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. 68164

FILED

JUN 29 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

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. 71000

ORDER OF AFFIRMANCE

In these unconsolidated cases, Rainbow Commercial, LLC, appeals from district court post-judgment orders awarding attorney fees in a contracts action. Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

Respondents Jason D. Griego, Daniel Fast, and Kavon B. Warren (the promoters) were promoters and managers of a corporation that entered into a lease with Rainbow Commercial, LLC. The corporation eventually breached the lease and Rainbow Commercial sued both the

corporation and the promoters for breach of contract and related claims.[1] After a bench trial, the district court found in favor of Rainbow Commercial. The promoters then filed a motion to amend the judgment[2] arguing that, as promoters, they were not liable under the lease. The district court granted the motion and amended the judgment to reflect that the promoters were not liable under the lease, while the corporation remained liable for the breach. Rainbow Commercial then appealed that decision, which was affirmed by this court in *Rainbow Commercial, LLC v. Griego*, Docket No. 67666 (Order of Affirmance, Apr. 1, 2016).

After the amended judgment was entered and while Rainbow Commercial pursued its appeal of the liability issue, the promoters sought attorney fees in district court. Over Rainbow Commercial's opposition, the district court awarded fees based both on the attorney fees provision contained in the lease and, alternatively, because it found the promoters to be third-party beneficiaries of that provision. That order is the subject of the appeal in Docket No. 68164.

Meanwhile, following Rainbow Commercial's unsuccessful appeal in Docket No. 67666, the promoters moved the district court for an award of the attorney fees they incurred during that appeal. Rainbow Commercial again opposed the motion, but the district court awarded the fees based on its previous conclusions that the promoters were entitled to them under the lease or were third-party beneficiaries of the lease's

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[1]The corporation is not a party to this appeal.

[2]This motion was assigned to the Honorable Richard F. Scotti, Judge, as the judge that held the bench trial and entered the initial judgment had retired.

attorney fees provision. That fee award is the subject of the appeal in Docket No. 71000.[3]

Turning to the lease's language first, this document provides that a "prevailing party" is entitled to attorney fees. The lease goes on to state that the term "'Prevailing Party' shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, a settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense." Both Rainbow Commercial and the promoters agree that the promoters are neither a "Party" nor a "Broker" as those terms are defined in the lease, and thus focus their appellate arguments on the meaning of the phrase "without limitation" as used in the attorney fees provision.

To that end, the promoters echo the district court's conclusion that the phrase is unambiguous and intended to expand the scope of the attorney fees provision beyond the contractually-defined "Party" and "Broker" to anyone that is a party to a legal dispute regarding the lease.

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[3]Rainbow Commercial asserts that the district court lacked jurisdiction to apply the contractual attorney fees provision to award the additional attorney fees at issue in Docket No. 71000 while it was challenging the applicability of this provision to allow the promoters to recover fees through the appeal of the initial attorney fees award in Docket No. 68164. We disagree. While the legal issues raised in both cases are the same, the fee awards at issue in these two matters are collateral to and independent of one another, as Docket No. 68164 addresses the attorney fees incurred during the underlying action while the fee award that resulted in the appeal pending in Docket No. 71000 relates to attorney fees incurred during the appeal in Docket No. 67666. *See Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529-30 (2006) (providing that even when an appeal is filed "the district court [still] retains jurisdiction to enter orders on matters that are collateral to and independent from the appealed order").

They further assert that Rainbow Commercial's proffered interpretation below and on appeal—that "without limitation" refers only to other parties similar to the contractually-defined "Party" and "Broker," such as their successors and assignees—is unreasonable because successors and assignees would automatically step into the shoes of a "Party" or "Broker" regardless of the lease's language. Rainbow Commercial responds that the contractual definitions of "Party" and "Broker" do not include their successors and assignees, thus the "without limitation" language is necessary to ensure that successors and assignees are included within the realm of possible prevailing parties. It further argues that the promoters' interpretation is unreasonable because it would allow anyone to be entitled to attorney fees and, if that were the case, the language defining "Prevailing Party" would be inappropriately rendered meaningless. *See Musser v. Bank of Am.*, 114 Nev. 945, 949, 964 P.2d 51, 54 (1998) (concluding that a contract should not be interpreted so as to make any provision meaningless).

Having reviewed the papers and pleadings on record, we conclude that the district court did not err in finding that the promoters were properly considered prevailing parties under the plain and unambiguous language of the attorney fees provision. *See Dobron v. Bunch*, 125 Nev. 460, 463, 215 P.3d 35, 37 (2009) (providing that the interpretation of a contract is reviewed de novo). As detailed above, this provision provides, in pertinent part, that "'Prevailing Party' shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, a settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense." And Nevada caselaw addressing the construction of

the "without limitation" phrasing at issue in this case, albeit in the statutory, rather than contract interpretation context, demonstrates that, contrary to Rainbow Commercial's arguments on appeal, the use of this phrasing "plain[ly] and unambiguous[ly]" requires an expansive interpretation. *Sims v. Eighth Judicial Dist. Court*, 125 Nev. 126, 130, 206 P.3d 980, 983 (2009).

In *Sims*, the Nevada Supreme Court addressed a statute providing that "[t]he prosecuting attorney and the defendant[, during a competency hearing,] may: (a) Introduce other evidence including, without limitation, evidence related to treatment to competency and the possibility of ordering the involuntary administration of medication." *Id.* (quoting NRS 178.415(3)). Although the district court had viewed this language as limiting the type of evidence admissible during such a hearing to evidence "'related to treatment to competency and the possibility of ordering the involuntary administration of medication,'" the supreme court disagreed, noting that the plain language of the statute, including the use therein of the phrase "without limitation," "denote[d] expansive legislative intent." *Id.* at 129-30; 206 P.3d at 982-83. Based on its conclusion that "the statute's plain meaning clearly support[ed] an expansive interpretation," the supreme court determined that this provision "in no way limit[ed] the . . . ability to introduce evidence during the competency hearing" thereby allowing for the introduction of evidence outside what was specifically delineated in the statute. *Id.* at 130, 206 P.3d at 983.

Although *Sims* dealt with statutory, as opposed to contractual, language, the structure of the statute addressed there and the contractual language at issue here are largely identical, including their use of the

phrase "without limitation," thus we find *Sims* to be instructive.[4] Indeed, the express discussion of this phrasing in *Sims* belies Rainbow Commercial's assertion that the attorney fees provision's use of the phrase "without limitation" should be narrowly construed so as to include only parties, brokers, and their successors and assigns.[5] Instead, this decision compels a broad construction of the language at issue here such that, consistent with this case, we conclude that the attorney fees provision

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[4]Rainbow Commercial asserts that the language of the attorney fees provision specifically limits its application to cases where both the party bringing the claims and the party defending the claims are either parties or brokers, and because that was not the case here, attorney fees cannot be awarded. But Rainbow Commercial's argument in this regard fails, as the first portion of the provision, which states that attorney fees will be awarded "[i[f any Party or Broker brings an action or proceeding involving the premises . . . the Prevailing Party . . . in any such proceeding . . . shall be entitled to reasonable attorney fees," suggests that, while only a party or broker may initiate an action under the lease agreement, the broader group of prevailing parties can recover attorney fees. We further reject Rainbow Commercial's argument that "without limitation" modified the list of the manners in which a case brought under the lease could be resolved and a prevailing party still be entitled to attorney fees to be without merit, as the phrase "without limitation" immediately follows the term "Prevailing Party" rather than following or preceding the list of the manners in which the case may be resolved.

[5]Neither Rainbow Commercial nor the promoters have cited authority from Nevada or any other jurisdiction addressing the construction of statutory or contractual provisions utilizing similar "without limitation" language. Nonetheless, as the appellant, it is Rainbow Commercial who bears the burden of demonstrating it is entitled to appellate relief and providing adequate authority to support its appellate contentions. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that appellate courts need not consider claims that are not cogently argued or supported by relevant authority).

contemplates the inclusion of the promoters within the group of individuals who can be considered prevailing parties and thus, we agree with the district court that the promoters were eligible for an award of attorney fees if they were the prevailing party in an action brought by Rainbow Commercial.[6] *See Sims*, 125 Nev. at 130, 206 P.3d at 983. It follows then that, because the promoters were successful in both their district court action and the subsequent appeal from that decision, the district court did not abuse its discretion in making awards of attorney fees based on the prevailing party provision in Docket Nos. 68164 and 71000.[7]

Next, although Rainbow Commercial failed to assert any impropriety in the amount of attorney fees awarded in Docket No. 68164, it presents such a challenge to the award at issue in Docket No. 71000. And to that end, we see no abuse of discretion in the amount of the district court's award in Docket No. 71000, as the district court considered the relevant factors and the amount of fees awarded was not excessive. *See Thomas v. City of N. Las Vegas*, 122 Nev. 82, 90, 127 P.3d 1057, 1063

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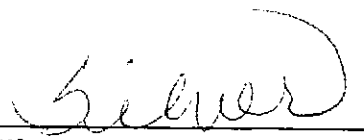
[6]Additionally, although neither party addresses this term, we note that the lease also includes a provision stating that it is binding upon the parties' "personal representatives," but does not further define the term "personal representatives."

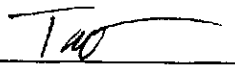
[7]Because we conclude that the district court did not err in finding that the attorney fees provision unambiguously included the promoters, we need not address the district court's alternative finding that the promoters were third-party beneficiaries of that provision. Additionally, having considered Rainbow Commercial's assertion that the request for attorney fees in Docket No. 71000 was untimely, such that the district court lacked jurisdiction to award attorney fees, we conclude that argument is without merit.

(2006) (reviewing an award of attorney fees for an abuse of discretion); *see also Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) (providing the factors a court must consider when awarding attorney fees). We further conclude that the district court did not err in awarding interest on the award at issue in Docket No. 71000. *See* NRS 17.130(2) (providing for interest on judgments). Accordingly, for the reasons set forth above, we

ORDER the judgment of the district court AFFIRMED.[8]



_____, C.J.
Silver



_____, J.
Tao

_____, J.
Gibbons

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

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[8]To the extent Rainbow Commercial raised arguments that are not specifically addressed herein, we conclude that they do not provide a basis to overturn the fee awards at issue in this matter.