

FILED

FEB 11 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

METALMARK NORTHWEST, LLC, an
Oregon limited liability company;
VALLEY BRONZE OF OREGON, INC.,
an Oregon corporation,

Plaintiffs - Appellees,

v.

LAURA JANELLE STEWART;
STEWART SPRINGS, LTD.;
HIGHLAND ORNAMENTAL IRON
WORKS, INC., a Virginia corporation;
MILESTONE TARANT, LLC, a District
of Columbia limited liability company;
RICHARD T. ROSS; SUPERIOR IRON
WORKS, INC., a Virginia corporation,

Defendants,

and

CHRISTOPHER W. STEWART; F.
LEITH BOGGESS,

Defendants - Appellants.

No. 06-36008

D.C. Nos. CV-05-01920-KI
04-00682-KI

MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Appeal from the United States District Court
for the District of Oregon
Garr M. King, District Judge, Presiding

Argued and Submitted February 4, 2008
Portland, Oregon

Before: RYMER, T.G. NELSON, and PAEZ, Circuit Judges.

Christopher Stewart and F. Leith Boggess appeal the district court's denial of their motion for a post-verdict judgment in an action brought by Metalmark Northwest, LLC and Valley Bronze of Oregon, Inc. (collectively, Metalmark). We affirm.

Metalmark waived any argument that Boggess and Christopher Stewart acted out of improper purpose. Counsel expressly told the jury that "the purpose doesn't matter" and represented to the district court that Boggess's and Stewart's arguments regarding improper purpose were "irrelevant." *See United States v. Bentson*, 947 F.2d 1353, 1356 (9th Cir. 1991); *cf. United States v. James*, 987 F.2d 648, 651 (9th Cir. 1993).

However, substantial evidence supports the jury's verdict that Boggess and Christopher Stewart interfered with Metalmark by improper means. The jury could reasonably conclude that Janelle Stewart had a fiduciary duty not to take Metalmark's interest in the Capitol Project for herself; that she took the project for

herself through meetings with Bill White of Manhattan and by setting up a new partnership involving Highland, Milestone and Superior; that Boggess and Christopher Stewart knowingly and substantially assisted her in that breach by, among other things, working to set up and run the new partnership; and that the new partnership was able to complete work on the Capitol Project upon taking it from Metalmark. *See Granewich v. Harding*, 985 P.2d 788, 793-94 (Or. 1999) (knowingly providing substantial assistance in the commission of a fiduciary breach contravenes Oregon common law); *Nw. Natural Gas Co. v. Chase Gardens, Inc.*, 982 P.2d 1117 (Or. 1999) (means that violate a recognized rule of common law are improper). The jury could reasonably find from the same evidence that Boggess and Christopher Stewart conspired to assist Janelle Stewart to this end, *Granewich*, 985 P.2d at 794, and that their efforts harmed Metalmark in the amount of \$850,000. *See N. Pac. Lumber Co. v. Moore*, 551 P.2d 431 (Or. 1976).

Nor was it manifest error for the district court to admit the expert testimony of Ronald Maus in light of Maus's qualifications, the potential assistance of Maus's testimony to the jury, and the preparation undertaken by Maus. Christopher Stewart and Boggess did not show Maus's testimony to be more prejudicial than probative. *Desrosiers v. Flight Int'l of Fla., Inc.*, 156 F.3d 952, 961 (9th Cir. 1998).

AFFIRMED.