IN THE SUPREME COURT OF THE STATE OF NEVADA

CB COMMERCIAL REAL ESTATE GROUP, INC., AND GARY JOHNSON,
Appellants/Cross-Respondents,
vs.
KAMRAN FARHADI AND SUZIE FARHADI, HUSBAND AND WIFE; PARVIZ M. HARIRI, INDIVIDUALLY; WALTER E. FOSTER, PERSONAL REPRESENTATIVE OF THE ESTATE OF JACK VALLEGA, DECEASED, D/B/A DELTA FREIGHT COMPANY; AND IRONWOOD INVESTMENTS, A PARTNERSHIP,
Respondents/Cross-Appellants.

No. 33921

FILED

MAR 08 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

Appellants/cross-respondents CB Commercial Real Estate Group, Inc. and CB's agent Gary Johnson (collectively "CB/Johnson") appeal the district court's decision in an action involving two consolidated cases stemming from a commercial leasing dispute. CB/Johnson raises various arguments challenging the district court's award of damages against them. We conclude that the district court erred in awarding "lost revenues" to the various respondents/cross-appellants, and thus we reverse and remand to the district court for a recalculation of the damage awards. On cross-appeal, respondents/cross-appellants Kamran and Suzie Farhadi and their business partner Parviz M. Hariri (collectively "Farhadis"), Jack Vallega, d.b.a. Delta Freight Company ("Vallega"), and Ironwood Investments challenge, among other things, the district court's refusal to award punitive damages in their favor. We conclude that the

district court did not abuse its discretion in refusing to award punitive damages.

On appeal, CB/Johnson first challenges the district court's award of damages to the Farhadis, contending that "the overriding basis for reversal of the Farhadis' judgment is the absence of evidence that the Farhadis were damaged." We agree. Although we conclude that substantial evidence supports all other elements of the Farhadis' claims against CB/Johnson, each claim fails on the damages element with regard to the Farhadis' alleged lost revenues due to insufficient evidence.

The district court concluded, as the Farhadis urge on appeal, that because of Johnson's actions, the Farhadis were forced to undertake an action against various parties who claimed invalid interests in the property. The Farhadis argue further that due to the confusion caused by Johnson's meddling, they were forced to settle the unlawful detainer action against those parties on less-than-favorable terms. The basis for the Farhadis' damage claim is that, absent Johnson's interference, they would have been able to negotiate termination of Scolari's and Vallega's leases, giving the Farhadis the opportunity to secure a more profitable lease with a tenant of their choosing. This argument, however, is founded on the premise that the unconsented-to subleases were indeed invalid. But if we accept this premise, then logic begs the question: if the sublease interests that Johnson's misconduct created were truly invalid, why did the Farhadis settle their unlawful detainer action on terms that did not, as they contend, adequately compensate their losses?

Here, Mr. Farhadi argued that the subleases were not valid without his consent and were therefore void, but then he claims to have been bound by the subleases when asserting damages. The Farhadis

respond that they were simply trying to mitigate their damages by settling. But we note that the mitigation doctrine by definition only requires a plaintiff to minimize "avoidable consequences"[1] and does not require the plaintiff to relinquish rights validly held, as the Farhadis contend. Thus, if we accept the Farhadis' assertion that their consent was required for the subsequent subleases, and therefore any unconsented-to subleases are invalid, then we must assume that the terms upon which the Farhadis ultimately negotiated with FBRC/Fabricland as their tenant reflected the fair market lease value of the property.[2] Logically, then, the Farhadis are not entitled to recover the lost revenues on the hypothetical lease they could have made by seeking termination of Scolari's and Vallega's interests and obtaining another tenant. Accordingly, we conclude that substantial evidence does not support that portion of the district court's award that reflects the Farhadis' lost revenues and applicable interest, but we conclude that the remaining portion of the award is supported by substantial evidence.[3]

CB/Johnson next challenges the district court's award of damages to Vallega and Ironwood. In essence, CB/Johnson argues that

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[1]Black's Law Dictionary 693-94 (abridged 6th ed. 1991).

[2]Cf. Montgomery Ward & Co. v. Northern Pac. Terminal Co. of Or., 17 F.R.D. 52, 55 (D. Or. 1954) ("Where the theories of law have been applied to the particular facts so found by the first opinion of the Court, then neither party can discard the theory of liability or defense on which he has proceeded in order to adopt an inconsistent position in regard to the establishment or minimization of damages.").

[3]See Paul Steelman, Ltd. v. Omni Realty, 110 Nev. 1223, 1226, 885 P.2d 549, 551 (1994) (noting "that we will not disturb a district court's judgment that is supported by substantial, yet conflicting, evidence").

Johnson's action did not cause Vallega or Ironwood to lose their profits on their subleases because the subleases would not have existed absent Johnson's misconduct. This, CB/Johnson argues, is simply because the Farhadis' consent was required to sublease, and they would not have granted consent to the subleases. We agree, and conclude that although substantial evidence supports the other elements of Vallega's and Ironwood's liability theories, the evidence does not support the district court's findings regarding causation under each of those theories.[4]

It is a cardinal rule of both contract and tort law that the defendant's alleged misconduct must cause the damages claimed.[5] Thus, in order to justify their awards for lost revenues, Vallega and Ironwood had to establish the premise that, had things been done properly, i.e., had the Farhadis' consent been sought, the Farhadis would have consented to the transaction on terms that would have allowed Vallega and Ironwood to retain the "rent spreads," or revenues, from their respective subleases. The record does not support the district court's implicit finding on this point. We note that Mr. Farhadi indeed testified that "under certain circumstances" he "probably would have given the consent." But when

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[4]Because we conclude that Vallega's and Ironwood's other liability theories support the remaining portions of their awards, we need not address whether indemnity also applies here.

[5]See, e.g., Chicago Title Agency v. Schwartz, 109 Nev. 415, 418, 851 P.2d 419, 421 (1993) ("If Chicago Title breached its contractual obligation, or is liable to Schwartz for breach of some other duty, Schwartz must establish that Chicago Title's breach caused him to incur damages and that he is entitled to recover those damages from Chicago Title."); Silver Dev. Corp. v. Gavin, 95 Nev. 526, 598 P.2d 625 (1979) (denying recovery in an action for breach of the covenant of quiet enjoyment because "the breach did not cause the damages for which recovery was sought").

clarifying this statement, he explained that he would have required that any revenues resulting from the sublease go to him. How much the Farhadis would have left Vallega and Ironwood after taking all or even the "lion's share" of the resulting revenues is rank speculation that cannot support a damage award.[6] Thus, we conclude that substantial evidence does not support the conclusion that CB/Johnson caused Vallega and Ironwood to lose their claimed revenues. Accordingly, we reverse that portion of the damage award representing Vallega's and Ironwood's lost revenues and applicable interest, and remand to allow the district court to recalculate the award.[7]

CB/Johnson next contends that Vallega's and Ironwood's remaining damages must be offset by the profits they received from their subleases to Ironwood and FBRC respectively and the amounts recovered in the settlement with the Farhadis. But CB/Johnson fails to support this argument with authority, and so we reject it.[8]

On cross-appeal, the Farhadis and Ironwood assert that the district court should have found CB/Johnson liable on a theory of

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[6]Knier v. Azores Constr. Co., 78 Nev. 20, 24, 368 P.2d 673, 675 (1962) (refusing an award of damages where the "claimed existence of damage . . . is too uncertain and speculative to form a basis for recovery").

[7]Vallega and Ironwood contend that the doctrine of equitable estoppel bars CB/Johnson from arguing that had Johnson done what he was supposed to do, there would have been no subleases because the Farhadis would have refused to consent. Their equitable-estoppel theory is made for the first time on appeal, and thus we need not entertain it. In any event, we decline to apply it in the circumstances of this case.

[8]See Citti v. State, 107 Nev. 89, 91, 807 P.2d 724, 726 (1991) (refusing to consider arguments unsupported by authority); see also NRAP 28(a)(4) (requiring that arguments be supported by authority).

fraud/intentional misrepresentation in addition to the other liability theories. We disagree. Although there is conflicting testimony on the issue, we conclude that substantial evidence supports the district court's conclusion that Johnson was "basically negligent."

Finally, the various respondents/cross-appellants contend that the district court abused its discretion by failing to award them punitive damages based on theories of fraud or breach of fiduciary duty. In addition to showing intentional misconduct based on those theories, the party seeking punitive damages must also show malice of such a degree that the wrongdoer deserves exemplary punishment.[9] The district court determined that CB/Johnson's conduct did not warrant this, and that is a matter we leave entirely to the district court's discretion.[10]

Based on the forgoing conclusions, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

_____, J.
Shearing

_____, J.
Rose

_____, J.
Becker

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[9]See Evans v. Dean Witter Reynolds, Inc., 116 Nev. 598, 611, 5 P.3d 1043, 1052 (2000) (quoting NRS 42.005(1)).

[10]Id. at 612, 5 P.3d at 1052 (noting that punitive damage awards are left "entirely in the discretion of the trier of fact").

cc: Hon. Peter I. Breen, District Judge
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