

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBERTO V. AGUILERA A/K/A JUAN  
GABRIEL,  
Appellant,  
vs.  
CME ENTERPRISES, INC.,  
Respondent.

No. 53192

**FILED**

SEP 28 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court amended judgment, following a bench trial, in a contract action. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Appellant, a singer, argues that he was legally excused from the contract to perform at respondent's Cinco de Mayo event because respondent abruptly cancelled the event an hour before his scheduled appearance, preventing his appearance. He alternatively challenges the damages award as unforeseeable, stating that it puts respondent in a better position than had the contract been performed.

Substantial evidence supports the district court's findings that respondent would not have proceeded with the event had appellant not agreed to perform and to be the event's honoree, and that appellant breached the performance agreement by failing to appear at the venue. See Pombo v. Nevada Apartment Ass'n, 113 Nev. 559, 562, 938 P.2d 725, 727 (1997) (recognizing that, even where predicated upon conflicting evidence, the district court's factual findings "must be upheld if supported

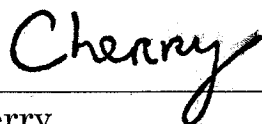
by substantial evidence, and may not be set aside unless clearly erroneous”); First Interstate Bank v. Jafbros Auto Body, 106 Nev. 54, 56, 787 P.2d 765, 767 (1990) (explaining that substantial evidence is “evidence that a ‘reasonable mind might accept as adequate to support a conclusion’”) (quoting State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986))) superseded by statute on other grounds as stated in Countrywide Home Loans v. Thitchener, 124 Nev. 725, 192 P.3d 243 (2008). As the fact-finder, the district court judge was responsible for assessing witness credibility and resolving evidentiary conflicts, and although appellant asserts that he was excused from performing under the contract, the testimony and evidence was legally sufficient to support the court’s finding that the event was discontinued after respondent became aware that appellant would not appear. Fox v. First Western Sav. & Loan, 86 Nev. 469, 470 P.2d 424 (1970) (acknowledging that, as the reviewing court, this court extends substantial deference to the district court’s witness credibility and weight of evidence determinations).

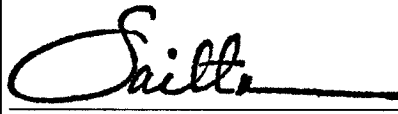
Although appellant also challenges portions of the damages award as unforeseeable, the district court found that the entire production was built around appellant’s appearance and thus awarded costs related to producing and promoting the event, as a foreseeable result of appellant’s breach of contract. See Valladares v. DMJ, Inc., 110 Nev. 1291, 1294, 885 P.2d 580, 582 (1994) (recognizing that, “in general,

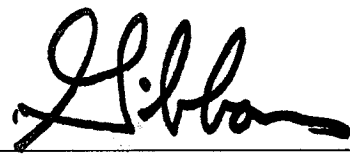
foreseeability is a question of fact,” and “this court will not disturb a district court’s findings of fact unless those findings are clearly erroneous”). Here, we perceive no clear error in the district court’s findings with regard to damages.<sup>1</sup>

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Elissa F. Cadish, District Judge  
M. Nelson Segel, Settlement Judge  
Gibbs, Giden, Locher, Turner & Senet LLP  
Hanratty Law Group  
Eighth District Court Clerk

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<sup>1</sup>Although appellant asserts that failures in respondent’s answering brief should be treated as a tacit admission that appellant’s arguments have merit and as supporting reversal, we decline to treat the defective brief as such an admission. We nevertheless warn respondent’s attorney that failure to comply with the NRAP in any future filings in this court may result in sanctions. See Barry v. Lindner, 119 Nev. 661, 672, 81 P.3d 537, 544 (2003).