

IN THE SUPREME COURT OF THE STATE OF NEVADA

LVRC HOLDINGS, LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Appellant,
vs.
CHRISTOPHER BREKKA; AN
INDIVIDUAL; CAROLYN QUAIN, AN
INDIVIDUAL; EMPLOYEE BUSINESS
SOLUTIONS, INC., A NEVADA
CORPORATION; AND EMPLOYEE
BUSINESS SOLUTIONS, A FLORIDA
CORPORATION,
Respondents.

No. 58164

FILED

DEC 21 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Anger
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment on a jury verdict in a tort action.¹ Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

This dispute arises out of the terminated business relationship between appellant LVRC Holdings, LLC, a for-profit addiction treatment facility, and its former employee, respondent Christopher Brekka.² During Brekka's employment with LVRC, he e-mailed a number of

¹The clerk of this court shall modify this docket's caption to conform to the caption of this order, reflecting that Carolyn Quain is a respondent to this appeal.

²As the parties are familiar with the facts, we do not recount them further except as necessary to our disposition.

LVRC's confidential documents to his personal e-mail account and to his wife, respondent Carolyn Quain.³

After Brekka was terminated, LVRC brought action against respondents in federal court, asserting violations of federal computer privacy statutes and various state tort claims. The federal court adjudicated the claims based on the federal statutes in respondents' favor, but declined to exercise supplemental jurisdiction over the state law claims. LVRC then brought the unresolved claims to state court, alleging trade secret misappropriation and various other tort actions.

The district court dismissed LVRC's claim for trade secret misappropriation by summary judgment, concluding that it was precluded by the federal court's findings of fact. Following trial and a jury verdict in respondents' favor, the district court granted respondents' request for a partial award of attorney fees as related to their defense of the trade secret misappropriation claim.

On appeal, LVRC contends that (1) summary judgment on the trade secret misappropriation claim was improper, (2) the jury verdict is not supported by sufficient evidence, and (3) the award of attorney fees was unreasonable. We disagree.

³Respondent Employee Business Solutions, Inc. (EBS) is a consolidation of two companies owned by Brekka, located in Nevada and Florida. Because the legal issues with respect to Brekka pertain equally to EBS and Quain, we refer to them collectively as "respondents" unless noted otherwise.

Summary judgment was proper

LVRC argues that the district court should not have granted summary judgment in favor of respondents because res judicata did not preclude the issues related to its trade secret misappropriation claim.

This court reviews a district court's grant of summary judgment de novo. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper only if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. NRC 56(c). "[W]hen reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." Wood, 121 Nev. at 729, 121 P.3d at 1029.

The doctrine of collateral estoppel, or issue preclusion, "provides that any issue that was actually or necessarily litigated in one action will be estopped from being relitigated in a subsequent suit." Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1052, 194 P.3d 709, 711 (2008) (noting that although different elements apply, the doctrine of res judicata encompasses both claim and issue preclusion). "To establish the preclusive effect of a previous federal decision, a party must demonstrate that the issue he seeks to preclude is (1) 'identical to the one alleged in the prior litigation,' (2) has 'been actually litigated in the prior litigation,' and (3) that the resolution of the issue was 'a critical and necessary part' of the earlier judgment." Bower v. Harrah's Laughlin, 125 Nev. 470, 480, 215 P.3d 709, 717 (2009) (quoting Clark v. Bear Stearns & Co., Inc., 966 F.2d 1318, 1320 (9th Cir.1992)).

Here, it is undisputed that the latter two prongs are satisfied: LVRC actually litigated in federal court the issues of whether Brekka was authorized to access the documents in dispute and whether Brekka's

conduct had violated a confidentiality agreement. LVRC Holdings LLC v. Brekka, 581 F.3d 1127, 1132 (9th Cir. 2009) (indicating that these issues were critical to the federal district court's dismissal of LVRC's federal claims). Thus, we now address whether LVRC's misappropriation of trade secrets claim involves at least one issue that is identical to those alleged in federal court.

In Nevada, the elements for establishing a misappropriation of trade secrets claim include: "(1) a valuable trade secret; (2) misappropriation of the trade secret . . . ; and (3) the requirement that the misappropriation be wrongful because it was made in breach of an express or implied contract or by a party with a duty not to disclose." Frantz v. Johnson, 116 Nev. 455, 466, 999 P.2d 351, 358 (2000) (footnotes omitted). See also NRS 600A.030(2) (defining misappropriation as "[a]cquisition of the trade secret of another by a person by improper means").

On appeal, LVRC concedes that res judicata would bar an action based on Brekka's post-termination conduct but argues that, because the federal court did not address Brekka's activities while employed by LVRC, claims based on his conduct during that time should not have been precluded. This argument is unpersuasive because the federal court expressly considered Brekka's conduct both during and after his employment. Specifically, the federal court found it to be "undisputed that when Brekka was employed by [LVRC] . . . he had authority and authorization to access the documents and e-mails that were found on his home computer and laptop," and that and "there was no evidence that Brekka had agreed to keep the emailed documents confidential." LVRC Holdings LLC v. Brekka, 581 F.3d 1127, 1132 (9th Cir. 2009) (quoting LVRC Holdings, LLC, v. Brekka, No. 2:05-CV-01026-KJD-GWF, 2007 WL 2891565 at *3 (D. Nev. Sept. 28, 2007)). Accordingly, the federal court

previously adjudicated two issues that are identical to those raised in Brekka's trade secret misappropriation claim: Brekka did not obtain the information by improper means and LVRC failed to produce any evidence to show that acquisition of the information was in breach of an express or implied contract.⁴

We conclude that the elements for collateral estoppel are satisfied and that the federal court's conclusions of fact necessarily preclude LVRC from reasserting these issues in state court. Thus, the district court properly granted summary judgment on the misappropriation of trade secrets claim in respondents' favor.

Sufficient evidence supports the jury's verdict

In regard to the surviving claims, LVRC contends that there was insufficient evidence adduced at trial to support the jury verdict in respondents' favor.⁵

⁴We also reject LVRC's contentions that the parties maintained an implied agreement while they worked to memorialize a formal employment agreement, and that the draft agreement (which was never signed) included clauses for non-disclosure of confidential information. The record supports that LVRC previously presented evidence on this matter with regard to its federal claims, and the federal court concluded that no such agreement existed.

⁵LVRC also argues that the district court improperly dismissed Quain in regard to its claim that she aided and abetted Brekka's alleged breach of fiduciary duty. We disagree. After all evidence had been submitted to the jury, the district court granted respondents' motion to dismiss Quain, reasoning that her role as an officer at EBS and the fact that she had received e-mails from Brekka was not evidence of substantial assistance, encouragement, or contribution. See Dow Chemical Co. v. Mahlum, 114 Nev. 1468, 1490, 970 P.2d 98, 112 (1998) ("[L]iability attaches for civil aiding and abetting if the defendant substantially assists or encourages another's conduct in breaching a duty to a third person."), overruled in part on other grounds by GES, Inc. v. Corbitt, 117 Nev. 265,

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“Our standard of review is whether substantial evidence supports the verdict.” Taylor v. Thunder, 116 Nev. 968, 974, 13 P.3d 43, 46 (2000). “Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion.” Id. (quoting Yamaha Motor Co. v. Arnoult, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998)). Even if there is conflicting evidence, “this court is not free to weigh the evidence, and all inferences must be drawn in favor of the prevailing party.” Id. (quoting Smith v. Timm, 96 Nev. 197, 202, 606 P.2d 530, 532 (1980)).

At trial, LVRC argued that Brekka breached his fiduciary duty of loyalty as a director of LVRC by sending confidential information to his personal e-mail account and by keeping this information on his personal computer after he left the employ of LVRC. LVRC also complained that Brekka was referring clients who were financially unsuitable for admittance to LVRC to other facilities on behalf of EBS, as opposed to making the referrals on LVRC’s behalf. In response, Brekka testified that his title as director was misleading because LVRC was a startup company, and that the practice of forwarding e-mails to his home computer was necessary while he was traveling for business. Consequently, respondents argued that Brekka had not breached a fiduciary duty to LVRC.

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271, 21 P.3d 11, 15 (2001). Moreover, any error in dismissing Quain was harmless, as the jury had already heard all of LVRC’s evidence prior to her dismissal, and the jury ultimately reached a verdict in respondents’ favor. Dow Chemical, 114 Nev. at 1490-91, 970 P.2d at 113 (noting that a claim of aiding and abetting cannot be found where the party to receive aid is not found by the trier of fact to have committed unlawful conduct).

Despite this conflicting evidence noted by LVRC, the jury heard testimony and posed questions to both parties during trial and ultimately ruled in respondents' favor. Drawing all inferences in respondents' favor, we conclude that a reasonable mind could accept Brekka's explanation as evidence to support the jury's conclusion that he did not breach an alleged duty of loyalty to LVRC.⁶ Taylor, 116 Nev. at 974, 13 P.3d at 46.

The district court reasonably awarded attorney fees

Following trial, respondents requested approximately \$123,000 in attorney fees and argued that LVRC's claim for trade secret misappropriation was made in bad faith. The district court granted respondents' motion in part, concluding that only half of the total requested amount related to the trade secret claims. The district court awarded respondents a total of \$61,427.75 in attorney fees.

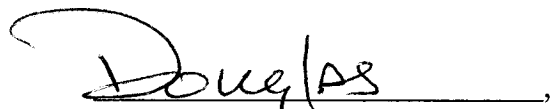
NRS 600A.060 provides that if "[a] claim of misappropriation is made in bad faith . . . the court may award reasonable attorney's fees to the prevailing party." The district court is afforded broad discretion in determining the reasonableness of statutory attorney fee awards, so long as it evaluates the factors set forth in Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) (directing the district court to consider four factors in calculating the reasonableness of attorney fees: (1) the qualities of the attorney, (2) the character of the work to be done, (3) the actual work performed by the attorney, and (4) the case's result).


⁶Because LVRC's remaining claims against respondents all derive from the same allegations of wrongdoing, Brekka's testimony constitutes substantial evidence to support the jury's verdict on these claims as well.

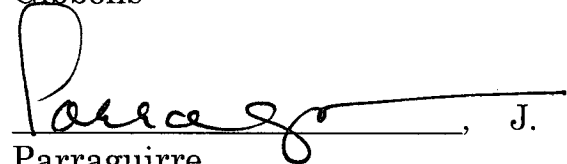
Here, the district court's order and the associated minutes indicate that the district court read all of the pleadings and considered the Brunzell factors in making its award. Accordingly, the record supports that the district court did not abuse its discretion in concluding that attorney fees were appropriate based on LVRC's bad faith in bringing the misappropriation claim, and the district court conducted the requisite consideration in determining the reasonable amount of attorney fees to award respondents based on the trade secrets claim.⁷

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

⁷We decline respondents' request for sanctions. Respondents acknowledge that their request for sanctions lacks relevance to the merits of this appeal, but they urge this court to impose sanctions on LVRC for litigating the state law claims in bad faith after the federal claims had been dismissed. See Chambers v. NASCO, Inc., 501 U.S. 32, 45-46 (1991) (emphasizing a court's inherent power to issue sanctions when a litigant has acted in bad faith or for oppressive reasons). We conclude that sanctions are not warranted under the circumstances of this case, and further note that respondents have already received a partial award of attorney fees on the ground of bad faith.

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Stephen E. Haberfeld, Settlement Judge
Cotton, Driggs, Walch, Holley, Woloson & Thompson/Las Vegas
Norman H. Kirshman
Eighth District Court Clerk