

**IN THE SUPREME COURT, STATE OF WYOMING**

CAROL THOMPSON, CLERK

**2014 WY 159**

**OCTOBER TERM, A.D. 2014**

**December 10, 2014**

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DAREN SINGER, individually and in his capacity as  
a manager of Beartooth Mountain Springs, LLC;  
CLARK'S FORK CANYON SPRINGS, LLC; and  
SUNLIGHT SPRINGS DISTRIBUTION, LLC,

Appellants  
(Defendants),

v.

PHILIPPE LAJAUNIE, individually and derivatively  
as a member of Beartooth Mountain Springs, LLC  
and AMERICAN SUMMITS, LLC,

Appellees  
(Plaintiffs).

S-14-0004

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PHILIPPE LAJAUNIE, individually and derivatively  
as a member of Beartooth Mountain Springs, LLC  
and AMERICAN SUMMITS, LLC,

Appellants  
(Plaintiffs),

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DAREN SINGER, individually and in his capacity as  
a manager of Beartooth Mountain Springs, LLC;  
CLARK'S FORK CANYON SPRINGS, LLC; and  
SUNLIGHT SPRINGS DISTRIBUTION, LLC,

Appellees  
(Defendants).

S-14-0005

*Appeal from the District Court of Park County  
The Honorable Steven R. Cranfill, Judge*

***Representing Daren Singer, Clark's Fork Canyon Springs, LLC, and Sunlight Springs Distribution, LLC:***

*Weston W. Reeves and Anna M. Reeves Olson, Park Street Law Offices, Casper, Wyoming. Argument by Ms. Reeves Olson.*

***Representing Philippe Lajaunie and American Summits, LLC:***

*Larry B. Jones and Colin M. Simpson, Burg, Simpson, Eldredge, Hersh & Jardine, PC, Cody, Wyoming; Brian K. Matisse, Burg, Simpson, Eldredge, Hersh & Jardine, PC, Englewood, Colorado. Argument by Mr. Matisse.*

***Before BURKE, C.J., and HILL, KITE, DAVIS, and FOX, JJ.***

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## **BURKE, Chief Justice.**

[¶1] This dispute arose from an unsuccessful business venture involving the bottling and sale of “premium bottled mineral water” by Beartooth Mountain Springs, LLC. Philippe Lajaunie and Daren Singer were owners and co-managers of Beartooth. Mr. Singer ran the day to day aspects of the business. In 2011, Mr. Lajaunie<sup>1</sup> filed suit against Mr. Singer<sup>2</sup> claiming that Mr. Singer had breached his fiduciary duties as a manager and member of Beartooth. Mr. Singer responded with a counterclaim based on a theory of promissory estoppel. He subsequently sought to amend the counterclaim to allege a cause of action based on fraud.

[¶2] The district court granted summary judgment in favor of Mr. Lajaunie on Mr. Singer’s counterclaim, and denied Mr. Singer’s motion to amend his counterclaim to add a claim of fraud. In Docket No. S-14-0004, Mr. Singer challenges the district court’s decisions on these motions. In the trial on Mr. Lajaunie’s claims, the jury awarded \$14,604.63 in damages. In Docket No. S-14-0005, Mr. Lajaunie seeks a new trial contending that the district court admitted irrelevant evidence which improperly influenced the jury and negatively impacted the jury verdict. We reverse and remand for further proceedings in both dockets.

### ***ISSUES***

[¶3] In Docket No. S-14-0004, Mr. Singer presents these issues:

1. Did the district court err by granting summary judgment to Mr. Lajaunie on Mr. Singer’s promissory estoppel counterclaim?
2. Did the district court err in finding that Mr. Singer’s proposed amended counterclaim would not withstand a motion to dismiss?
3. Did the district court abuse its discretion when it denied Mr. Singer’s request to delay consideration of

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<sup>1</sup> Mr. Lajaunie sued both in his personal capacity and in his capacity as a member of Beartooth. Our references to Mr. Lajaunie in this opinion include both capacities unless otherwise noted. The other plaintiff, American Summits, LLC, is a limited liability company. Mr. Lajaunie is a member and chief executive officer of American Summits.

<sup>2</sup> Also sued as defendants were Clark’s Fork Canyon Springs, LLC, and Sunlight Springs Distribution, LLC. Mr. Singer is a member and the manager of both companies.

Mr. Lajaunie's motion for summary judgment until after discovery was completed?

[¶4] In Docket No. S-14-0005, Mr. Lajaunie presents issues that we summarize as follows:

1. Did the district court abuse its discretion by admitting irrelevant evidence that prejudiced Mr. Lajaunie?

### *FACTS*

[¶5] In the 1980s and 1990s, Mr. Singer spent considerable time and effort analyzing the water from springs located on his family's ranch near Clark, Wyoming, and learning how to operate a premium bottled water business. In 2005, he and his brother, Steve Singer, acquired ownership of the ranch and placed it in a limited liability company, Clark's Fork Canyon Springs, LLC. They also formed Yellowstone Headwaters, LLC, a company that hand-bottled spring water for sale.

[¶6] In 2006, Mr. Lajaunie, a restaurateur from New York, ordered some Yellowstone Headwaters spring water. He had been interested for some time in establishing his own brand of premium-quality bottled spring water, and found the Yellowstone Headwaters product promising. He contacted Mr. Singer, and the two agreed to form a new business venture. The parties formed Beartooth Mountain Springs, LLC, in 2007. Mr. Lajaunie owned 40% of the company, Mr. Singer 30%, Yellowstone Headwaters 20%, and Mr. Singer's brother 10%. In exchange for their ownership interests, Mr. Lajaunie contributed \$300,000, and Mr. Singer and his brother contributed "knowledge, know how, contacts, relationships and business acumen." Yellowstone Headwaters contributed access to the spring water.

[¶7] Mr. Lajaunie and Mr. Singer served as co-managers for Beartooth, but Mr. Singer was responsible for running its day-to-day operations, and had control of Beartooth's bank accounts and financial records. The Beartooth office was located in Mr. Singer's home, and Mr. Singer used some of his personal vehicles when conducting Beartooth business. Mr. Lajaunie took a more passive role. Shortly after Beartooth was formed, it entered into a distribution agreement with American Summits, LLC. American was to purchase bottled water from Beartooth for retail distribution.

[¶8] In 2008, Beartooth purchased Edelweiss, Inc., a company that owned and operated a bar, convenience store, and gas station located near the Beartooth bottling plant in Clark, Wyoming. Beartooth purchased Edelweiss to promote the spring water and as a staging area for future shipments by truck. There was a lease agreement between Beartooth and Edelweiss, but according to Mr. Singer, Edelweiss could never afford to pay Beartooth because it never made a profit.

[¶9] In May of 2009, Beartooth was in need of additional funds, and its members agreed to contribute more capital. Mr. Lajaunie agreed to contribute \$74,376, but when it came time to make the payment, Mr. Lajaunie gave himself credit for a \$54,768 loan he had previously made to Beartooth. As a result, his cash contribution was in the amount of \$19,608.

[¶10] Also in 2009, Beartooth applied for a bank loan to allow it to expand its operations. The bank, in reviewing the loan, sought information on potential markets and sales. Mr. Lajaunie sent an email message stating, “in terms of volume, I guarantee one truck a day (14,400 bottles), 5 days a week. . . . I can sign a yearlong recurrent Purchase Order with no problem.” The loan of \$875,000 was finalized in August of 2009. The bank required Mr. Lajaunie to execute an unlimited personal guarantee of the loan, and his company, American Summits, placed a \$46,000 certificate of deposit as collateral for the loan. In addition, Mr. Singer and his brother agreed to pledge the Singer Ranch as collateral.

[¶11] Although Mr. Singer had anticipated that Mr. Lajaunie, through American Summits, would begin purchasing Beartooth water soon after the distribution agreement was finalized in 2007, the first order was not made until January of 2010. When the water was delivered to New York, however, several bottles were frozen, and American Summits refused to pay for the shipment. In September of 2010, American Summits ordered another truckload of Beartooth water. When it arrived, American Summits again refused to pay for the shipment. Mr. Lajaunie complained that the water had a musty smell, labels were off, water levels were inconsistent, and the carbonation was irregular.

[¶12] At some point, because Beartooth was not doing well financially, Mr. Singer formed Sunlight Springs Distribution, LLC, and planned to sell Beartooth water through that company. Mr. Singer also planned for Sunlight Springs to loan Beartooth money to allow Beartooth to make loan payments to the bank. Mr. Singer did not inform Mr. Lajaunie about the creation of Sunlight Springs until several months after it went into business.

[¶13] As mentioned above, Mr. Singer ran Beartooth’s day-to-day operations, and he had control of Beartooth’s bank accounts and financial records. In June of 2010, Mr. Lajaunie came to Wyoming to review Beartooth’s financial documents. Mr. Lajaunie became concerned that Mr. Singer had been using Beartooth funds to pay personal expenses. After discussing these concerns with Mr. Singer, Mr. Lajaunie claims that Mr. Singer cut off his access to Beartooth’s financial records. Mr. Singer’s version is that he took that step because Mr. Lajaunie had unilaterally charged Beartooth \$4,500 “for his unwanted ‘bookkeeping services.’”

[¶14] The bank eventually foreclosed on Beartooth’s assets and collateral. Mr. Lajaunie

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