IN THE SUPREME COURT OF THE STATE OF NEVADA

TOWER REALTY AND DEVELOPMENT, INC., A NEVADA CORPORATION; 901 RANCHO LANE PARTNERSHIP, A NEVADA GENERAL PARTNERSHIP; AND IAN B. FINLAYSON AND JOHN CARNESALE, GENERAL PARTNERS,
Appellants,
vs.
CON-FORCE STRUCTURES LIMITED, INC., A CANADIAN CORPORATION,
Respondent.

No. 36851

FILED

JUL 10 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a final judgment in an action for breach of contract and related claims arising from a construction contract. On appeal, Tower Realty and Development Inc. makes several arguments.

First, Tower argues it was error for the district court to deny its motion to dismiss the complaint and to grant the countermotion from Con-Force Structures Nevada, Inc. to substitute Con-Force Structures Limited as the real party in interest. We disagree.

Pursuant to NRCP 17(a), we conclude that the district court did not err in denying Tower's motion to dismiss the complaint. Additionally, the district court did not err in allowing Con-Force Structures to maintain the lawsuit against Tower because Con-Force

Structures, a foreign corporation, did not do business in Nevada within the meaning of NRS 80.015.[1]

Second, Tower argues that it was error for the district court to deny its counterclaim in light of Tower's unrefuted expert testimony that the failure to construct a waterproof parking structure, as required by the contract, caused a diminution in the value of the parking structure in the amount of $135,000.00. We disagree.

In evaluating all the evidence, including the cross-examination of Collins Butler, Tower's expert, the district court determined that Butler was not a credible witness and that Tower failed to meet its burden of proof that it was entitled to $135,000.00 in damages. Instead, the district court found that Tower was entitled to $86,750.00, which encompassed, in part, damages associated with failure to provide a waterproof parking structure and for a reduction or loss of Tower's lease in the storage area for the three-year warranty period. Thus, we conclude that the district court did not abuse its discretion in denying Tower's counterclaim in the amount of $135,000.00.[2]

Finally, Tower argues that it was error for the district court to award interest on the judgment for the due and unpaid payments on the

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[1]We note that Bader Enterprises, Inc. v. Olsen, 98 Nev. 381, 649 P.2d 1369 (1982), and League to Save Lake Tahoe v. Tahoe R.P.A., 93 Nev. 270, 563 P.2d 582 (1977), cases relied on by Tower, were overruled by our holding in Executive Mgmt. v. Ticor Title Ins. Co., 118 Nev. ___, 38 P.3d 872 (2002).

[2]Flamingo Realty v. Midwest Development, 110 Nev. 984, 987, 879 P.2d 69, 71 (1994) (holding that "[a] district court is given wide discretion in calculating an award of damages and an award will not be disturbed on appeal absent an abuse of discretion.").

contract when the parties intentionally crossed out and initialed the specific provision of the contract relating to interest. We disagree.

Based on the record, we conclude that substantial evidence supports the district court's determination that the parties did not intend that the excised interest clause apply to a judgment. Thus, we conclude that the district court did not err by awarding Con-Force Structures interest on the judgment.[3]

Having considered Tower's arguments, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Young

_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. Michael A. Cherry, District Judge
Perry & Spann/Las Vegas
Lamond R. Mills & Associates LLC
Clark County Clerk

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[3]Folsom v. Woodburn, 100 Nev. 331, 333, 683 P.2d 9, 10 (1984) (holding that when a trial court sitting without the jury makes a determination based on conflicting evidence, that determination will not be disturbed on appeal if it is supported by substantial evidence).