STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0779

Paul A. Toretta,
Appellant,

vs.

Theodore Lachinski, et al.,
Respondents,

William Bruggeman, Jr., et al.,
Respondents,

X, Y and Z, et al.,
Defendants.

Filed February 11, 2013
Affirmed
Halbrooks, Judge

Hennepin County District Court
File No. 27-CV-08-27858

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Considered and decided by Ross, Presiding Judge; Halbrooks, Judge; and Kirk, Judge.

U N P U B L I S H E D   O P I N I O N

HALBROOKS, Judge

Appellant Paul Toretta is a minority shareholder and former director of respondent/cross-appellant GeoSpan Corporation. Following his removal from the board of directors, Toretta brought direct and derivative claims against the corporation; the board members who replaced him, respondents Theodore Lachinski, James Mandel, and Joseph Caffarelli; a major shareholder, respondent William Bruggeman, Jr.; and Bruggeman's business associate, respondent Phyllis Harding (collectively respondents). Following a bench trial, the district court entered judgment in favor of respondents on Toretta's claims of unfairly prejudicial conduct, dissenter's rights, and breach of contract. The district court entered judgment in favor of Toretta on claims of unjust enrichment and inspection of corporate records. Toretta appeals the judgments in favor of respondents. GeoSpan Corp. cross-appeals the judgment in favor of Toretta on his unjust-enrichment claim. We affirm.

FACTS

Respondent/cross-appellant GeoSpan Corp. was founded in 1990 by respondent Theodore Lachinski in order to capitalize on proprietary technology that provided "spatially accurate visual information imagery." In 2000, GeoSpan.com was incorporated as a spin-off of GeoSpan Corp. with a licensing agreement for certain GeoSpan Corp. technology. As part of the spin-off, GeoSpan Corp. shareholders received one share of GeoSpan.com for each share they owned of GeoSpan Corp. Until

2010, many of the shareholders of GeoSpan Corp. and GeoSpan.com (collectively the Companies) overlapped.

Respondent Theodore Lachinski is the president of the Companies. He is also a shareholder and in 2010, owned approximately 6.8% of GeoSpan Corp. Respondents Joseph Caffarelli and James Mandel replaced Toretta and others as members of the board of directors in a shareholder vote that took place in February 2008.

Respondent William Bruggeman, Jr. is a shareholder and, as of 2010, owned approximately 23% of GeoSpan Corp., the largest amount of shares owned by any single shareholder. During the relevant time period, Bruggeman did not formally participate in management of the Companies but did exercise a certain degree of control over the Companies' operations, both personally and through his business associate, respondent Phyllis Harding.

Toretta is a minority shareholder who owned less than 2% of each of the Companies as of 2010. Toretta initially invested in GeoSpan Corp. in 2000 and made additional investments in 2001, 2002, 2003, 2005, and 2006. He began investing in GeoSpan.com in 2002 and made additional investments in 2003, 2005, and 2006. Toretta was appointed to the GeoSpan Corp. board of directors in August 2002 and was later appointed chairman. Throughout his time working with the Companies, Toretta actively participated in their business affairs and operations.

In November 2004, Toretta and GeoSpan Corp. purported to enter into a consulting agreement, whereby Toretta was to receive compensation of $5,000 per month plus expenses and up to 1% of the Companies' common stock for his work in pursuing the Companies' business objectives. The consulting agreement was signed by Toretta and by Lachinski in his capacity as president of GeoSpan Corp. The board did not formally approve the consulting agreement, but the district court found that "the agreement was discussed and informally approved and acquiesced in by the Board." The terms of the consulting agreement provided that it was to expire after one year and was renewable only by subsequent board action. The board did not formally renew the agreement, but the district court found that it "continued to acquiesce in the agreement until February 2008 when the Board relieved Mr. Toretta of his duties." GeoSpan Corp. never paid Toretta the compensation or expenses that he was owed under the consulting agreement. Instead, as provided for under the terms of the consulting agreement, the payments accrued as a liability on GeoSpan Corp.'s books due to GeoSpan Corp.'s cash-flow constraints.

In connection with his work under the consulting agreement and as a director, Toretta sought to evaluate the possibility of a strategic alliance with other companies. In pursuit of this strategy, the Companies hired a mergers-and-acquisitions expert, who contacted representatives from multiple companies to discuss potential partnership, merger, or acquisition opportunities. In these discussions, the possibility of the Companies being purchased for an amount between $25 million and $50 million was floated. Despite negotiations, the Companies failed to reach a deal with any of the companies, and no strategic alliance was ever formed.

Bruggeman disagreed with Toretta's strategy of pursuing a strategic alliance. Instead, he felt that enforcing GeoSpan Corp.'s intellectual-property rights would be the most profitable strategy to pursue. But neither Toretta's nor Bruggeman's strategy was successful. The district court noted that the "unfortunate truth is that the GeoSpan companies have never made money" and "continue to lose money each year." The district court also found that "the evidence suggests only that none of the strategies can be said to have a higher degree of potential success than the other."

The competing strategies of Toretta and Bruggeman and the failure to turn a profit led to a deterioration of the parties' relationship. In February 2008, Lachinski called a shareholder meeting for the purpose of electing new directors and amending the articles of incorporation to expand the number of authorized shares. Toretta challenged the propriety of the meeting and declined to attend, sending his attorney instead. Despite Toretta's objections, the meeting was held on February 29, 2008, with a quorum present. At the meeting, Lachinski, Mandel, and Caffarelli were elected as directors; Toretta and the other board members were thereby removed.

At some point during the meeting, Bruggeman told the shareholders that Toretta and the prior board had been trying to execute a "fire sale" of the Companies for $5 million. The district court found that Bruggeman's statement was inaccurate and that there was no evidence that Toretta was trying to sell the Companies for $5 million. The parties do not dispute that the "fire sale" comment was made, but they dispute the influence that the comment had on the shareholders' vote to remove the prior board of directors. The district court found that Bruggeman had inaccurately represented Toretta's position and noted that it was apparent to Toretta's attorney "that this was not the first time the shareholders" had heard Bruggeman's inaccurate representation of Toretta's position.

In July 2008, after a failed attempt to effectuate a merger between GeoSpan Corp. and GeoSpan.com, GeoSpan Corp. sent a letter to GeoSpan.com shareholders offering them the opportunity to exchange their shares for GeoSpan Corp. shares on a 1:1 basis. GeoSpan Corp. included a "Securities Exchange Agreement" with the letter and informed shareholders that they needed to sign the agreement and return it in order to exchange their shares. The majority of shareholders signed the agreement and exchanged their shares, which resulted in GeoSpan Corp. owning approximately 93% of the GeoSpan.com shares after the exchange. Toretta and 53 other GeoSpan.com shareholders did not sign the agreement and thus retained their shares in GeoSpan.com.

Around the time of the share exchange, Toretta sent the Companies a letter, requesting that they produce certain corporate records for his inspection. The Companies responded by supplying some corporate documents but withheld others, one of which was referred to as the "Ocean Tomo Report," a report commissioned by Bruggeman to value certain corporate opportunities. Toretta discovered the existence of the Ocean Tomo Report and objected to the Companies' failure to supply it. Despite Toretta's objection, the Companies refused to provide the Ocean Tomo Report.

On October 30, 2008, Toretta initiated suit against respondents Lachinski, Caffarelli, Mandel, and GeoSpan Corp. (*Toretta I*). The complaint alleged: Count I: breach of fiduciary duties; Count II: violation of Minn. Stat. § 302A.461 (2012) for failing to maintain and provide corporate records; Count III: violation of Minn. Stat.

§ 302A.471 (2012) for failing to follow dissenters' rights procedures; Count IV: violation of Minn. Stat. § 302A.751 (2012) for unfairly prejudicial conduct; Count V: breach of contract; Count VI: account stated for unpaid services provided; and Count VII: unjust enrichment. On September 21, 2010, Toretta initiated a separate suit against respondents Bruggeman and Harding, alleging the same claims in addition to a claim of tortious interference with a contract (*Toretta II*). The district court consolidated the cases for trial. In May 2011, the district court heard oral arguments on respondents' motion for summary judgment and dismissed certain claims against the individual respondents.

On July 28, 2011, the board passed a resolution to establish a special litigation committee (SLC) to "consider the merits of the allegations and the legal rights or remedies of the Companies" with respect to the derivative claims in Toretta's complaints. The board appointed retired Hennepin County District Court Judge John Borg as the sole member of the SLC. On September 12, 2011, the SLC issued its report, identifying most of Toretta's claims as derivative. The SLC report recommended that the Companies not pursue the derivative claims.

Pursuant to the SLC report, respondents moved to dismiss Toretta's claims that were found to be derivative. The district court granted the motion to dismiss. The district court also clarified the scope of Toretta's claim under Minn. Stat. § 302A.751, limiting the claim to Toretta's allegations related to his removal as a director.

The remaining claims for trial in *Toretta I* were: Count II: violation of Minn. Stat. § 302A.461 for failing to maintain and provide corporate records; Count III: violation of Minn. Stat. § 302A.471 for failing to follow dissenters' rights procedures; Count IV:

violation of Minn. Stat. § 302A.751 for unfairly prejudicial conduct; Count V: breach of contract; Count VI: account stated for unpaid services provided; and Count VII: unjust enrichment. The remaining claims in *Toretta II* were: Count III: violation of Minn. Stat. § 302A.751 for unfairly prejudicial conduct and Count VI: tortious interference with contract.

A bench trial was held between September 27 and October 7, 2011, on the remaining claims. On December 30, 2011, the district court issued its findings of fact, conclusions of law, and order for judgment. The district court concluded that Toretta was entitled to relief on his corporate-records claim and his unjust-enrichment claim but that he was not entitled to relief on any of his other claims. All parties moved for amended findings and a new trial. By order dated March 13, 2012, the district court denied all parties' motions for amended findings and for a new trial. But the district court issued amended findings of fact, conclusions of law, and order for judgment, clarifying the initial order. The amended order did not alter the judgment. Toretta now appeals, and GeoSpan Corp. cross-appeals on the district court's judgment in favor of Toretta on his claim of unjust enrichment.

D E C I S I O N

In an appeal from a bench trial, we give the district court's factual findings great deference and will not set them aside unless they are clearly erroneous. *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002), *review denied* (Minn. June 26, 2002). We review legal determinations de novo. *See id.* And we review the district court's equitable determinations for an abuse of discretion. *City of N. Oaks v. Sarpal*, 797 N.W.2d 18, 24 (Minn. 2011).

I.

As a preliminary issue, respondents argue that this court should dismiss Toretta's appeal because he appealed from an order of judgment rather than an entry of judgment. But when the order identified in the notice of appeal is identical to the judgment entered, the notice is sufficient to apprise the respondents of the issues to be litigated on appeal. *Huntsman v. Huntsman*, 633 N.W.2d 852, 856 (Minn. 2001). The order for judgment, dated March 13, 2012, is identical to the judgment, which was entered the following day on March 14, 2012. Toretta's appeal is thus sufficient to withstand dismissal.

Respondents further argue that Toretta appealed only from the district court's denial of his motions for a new trial and amended findings, and therefore this court should review his claims under an abuse-of-discretion standard. Respondents also argue that the scope of Toretta's appeal is limited to the issues raised in posttrial motions. A notice of appeal should be liberally construed in favor of its sufficiency. *Kelly v. Kelly*, 371 N.W.2d 193, 195 (Minn. 1985). It is sufficient "if it shows an intent to appeal and the order appealed from apprises the parties of the issues to be litigated on appeal." *Id.* at 195-96. A notice of appeal is not insufficient due to defects that could not have been misleading to the other party. *Id.* at 196.

Toretta's notice of appeal states that he is appealing from the district court's March 13, 2012 order. But his statement of the case includes copies of: (1) the district court's amended findings of fact, conclusions of law, and order for judgment, dated

March 13, 2012; (2) the district court's order denying the motions for new trial and amended findings; (3) the district court's original findings of fact, conclusions of law, and order for judgment, dated December 30, 2011; (4) and the district court's order dismissing Toretta's derivative claims. The notice of appeal and statement of the case together sufficiently identify the issues. Moreover, respondents make no claim that they were misled or confused about what issues are on appeal. Toretta's appeal is thus properly before this court.

II.

Toretta argues that the district court erred by denying him equitable relief under Minn. Stat. § 302A.751. A court may grant equitable relief in a shareholder action when "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). The decision to grant relief under section 302A.751 is within the discretion of the district court and will not be overturned absent an abuse of that discretion. *Bolander v. Bolander*, 703 N.W.2d 529, 552 (Minn. App. 2005), *review dismissed* (Minn. Nov. 15, 2005).

The legislature has not defined what constitutes "unfairly prejudicial" conduct, but the supreme court has explained that it "includes conduct that violates the reasonable expectations of the minority shareholder." *U.S. Bank N.A. v. Cold Spring Granite Co.*, 802 N.W.2d 363, 378 (Minn. 2011). "[W]hether a shareholder's reasonable expectations have been frustrated is essentially a fact issue." *Gunderson v. Alliance of Computer Prof'ls, Inc.*, 628 N.W.2d 173, 186 (Minn. App. 2001), *review granted* (Minn. July 24, 2001), *appeal dismissed* (Minn. Aug. 17, 2001).

Prior to trial, the district court dismissed Toretta's section 302A.751 claim to the extent that it was derivative and limited its scope to Toretta's "asserted direct cause of action for his removal as director." On appeal, Toretta makes two arguments: (1) that the district court erred in denying him equitable relief based on the frustration of his reasonable expectations of continued input as a director and (2) that respondents frustrated reasonable expectations other than those related to his removal as a director.

A. Reasonable Expectation of Continuing as a Director

Toretta asserts that he had a reasonable expectation for continued input into the management and control of the Companies. The district court found that Toretta had a reasonable belief that his views would be accurately represented to shareholders and that this expectation was frustrated when Bruggeman inaccurately told shareholders that Toretta intended to sell the Companies for $5 million. But the district court explained that this finding was "nevertheless unavailing to Mr. Toretta because he did not have a reasonable expectation of continuing control and management of the company."

Toretta challenges the district court's conclusion, relying largely on caselaw addressing conduct that is unfairly prejudicial toward a shareholder in his capacity as an *employee*, rather than his capacity as a *director*, which is the pertinent issue here. Nonetheless, a shareholder's claims of reasonable expectations in his capacities as both an employee and a director hinge on the amount of input and control the shareholder expected when investing in the Companies. Given the lack of caselaw addressing the reasonable expectations of a shareholder in his capacity as a director, the authority is instructive. In *Gunderson*, we stated that an expectation of continuing employment is reasonable "if continuing employment can fairly be characterized as part of the shareholder's investment." *Id.* at 191 (quotation omitted).

Toretta relies heavily on the assertion that his position as a director was a significant reason for his investment. At trial, the parties submitted conflicting evidence as to whether Toretta invested in the Companies with the expectation that he would participate as a director. Toretta testified that the Companies asked him to invest in and help run the Companies and that he, in turn, expected to be on the board, help manage the Companies, and have input in the Companies' decisions. Respondents, on the other hand, point to Toretta's own testimony in which he stated that he was "tricked into becoming a director" and that he declined a position on the board after it was offered in both 2000 and 2001, despite having made investments at those times.

The district court found that Toretta "had no reasonable assurance" that his proposed strategies would prevail or that he would remain a director with continued input into the Companies' operations. On appeal, it is not this court's task to reconcile conflicting evidence. *Porch*, 642 N.W.2d at 477; *see also Haley v. Forcelle*, 669 N.W.2d 48, 60 (Minn. App. 2003) (determining that when there were inconsistencies in one party's affidavits, the district court's decision to discount the affidavits was not clearly erroneous), *review denied* (Minn. Nov. 25, 2003). Given that there was conflicting evidence, some of which suggested that Toretta did not have a reasonable expectation of continuing as a director, the district court's finding on this issue is not clearly erroneous.

Toretta argues that this case is analogous to *McCallum v. Rosen's Diversified, Inc.*, 153 F.3d 701, 704 (8th Cir. 1998), in which the Eighth Circuit ordered a fair-value buyout under section 302A.751. In that case, McCallum was hired as the CEO and later appointed to the board of directors of Rosen's Diversified, Inc. (RDI). 153 F.3d at 702. RDI indisputably performed well under McCallum's control and McCallum and other key employees were rewarded, in part, with shares in the company. *Id.* Years later, the relationship between RDI and McCallum deteriorated, and McCallum brought suit seeking a fair-value buyout. *Id.* at 702-03. During the litigation, RDI acknowledged that it had rewarded McCallum and the others with the shares because they "were almost entirely responsible" for the corporation's financial success, because their compensation had been "artificially low," and in order to maintain the "unswerving loyalty" of these employees. *Id.* at 702. The Eighth Circuit concluded that the district court erred in declining to order a fair-value buyout because "the uncontested facts demonstrate[d] that McCallum's reasonable expectations were defeated" and that he was entitled to a fair-value buyout. *Id.* at 704.

The relationship between Toretta and the Companies is distinguishable from that in *McCallum*. First, unlike McCallum, Toretta purchased his shares as an investment; he did not receive them "as an inducement to remain" at the Companies. *See id.* Second, it is undisputed that the Companies did not thrive under Toretta. Third, although McCallum was on the RDI board, the Eighth Circuit's analysis focused on the unfair prejudice he was subjected to in his role as CEO. *See id.* Toretta claims that he was the "acting CEO" of the Companies, but there is no evidence to support this assertion beyond Toretta's own testimony. And the district court did not make any findings on this issue. The facts of this case are thus dissimilar to *McCallum* and fail to demonstrate that Toretta's reasonable expectations were defeated such that he would be entitled to a fair-value buyout.

Therefore, the district court's finding that Toretta did not have a reasonable expectation of continued input is not clearly erroneous, and the district court acted within its discretion by denying Toretta's claim for equitable relief under Minn. Stat. § 302A.751.

B. Toretta's Other Claims of Reasonable Expectations

Although the district court limited the scope of Toretta's section 302A.751 claim to whether his removal as a director frustrated his reasonable expectations, Toretta argues that he is entitled to relief based on other expectations. Specifically, Toretta argues that he had a reasonable expectation that respondents would not (1) unlawfully withhold corporate records from him, (2) dishonestly withhold payment from him for his services, and (3) engage in oppressive and unfair tactics that would give rise to a breach of their fiduciary duties.

As to the first claim, the district court awarded Toretta money damages for his claim of withholding corporate records under Minn. Stat. § 302A.461. As to the second claim, the district court awarded Toretta damages on a theory of unjust enrichment. Section 302A.751 affords the district court discretion to grant "any equitable relief it deems just and reasonable in the circumstances." Minn. Stat. § 302A.751, subd. 1. Having awarded Toretta damages on these claims under different theories, the district court did not abuse its discretion by declining to grant additional equitable relief under section 302A.751.

As to the third claim, the district court found that Toretta had a reasonable belief that his views would be accurately represented to shareholders and that this was frustrated when Bruggeman told shareholders that Toretta was trying to "fire sell" the Companies for $5 million. But the district court also determined that the finding was unavailing because Toretta did not have a reasonable expectation of continuing control and management of the Companies. Whether to grant relief on this basis was thus encompassed in the district court's decision denying relief on Toretta's claimed reasonable expectation of continuing input as a director.

While Toretta claims that he is entitled to a forced buy-out on this claim, it is not clear that Bruggeman's false statement had any influence on the shareholders' decision to remove Toretta as a director. Although Minn. Stat. § 302A.751, subd. 1, provides that the district court "*may* grant any equitable relief" when unfairly prejudicial conduct occurs, the district court, within the proper exercise of its discretion, declined to do so in this case.

III.

Toretta argues that the district court erred by denying him relief under Minn. Stat. § 302A.471. Section 302A.471, subdivision 1(d), allows a shareholder to dissent from and obtain the fair value of his shares in the event of certain corporate actions, including “a plan of exchange.” The district court determined that Toretta is not entitled to assert a dissenter’s rights because a statutory plan of exchange did not take place as required under section 302A.471. When interpreting a statute, we attempt to ascertain and effectuate the intent of the legislature. *Cold Spring Granite*, 802 N.W.2d at 377. The correct interpretation of the statute is a legal question, which we review de novo. *Whetstone v. Hossfeld Mfg. Co.*, 457 N.W.2d 380, 382 (Minn. 1990).

Toretta asserts that the district court erred in determining that section 302A.471 requires a compulsory plan of exchange. Although subdivision 1(d) does not expressly state that the share exchange must be compulsory, other provisions in the statutory scheme indicate that a plan of exchange must be compulsory to trigger a dissenter’s rights. *See Cold Spring Granite*, 802 N.W.2d at 377-78 (explaining that when interpreting statutes, we take guidance from other provisions in the statutory scheme).

Minn. Stat. § 302A.601, subd. 2 (2012), creates a corporation’s right to a statutory share exchange and provides that a “corporation may acquire *all* of the outstanding shares of one or more classes or series of another domestic or foreign corporation pursuant to a plan of exchange approved in the manner provided in section[] 302A.611.” (Emphasis added.) Minn. Stat. § 302A.611 (2012) sets forth the requirements for a valid plan of exchange. In contrast with Minn. Stat. § 302A.601 (2012), section 302A.611, subd. 2, states that, although a corporation may execute a statutory plan of exchange, a corporation may also enter into an agreement “to acquire all *or part* of the ownership interests of one or more classes or series of another organization.” (Emphasis added.) These statutory sections thus distinguish between a statutory plan of exchange—wherein a corporation acquires "all" outstanding shares in accordance with section 302A.601—and some other agreement wherein a corporation acquires "all or part" of the outstanding shares in accordance with section 302A.611, subdivision 2. To give meaning to this distinction, we conclude that a statutory plan of exchange requires the acquisition of all outstanding shares of the corporation being acquired. And if all shares must be acquired to complete a statutory exchange, it follows that a statutory plan of exchange triggering a dissenter's rights must be compulsory because no statutory share exchange occurs if one shareholder may voluntarily decline to exchange his or her shares.[1]

Moreover, even if section 302A.471 does not require a compulsory plan of exchange, section 302A.611 further supports the district court's conclusion that a plan of exchange triggering a dissenter's rights did not occur. Section 302A.611 explains that "[t]he procedure authorized by this section does not limit the power of a corporation to acquire all or part of the ownership interests of one or more classes or series of another organization through a negotiated agreement with the owners or otherwise." Minn. Stat. § 302A.611, subd. 2. This section makes clear that not every transaction that results in an exchange of shares is a statutory "plan of exchange" triggering a dissenter's rights under section 302A.471. The evidence indicates that the share exchange that occurred between GeoSpan Corp. and the GeoSpan.com shareholders was an agreement rather than a plan

[1] In the alternative, Toretta argues that if section 302A.471 requires a compulsory plan of exchange, the share exchange was compulsory as applied to him because the exchange offer left him with a meaningless choice between acquiescing to the share exchange or retaining shares in a valueless company. Toretta offers no authority to support this argument. The evidence supports the district court's finding that the share exchange was not compulsory because it is undisputed that Toretta and 53 others retained shares in GeoSpan.com.

of exchange. The letter provided to shareholders notifying them of the opportunity to exchange their shares identifies itself as an "offer." Moreover, GeoSpan Corp. provided shareholders with a "Securities Exchange Agreement" that each individual shareholder was required to sign in order to complete the exchange. This offer-acceptance structure is more characteristic of an agreement than a plan. Because the share exchange was not a statutory plan of exchange so as to trigger Toretta's dissenter's rights, the district court did not err by denying Toretta's section 302A.471 claim.

IV.

Toretta challenges the district court's dismissal of his derivative claims based on the recommendation of the SLC. A corporation may establish an SLC "consisting of one or more independent directors or other independent persons to consider legal rights or remedies of the corporation and whether those rights and remedies should be pursued." Minn. Stat. § 302A.241, subd. 1 (2012). A district court may grant a corporation's motion to dismiss based on the SLC's decision only if the corporation has properly delegated the board's authority to the SLC. *In re UnitedHealth Group Inc. PSLRA Litigation*, 754 N.W.2d 544, 551 (Minn. 2008). The district court should defer to the SLC's determinations if it was independent and if its procedures in investigating the claims were "adequate, appropriate, and pursued in good faith." *Blohm v. Kelly*, 765 N.W.2d 147, 155 (Minn. App. 2009). But the district court need not defer to the decision of an SLC that plays a "mere advisory role" in assessing whether the corporation should pursue derivative claims. *Janssen v. Best & Flanagan*, 662 N.W.2d 876, 884 (Minn. 2003).

Toretta argues that the SLC was not sufficiently independent. His argument rests solely on the allegation that the SLC could make only a recommendation rather than a directive to the board on whether to pursue derivative claims. In support of this argument, Toretta cites to language in a July 28, 2011 board resolution, in which the board granted the SLC the authority to conduct an investigation and issue a report "as to how the Companies should proceed." Toretta also cites to the SLC's report, stating that "it is the recommendation of the SLC that the companies not pursue the above-identified derivative claims." In his brief, Toretta emphasizes the terms "should" and "recommendation" as support for his argument that the SLC did not have complete authority in deciding whether to pursue the derivative claims and, therefore, lacked independence.

A reading of the board resolution and the SLC's report in their entirety, however, demonstrates that the SLC had complete authority over the matter. The board resolution establishing the SLC delegates "the complete power and authority" of the board to the SLC. It also explicitly states: "Any action duly taken or decision duly made by the [SLC] within the course and scope of its authority shall be binding on the Companies." And indeed, after the SLC "recommended" that the Companies decline to pursue the derivative claims, the board passed a resolution to bring a motion to dismiss "consistent with the recommendations in the SLC report." The label "recommendations" in the SLC's report is not dispositive of the breadth of the SLC's authority, particularly when other language makes clear that the SLC's decision is binding. The district court thus did not abuse its discretion by granting respondents' motion to dismiss the derivative claims.

V.

Toretta argues that the district court erroneously determined that he is not entitled to warrant options under a 2004 promissory note and that the warrant options are essential to a determination of his damages. Toretta did not claim entitlement to the warrant options in his complaint. Because we conclude, as previously discussed, that Toretta is not entitled to any relief on the basis of his shares under section 302A.751 or section 302A.471, we decline to consider Toretta's argument related to his alleged warrant options.

VI.

GeoSpan Corp. argues on cross-appeal that the district court abused its discretion by awarding Toretta damages for unjust enrichment based on the services that Toretta provided under the 2004 consulting agreement. "Unjust enrichment is an equitable doctrine that allows a plaintiff to recover a benefit conferred upon a defendant when retention of the benefit is not legally justifiable." *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 838 (Minn. 2012). "To establish an unjust enrichment claim, the claimant must show that the defendant has knowingly received or obtained something of value for which the defendant in equity and good conscience should pay." *ServiceMaster of St. Cloud v. GAB Bus. Servs., Inc.*, 544 N.W.2d 302, 306 (Minn. 1996) (quotation omitted). A party is not entitled to relief on a claim for unjust enrichment when there is an adequate remedy at law. *Id.* at 305. The district court determined that the 2004 agreement was not a valid contract but that Toretta was entitled to unjust-enrichment damages for the services that he provided in reliance on the agreement. GeoSpan Corp.

argues that the district court abused its discretion because Toretta had an adequate remedy at law and because GeoSpan Corp. was not unjustly enriched.

A. Adequate Remedy at Law

GeoSpan Corp. asserts that Toretta had an adequate remedy at law via the statutory provision addressing interested-director transactions as well as his breach-of-contract claim but that he simply failed to prevail on those claims. Whether an adequate remedy at law is available is a question of law, which we review de novo. *Id.*

GeoSpan Corp. asserts that Toretta had an adequate remedy at law by complying with the "safe harbors" provisions in Minn. Stat. § 302A.255 (2012), under which he could have taken steps to ensure that the 2004 consulting agreement was ratified by the board. Minn. Stat. § 302A.255, subd. 1, sets forth the circumstances under which a contract or transaction between a corporation and a director is not void or voidable. The district court found that the 2004 consulting agreement was not a valid interested-director transaction under section 302A.255. GeoSpan Corp. argues that based on this finding, the district court erred in awarding unjust-enrichment damages because Toretta had an adequate remedy at law under section 302A.255.

The cases that GeoSpan Corp. relies upon in support of its argument that section 302A.255 provides an adequate remedy at law barring equitable relief predominantly deal with situations where a statute has explicitly provided procedures for obtaining relief and the plaintiff has failed to follow the procedures or pursue relief under that statute. *See ServiceMaster*, 544 N.W.2d at 306 (mechanics' lien statute); *Mon-Ray, Inc. v. Granite Re, Inc.*, 677 N.W.2d 434, 440 (Minn. App. 2004) (payment-bond statute); *Southtown*

Plumbing, Inc. v. Har-Ned Lumber Co., 493 N.W.2d 137, 140 (Minn. App. 1992) (mechanics' lien statute). In this case, the statute that GeoSpan Corp. claims bars Toretta's right to equitable relief does not provide any party with an avenue to obtain relief that Toretta otherwise failed to pursue. *See* Minn. Stat. § 302A.255. Rather than prescribe a remedy, section 302A.255 describes when contracts between a corporation and its directors are valid despite a potential conflict of interest. Unlike the cases cited by GeoSpan Corp., Toretta could not bring an action under this statute. Thus, section 302A.255 does not provide any remedy at law.

GeoSpan Corp. also asserts that Toretta had an adequate remedy in his breach-of-contract claim but failed to prevail on it. Because the district court concluded that no contract existed, Toretta had no remedy at law by way of a breach-of-contract claim.

B. Unjust Enrichment

GeoSpan Corp. also contends that the district court abused its discretion by awarding unjust-enrichment damages because GeoSpan Corp. did not receive value from Toretta's services to which GeoSpan Corp. was not entitled. A party is not entitled to unjust-enrichment recovery unless the other party actually received a benefit from "the efforts or obligations of others." *ServiceMaster*, 544 N.W.2d at 306. It must also "be shown that a party was unjustly enriched in the sense that the term 'unjustly' could mean illegally or unlawfully." *Id.*

GeoSpan Corp. asserts that Toretta's work on behalf of the Companies was simply what was expected of him in his role as a director. The district court found that Lachinski, acting as the president of GeoSpan Corp., negotiated the agreement with

Toretta. It also found that Toretta acted in reliance on the agreement, that he "conferred a material benefit upon GeoSpan," and that his work on behalf of GeoSpan Corp. "went well beyond that of a board member." The district court determined that to permit GeoSpan Corp. to deny its obligations "would work a fraud upon Mr. Toretta—a consequence which the equitable doctrine of unjust enrichment is designed to avoid."

It is undisputed that Toretta worked on behalf of the Companies and that he signed an agreement with Lachinski to that effect. Toretta pursued a strategy that could have potentially resulted in a sale of the Companies for $25 million. Although his strategy ultimately failed to garner the support of a sufficient number of shareholders, there is no dispute that Toretta pursued the strategy in good faith and for the purpose of turning a profit. That the Companies ultimately rejected his strategy does not discount the benefit that Toretta conferred by providing his expertise and management services to the Companies. It is admittedly more difficult to value the benefit wrongfully retained when that benefit is intangible, such as the expertise and management services provided here. But GeoSpan Corp. has cited no authority for the proposition that an intangible benefit is not a benefit that entitles one to unjust-enrichment damages. Thus, the district court's finding that GeoSpan Corp. benefited from Toretta's work is not clearly erroneous.

GeoSpan Corp. also claims that the district court awarded Toretta damages in the amount that Toretta was entitled to under the 2004 agreement even after finding that terms of the agreement were not fair or reasonable. But the district court did not find that the terms of the agreement were not fair and reasonable; it found that the agreement did not comply with Minn. Stat. § 302A.255, which requires an agreement to be fair and reasonable *and* "authorized, approved, or ratified" by the board. *See* Minn. Stat. § 302A.255, subd. 1(a). There is no dispute that the agreement was not formally authorized, approved, or ratified. The district court in fact noted that the terms of the agreement provided "modest recompense" for the time and effort that Toretta dedicated to the Companies. The district court awarded unjust-enrichment damages based on what it determined to be reasonable. We therefore conclude that the district court acted within its discretion by awarding Toretta unjust-enrichment damages.

Affirmed.