

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARRETT MATERIALS, LLC, A
NEVADA LIMITED LIABILITY
COMPANY; JAMES D. GARRETT, AN
INDIVIDUAL; AND MARK CASH, AN
INDIVIDUAL,

Appellants,

vs.

BMI CONSTRUCTION, A NEVADA
CORPORATION; STEVEN M. MILLER,
AN INDIVIDUAL; AND SANDRA
BENNETT-MILLER, AN INDIVIDUAL,
Respondents.

No. 53616

FILED

JUL 19 2010

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

ORDER AFFIRMING IN PART AND REVERSING IN PART

This is an appeal from a district court judgment following a bench trial in a tort and contract action. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Appellant Garrett Materials, LLC (GM), supplied construction materials to respondent subcontractor BMI Construction for various construction projects in the Las Vegas area. During the business relationship, BMI's co-owner and account manager, Sandra Bennett-Miller, began noticing problems with GM's billing. Miller discovered that GM had double-charged BMI for certain orders and had failed to apply overpayment and early payment credits to BMI's account. She further found instances in which GM failed to apply payment to the proper project. Miller approached GM's credit manager, Linda Garrett, and asked her to correct the problem. Linda Garrett, however, refused to take any action until she discovered her accounting error. Miller also asked to

have an independent auditor review GM's books, but GM refused the request.

BMI then sued GM for unjust enrichment, debt due and owing, breach of covenant of good faith and fair dealing, declaratory relief, piercing the corporate veil, conversion, and fraud. GM counterclaimed, but the district court dismissed the counterclaims on summary judgment. BMI's claims, however, proceeded to a bench trial.

At trial, BMI presented Miller's accounting analysis. Miller matched GM's invoices and credits due to BMI's checks and credits received. The evidence showed that GM owed BMI \$72,780.92. Miller testified in support of this analysis. GM presented its own analysis, which showed that BMI actually owed GM \$95. By the time trial commenced, Linda Garrett no longer worked for GM. GM co-owner James Garrett and Linda Garrett's replacement, Susan McCarver, testified in support of GM's analysis. Neither party presented expert testimony, and Linda Garrett did not testify.

The district court judge weighed the evidence and concluded that Miller's testimony was more credible than the testimony GM offered. The district court then entered judgment against BMI in the amount of \$72,780.92. On appeal, GM argues that substantial evidence did not support the district court's decision.¹

¹GM additionally argues that BMI failed to provide any evidence at trial to support the piercing the corporate veil and fraud claims. In its answering brief, BMI concedes that because the district court's findings of fact and conclusions of law did not address these claims, BMI believes it did not prevail on them. Although the district court's judgment states that it resolves all the causes of action in BMI's favor, BMI's concession and
continued on next page . . .

The district court's factual findings will not be disturbed on appeal if they are supported by substantial evidence, unless they are clearly erroneous. Sheehan & Sheehan v. Nelson Malley & Co., 121 Nev. 481, 486, 117 P.3d 219, 223 (2005). "Substantial evidence is evidence that a reasonable person could accept as adequately supporting a conclusion." Dickinson v. American Medical Response, 124 Nev. 460, 466, 186 P.3d 878, 882 (2008) (citing Ayala v. Caesars Palace, 119 Nev. 232, 235, 71 P.3d 490, 491-92 (2003)). Where the parties present conflicting evidence, it is for the trier of fact to resolve the conflicts and judge witness credibility. Dieleman v. Sendlein, 99 Nev. 768, 770, 670 P.2d 578, 579 (1983).

Here, BMI presented Miller's detailed accounting analysis showing that BMI overpaid GM \$61,189.14. This overpayment resulted from duplicate invoices, misapplied payments, and unapplied credits. The analysis additionally showed that BMI owed GM \$591.06. Thus, GM owed BMI a net amount of \$60,598.08. BMI received a total of \$40,174.88 in credit memos from GM. Of that amount, \$12,182.84 was not accounted for in the overpayment calculation. The district court rendered judgment in the amount of the overpayment and other unused credits. We conclude that a reasonable person would accept this evidence as adequate to support the judgment.

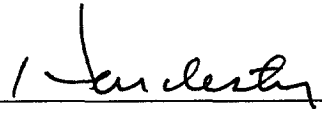
Although GM presented conflicting accounting analysis and testimony, the district court's order specifically found that Miller's

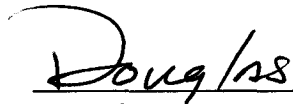
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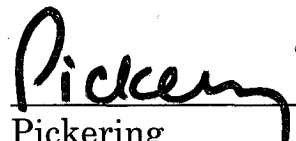
failure to defend its alter ego and fraud claims on appeal effectively abandons them. Therefore, we reverse the district court's judgment in favor of BMI on the piercing the corporate veil and fraud claims.

testimony was more credible than the testimony GM offered. The order further noted that Linda Garrett, who was responsible for keeping GM's records, did not testify at trial. Thus, the district court judge, as trier of fact, properly weighed the conflicting evidence. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Kathleen E. Delaney, District Judge
Hon. Michael Villani, District Judge
Lansford W. Levitt, Settlement Judge
Gibbs, Giden, Locher, Turner & Senet LLP
Hansen Rasmussen, LLC
Eighth District Court Clerk