IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RAINBOW COMMERCIAL, LLC,
Appellant,
vs.
JASON D. GRIEGO, AN INDIVIDUAL; DANIEL C. DE ANDA FAST, A/K/A DANIEL FAST, AN INDIVIDUAL; AND KAVON B. WARREN, AN INDIVIDUAL,
Respondents.

No. 67666

ORDER OF AFFIRMANCE

This is an appeal from an order granting a motion to amend findings of fact, conclusions of law, and judgment, and from an order granting a motion to retax. Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

In the underlying case, Rainbow Commercial, LLC sued Re-Evolution, LLC, Daniel Carmen De Anda Fast, Kavon Warren, and Jason Griego to recover damages for nonpayment under a commercial lease. The trial court concluded Fast, Warren, and Griego, who signed the agreement as managers of Re-Evolution before that corporation was formed, were liable as promoters, and also awarded Rainbow attorney fees and costs. Because the judge assigned to the case retired (for clarity, we refer to this judge hereinafter as the "trial judge"), a subsequent district court judge (who we will refer to as the "district judge") later reconsidered the findings of fact and conclusions of law and determined that under the terms of the lease and applying the trial court's findings, the lease agreement did not become a binding contract until after Re-Evolution was incorporated. The district court concluded Fast, Warren, and Griego were not, therefore,

liable as promoters and that the award of attorney fees and costs was also inappropriate.[1]

On appeal, we consider whether the district court abused its discretion by amending the trial judge's findings of facts, conclusions of law, and judgment; whether the district court abused its discretion by granting Fast, Warren, and Griego's motion to retax; and whether to remand for further proceedings on Rainbow's unjust enrichment claim. We conclude the district court did not abuse its discretion and that remand is unnecessary.

A district court may reconsider its earlier decision if that decision is clearly erroneous. *Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). Promoter liability arises where an individual contracts on behalf of a corporation that is contemplated but does not actually exist at the time the contract is made. *See Jacobson v. Stern*, 96 Nev. 56, 60-61, 605, P.2d 198, 201 (1980). If, however, the contracting corporation exists on the date the agreement becomes binding on all the parties, only the corporation, and not the individual signers, is liable for any subsequent breach. *See Heintze Corp., Inc. v. Northwest Tech-Manuals, Inc.*, 502 P.2d 486 (Wash. Ct. App. 1972).

Under the terms of the lease, the agreement did not become binding until "delivered by" all parties. And, after a bench trial, the trial judge determined, based on the totality of the evidence presented, that the lease was delivered in mid-March 2012. Thus, although the parties signed the lease on February 16, 2012, before Re-Evolution incorporated on

[1]We do not recount the facts except as necessary to our disposition.

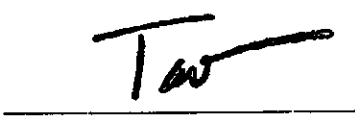
March 2, the contract did not become binding until the time the lease was delivered to all the parties. Consequently, we agree with the district court that only Re-Evolution, the corporation, could be liable for the later breach of the lease, and the trial judge erred in concluding Fast, Warren, and Griego were liable as promoters. *See Heintze*, 502 P.2d at 487-88 (where the tenants signed pre-incorporation and the landlord signed post-incorporation, the corporation, rather than the tenants, was liable for the later breach); *see also In re Maxcy*, 45 B.R. 268, 270 (Bankr. D. Mass. 1985) (where the offer is extended pre-incorporation but accepted post-incorporation, only the corporation is liable under the contract). Accordingly, the district court did not abuse its discretion in amending the trial judge's findings of fact, conclusions of law, and judgment. And, because Fast, Warren, and Griego are not liable as promoters, the district court did not abuse its discretion in granting the motion to retax. *See Gunderson v. D.R. Horton, Inc.*, 130 Nev. ___, ___, 319 P.3d 606, 615 (2014) (we review the district court's decision regarding attorney fees for an abuse of discretion).

We also decline to remand this case for further proceedings on Rainbow's unjust enrichment claim. Unjust enrichment is a quasi-contract claim and not available where a written contract exists. *See Leasepartners Corp. v. Robert L. Brooks Trust*, 113 Nev. 747, 755, 942 P.2d 182, 187 (1997); *Lipshie v. Tracy Inv. Co.*, 93 Nev. 370, 379, 566 P.2d 819, 824 (1977). Here, a valid contract exists between Rainbow and Re-Evolution under which Re-Evolution is liable for the damages Rainbow seeks to recover through unjust enrichment. The existence of a valid contract precludes Rainbow's cause of action for unjust enrichment against Fast, Warren, and Griego. Further, we note the original landlord

did not require Fast, Warren, and Griego to personally guarantee the lease agreement, and trial testimony established all parties believed the agreement was only between the landlord and Re-Evolution, even though Re-Evolution was yet to be incorporated. Under these facts, remand for further proceedings on an unjust enrichment claim would be inappropriate. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Silver

cc: Hon. Richard Scotti, District Judge
James J. Jimmerson, Settlement Judge
Johnson & Gubler, P.C.
Goold Patterson
Eighth District Court Clerk