in good faith believed he was exposed to personal liability for the Camas violations. And the actions by those in control of Camas, by not only committing or permitting the violations without regard to the consequences for Nash but by responding to Nash's



concerns by firing him, fall well within the definition of unfairly prejudicial conduct. We discern no abuse of discretion in awarding Nash \$25,000 for the repurchase of his Camas stock as a remedy for this conduct.

**E. Attorney fees and costs**

We next review the district court's award of attorney fees and costs to Schmidt and Nash. We review a district court's award of attorney fees for an abuse of discretion. *Giuliani v. Stuart Corp.*, 512 N.W.2d 589, 596 (Minn. App. 1994). The district court may award "reasonable expenses, including attorneys' fees and disbursements" based on a finding that a party to a proceeding under the LLCA or the BCA "acted arbitrarily, vexatiously, or otherwise not in good faith." Minn. Stat. §§ 302A.751, subd. 4, 322B.833, subd. 7.

The district court found that all of Camas's claims and BLF's claims were groundless and that both acted "arbitrarily, vexatiously, or otherwise not in good faith" in asserting the groundless claims. The record supports the district court's determination that Camas's and BLF's claims were groundless. And we defer to the district court's determination that Camas and BLF did not act in good faith in asserting the claims. *See Sefkow*, 427 N.W.2d at 210 (requiring deference to a district court's credibility determinations); *Tonka Tours*, 372 N.W.2d at 728 (stating that whether a party acts in good faith is essentially a credibility determination). We, therefore, conclude that the district court did not abuse its discretion in awarding Nash and Schmidt attorney fees.

However, we agree with BLF that the district court erred in holding BLF and Camas jointly and severally responsible for attorney fees. Imposing joint and several

liability for attorney fees improperly made BLF responsible for attorney fees incurred before BLF became a party to the action and failed to recognize the parties' different interests and claims. Because an award of fees and costs under the LLCA and the BCA is a conduct-based award, each party should bear only that portion of the burden for which it is responsible. We conclude that the district court abused its discretion by holding BLF and Camas jointly and severally responsible for Nash's and Schmidt's attorney fees and remand for the district court to allocate fees and costs between Camas and BLF according to their responsibility.

**F. Security interest, attachment, and sale of Camas's equipment**

Camas argues that the district court erred in ordering the attachment of its equipment but concedes that the error was harmless. We agree. The attachment of tangible personal property is governed by statute and permitted only in "limited, specified circumstances." *U.S. Bank Nat'l Ass'n v. Angeion Corp.*, 615 N.W.2d 425, 435 (Minn. App. 2000), *review denied* (Minn. Oct. 25, 2000); *see* Minn. Stat. § 570.01 (2010) (stating requirements for attachment). Attachment is permitted only on motion of a party seeking recovery. *See* Minn. Stat. §§ 570.01, .026, subd. 1 (2010). Because neither Nash nor Schmidt moved to attach Camas's property at any point during the proceeding, the district court erred in ordering attachment of Camas's equipment. However, the district court did not grant Schmidt and Nash anything more than they could have obtained by requesting a writ of execution pursuant to Minn. Stat. § 550.04 (2010). Accordingly, the district court's error in shortcutting the execution process was harmless and does not

warrant reversal. *See* Minn. R. Civ. P. 61 (requiring this court “disregard” harmless error).

**G. Vacation of the Schmidt land and relinquishment of furniture and equipment**

Finally, we review the district court’s order that Camas and BLF are to “immediately vacate the real property owned by Ron Schmidt” and to “leave all furniture, fixtures, equipment and real property improvements on the property and in good working order doing no damage to said property.” With respect to the vacation order against Camas, the record evidence supports the district court’s finding that Camas is not a party to the lease and is operating its business on the leased property in violation of the lease. Camas’s improper occupation of the property in violation of the lease amply justifies the order to vacate. But the only discernible basis for ordering BLF to vacate the premises is the lease termination. Because we reverse the district court’s order terminating the lease, we also reverse the district court’s order requiring BLF to vacate the premises.

The district court failed to identify a reason for its order that BLF and Camas relinquish their furniture, fixtures, equipment, and real property improvements to Schmidt. Although we observe that the district court did not tie this order to its award of attorney fees, as it did with the attachment and sale of the companies’ equipment, we cannot otherwise determine the basis for the order. We, therefore, remand for the district court to make findings indicating which of Schmidt’s claims this order is intended to redress.

**Affirmed in part, reversed in part, and remanded.**