

**Insights****SEVENTH CIRCUIT FORMALLY ADOPTS RULE THAT OBJECTIONS TO INCONSISTENCIES IN A JURY'S VERDICT ORDINARILY MUST BE RAISED BEFORE THE JURY IS DISMISSED.**

Sep 15, 2020

In *Continental Vineyard, LLC v. Vinifera Wine Co., LLC*, — F.3d —, 2020 WL 5229402 (Sept. 2, 2020), the Seventh Circuit formally adopted the rule that the failure to lodge a contemporaneous objection to a jury's general verdict on the ground of inconsistent verdicts ordinarily results in a waiver of any such objection. The case involved a dispute between two winemaking companies. The plaintiff company brought suit against the defendant company and its founder, Randy Dzierzawski—who had previously served as president of the plaintiff company—alleging that Dzierzawski stole valuable business opportunities, breached his fiduciary duties, engaged in unfair competition, and was unjustly enriched during and after his employment with the plaintiff company. After trial, the jury ruled in the defendants' favor on the plaintiff's breach of fiduciary duty and unjust enrichment claims but found for the plaintiff on the unfair competition claim. The jury's verdict on the unfair competition claim, however, was "opaque: despite rendering a verdict seemingly in [the plaintiff's] favor, the jury left the damages section on the verdict form blank." *Continental Vineyard, LLC*, 2020 WL 5229402, at \* 2. Given this seeming inconsistency, the court polled the jurors, and the jurors responded unanimously that their intention was to award no damages on the unfair competition count.

The plaintiff did not object to the verdict at the time it was announced, and the jury was dismissed. Several weeks later, the plaintiff filed a motion for a new trial under Federal Rule of Civil Procedure 59, asserting that it was entitled to a new trial because the jury's verdict was inconsistent in the following two respects: (1) "first, it contended that it is impossible to reconcile the finding that [the defendants were] liable for unfair competition with [the jury's] verdict that [the defendants were] not liable for breach of the fiduciary duty of loyalty" and (2) "second, it argued that the jury's decision not to award damages for [the plaintiff] could not be squared with [the jury's] finding that [the defendants were] liable for unfair competition." *Continental Vineyard, LLC*, 2020 WL 5229402, at \* 2. Despite recognizing the apparent inconsistencies in the jury's verdict, the district court denied the plaintiff's motion, finding that the plaintiff had waived these arguments by not contemporaneously objecting to the jury's verdict.

The Seventh Circuit affirmed. In so doing, the Court first noted that three other federal circuits have adopted the rule that the failure to lodge a contemporaneous objection to an inconsistent verdict constitutes a waiver. See *Kosmynka v. Polaris Indus., Inc.*, 462 F.3d 74, 83 (2d Cir. 2006); *Oja v. Howmedica, Inc.*, 111 F.3d 782, 790 (10th Cir. 1997); *Home Indem. Co. v. Lane Powell Moss & Miller*, 43 F.3d 1322, 1331 (9th Cir. 1995). Finding the reasoning of these cases to be “sound,” the court formally adopted the general rule “that a party wishing to challenge a jury’s general verdict on the ground of inconsistent verdicts must normally make a contemporaneous objection before the jury disbands.” *Continental Vineyard, LLC*, 2020 WL 5229402, at \*5 (also noting that “[w]ithout such an objection, the court’s option to fix the problem by resubmission to the jury as contemplated by Rule 49(b)(3)(B), vanishes.”). The failure to raise such a contemporaneous objection ordinarily results in a waiver of that objection. The Court further made clear that this general rule will be applied absent exceptional circumstances such as when a party had “no meaningful opportunity” to object to the jury’s verdict or when the jury’s verdict “resists all efforts at reconciliation, such that the grant of a Rule 59 motion for new trial is the only remedy possible.” *Id.* (citing *Turyna v. Martam Construction Co., Inc.*, 83 F.3d 178 (7th Cir. 1996) and *Gordon v. Degelmann*, 29 F.3d 295 (7th Cir. 1994)). Although the Court did not fully explain the contours of the situations that may warrant avoidance of the general rule, it is safe to assume that these situations will be rare.

## RELATED CAPABILITIES

- Appellate

## MEET THE TEAM



### **Samuel E. Hofmeier**

Kansas City

[sam.hofmeier@bclplaw.com](mailto:sam.hofmeier@bclplaw.com)

[+1 816 292 7870](tel:+18162927870)

---

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon ([kathrine.dixon@bclplaw.com](mailto:kathrine.dixon@bclplaw.com)) as the responsible attorney.