


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AMERICAN EXPRESSWAY INC., A  
NEVADA CORPORATION,  
Appellant,  
vs.  
ILIE "COSMIN" SANDRU, AN  
INDIVIDUAL; AND OLESYA SANDRU,  
AN INDIVIDUAL,  
Respondents.

No. 78342-COA

**FILED**

APR 27 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

American Expressway Inc. appeals from a final judgment in a tort and contract action. Eighth Judicial District Court, Clark County; Joanna Kishner, Judge.

American Expressway filed a complaint against Alin Catana, as well as respondents Ilie Sandru and Olesya Sandru, asserting numerous causes of action. As relevant here, the claims relate to allegations that the Sandrus, who worked for American Expressway, improperly shared the company's confidential information with Catana, which resulted in litigation between American Expressway and Catana's business, Acatana. American Expressway and Acatana ultimately stipulated to dismiss the litigation between them, with each party to bear its own attorney fees and costs.

In the underlying matter, American Expressway obtained defaults against the Sandrus and ultimately moved for a default judgment. The district court granted the requested default judgment as to all causes of action and awarded all damages requested, except for damages related to

the attorney fees and costs incurred in the litigation with Acatana. While the challenged order does not provide any explanation for why these damages were not awarded, the hearing transcripts indicate that the district court refused to award these damages because the stipulation for dismissal of the Acatana matter provided for each party to bear its own fees and costs. After the default judgment order was entered, Catana was voluntarily dismissed from the underlying action and this appeal, which challenges the court's refusal to include the attorney fees and costs from the Acatana litigation in the amount of damages awarded below, followed.

“Whether damages are legally recoverable is a question of law that [is] review[ed] de novo.” *Webb v. Clark Cty. Sch. Dist.*, 125 Nev. 611, 621, 218 P.3d 1239, 1246 (2009). Here, the pertinent order is silent with respect to any reasoning for denying the requested damages. However, the transcripts indicate that the district court, without identifying any legal basis for doing so, essentially held that the stipulation between American Expressway and Acatana, which provided for each of those parties to bear their own attorney fees and costs in the litigation between them, applied to the Sandrus. On appeal, American Expressway argues that the district court erred in determining that it could not recover the fees and costs incurred in the Acatana matter from the Sandrus. In doing so, American Expressway argues that the Sandrus were not signatories to, or contemplated by, the Acatana settlement. Further, it argues that it cannot be viewed as having given up any rights against third parties, i.e., the Sandrus, by mitigating its damages through settlement.

Our review of the record indicates that the stipulation, on its face, does not include the Sandrus. And as argued by American Expressway, neither of the Sandrus is mentioned therein and there is no

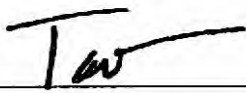
indication that either was contemplated by the stipulation. *See, e.g., Rose, LLC v. Treasure Island, LLC*, 135 Nev. 145, 155, 445 P.3d 860, 868 (Ct. App. 2019) (stating that, to be considered a third-party beneficiary, there must be a clear intent to benefit the third party). Further, there was no evidence presented at the hearings to indicate that the stipulation was meant to benefit the Sandrus. *Id.* Under these circumstances, we cannot ascertain any legal basis which would allow the district court to rely upon the stipulation between American Expressway and Acatana to prevent American Expressway from recovering damages incurred—notably its attorney fees and costs from the Acatana matter—due to the Sandrus’ wrongful conduct. *See Wells v. Bank of Nev.*, 90 Nev. 192, 197, 522 P.2d 1014, 1017 (1974) (“Absent evidence of a third party beneficiary status, an assignment of contract rights or a delegation of contract duties, [individuals have no] rights . . . under [an] agreement.”); *cf. Cramer v. State, DMV*, 126 Nev. 388, 396, 240 P.3d 8, 13 (2010) (indicating that stipulations generally bind only the parties that assent to them). Therefore, the district court’s denial of these damages on the basis of the stipulation in the Acatana matter was in error.

Because the district court erroneously determined that the stipulated dismissal from the Acatana matter barred American Expressway from recovering the attorney fees and costs incurred in that action as damages in the underlying case, it did not evaluate whether such damages should be awarded based on American Expressway’s claim for intentional interference with contractual relations and/or for Mr. Sandru’s breach of his non-disclosure agreement with American Expressway. Under these circumstances, we decline to address these issues in the first instance. Instead, we reverse this matter and remand to the district court for further

proceedings on American Expressway's request for damages related to the attorney fees and costs from the Acatana matter.

It is so ORDERED.<sup>1</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Joanna Kishner, District Judge  
Gibson Lowry LLP  
Ilie Cosmin Sandru  
Olesya Sandru  
Eighth District Court Clerk

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<sup>1</sup>Although the Honorable Bonnie Bulla, Judge, was the discovery commissioner for the proceedings below, she did not have any involvement in any decision relevant to the issues presented on appeal, and therefore, Judge Bulla participated in the decision of this matter on appeal.