IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SAMUEL BAGHDOYAN; AND EARTH LIMOUSINES LLC,
Appellants,
vs.
CHAMINDA YAPA-MUDIYANSELAGE,
Respondent.

No. 80037-COA

FILED

NOV 25 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Earth Limousines LLC and Samuel Baghdoyan appeal from a district court order granting a motion to enforce a settlement agreement. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Samuel Baghdoyan, a driver for Earth Limousines LLC (collectively, "Earth Limousines"), was involved in a car accident with Chaminda Yapa-Mudiyanselage.[1] Yapa-Mudiyanselage filed a claim with the insurer of Earth Limousines. The insurer processed the claim using D.B. Ford Insurance Adjusters ("D.B. Ford"). Yapa-Mudiyanselage communicated with Gloria Rojas, a claims adjuster for D.B. Ford, about his claim. Yapa-Mudiyanselage and Rojas eventually entered into a written settlement agreement and Yapa-Mudiyanselage signed a release of liability. In exchange, the settlement agreement called for the issuance of a check payable to Yapa-Mudiyanselage for $33,500.

When no payment was forthcoming from D.B. Ford or Earth Limousines, Yapa-Mudiyanselage discovered that D.B. Ford was only able to pay for a portion of the settlement amount. After numerous attempts by

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

Yapa-Mudiyanselage to collect the full settlement amount to no avail, he filed a complaint for breach of contract. Earth Limousines responded that the settlement agreement was invalid because Rojas did not have authority to settle on its behalf. Yapa-Mudiyanselage then filed a motion to enforce the settlement agreement, which Earth Limousines opposed. The district court granted Yapa-Mudiyanselage's motion, finding that there was a valid settlement agreement because Rojas had apparent authority to enter into the agreement on behalf of Earth Limousines and that Earth Limousines failed to pay Yapa-Mudiyanselage.

Earth Limousines appeals the district court's order, primarily arguing that there was no valid settlement agreement because Rojas did not have authority to act on its behalf. We review the district court's decision to enforce a settlement agreement for an abuse of discretion. *See Grisham v. Grisham*, 128 Nev. 679, 686, 289 P.3d 230, 235 (2012).

Whether a contract exists generally presents a question of fact, which requires this court to defer to the district court's findings unless they are clearly erroneous or not supported by substantial evidence. *May v. Anderson*, 121 Nev. 668, 672-73, 119 P.3d 1254, 1257 (2005). "Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion." *Whitemaine v. Aniskovich*, 124 Nev. 302, 308, 183 P.3d 137, 141 (2008).

"An insurer is an agent of its insured for purposes of litigation arising from an insurance policy." *NAD, Inc. v. Eighth Judicial Dist. Court*, 115 Nev. 71, 78, 976 P.2d 994, 998 (1999). Generally, the existence of an agency relationship is a question of fact. *Simmons Self-Storage Partners, LLC v. Rib Roof, Inc.*, 130 Nev. 540, 549, 331 P.3d 850, 856 (2014).

In order to bind a principal, an agent must have actual or apparent authority. *See id.* An agent has apparent authority where (1) the principal holds the agent out as possessing that authority, or permits the agent to represent himself as possessing that authority or to exercise that authority, and (2) the circumstances prevent the principal from denying the existence of authority. *See id.* at 550, 331 P.3d at 857. Although the agent's acts alone cannot establish apparent authority, evidence that the principal knew of the agent's acts and acquiesced is sufficient. *See id.* As the Restatement explains, "[a]pparent authority is the power held by an agent or other actor to affect a principal's legal relations with third parties when a third party reasonably believes the actor has authority to act on behalf of the principal and that belief is traceable to the principal's manifestations." Restatement (Third) of Agency § 2.03 (2006).

The district court did not abuse its discretion by granting the motion to enforce the settlement agreement because substantial evidence supports the court's finding that a contract existed and that Rojas had apparent authority to enter into the contract on behalf of Earth Limousines. First, the record shows that Yapa-Mudiyanselage was in contact with Rojas about settling his claim against Earth Limousines for months. After numerous discussions, Yapa-Mudiyanselage and Rojas negotiated a settlement amount of $33,500 and Rojas sent Yapa-Mudiyanselage a release of liability and a settlement agreement. Yapa-Mudiyanselage signed the agreement and returned it to Rojas. Later, after Earth Limousines failed to pay the settlement amount, counsel for Earth Limousines agreed in correspondence with Yapa-Mudiyanselage to pay the balance of the settlement amount, thereby evidencing the formation of an agreement. In fact, counsel for Earth Limousines stated that the issue with

paying Yapa-Mudiyanselage was due to "a dispute between our client, Earth Limos, and the insurance company over the payment to your client. I realize that's not your client's problem . . . ." At no time after Yapa-Mudiyanselage signed the settlement agreement, and before Earth Limousines filed its answer, did Earth Limousines dispute that the agreement existed.

Next, substantial evidence shows that due to the acquiescence of Earth Limousines, Yapa-Mudiyanselage reasonably believed Rojas had authority. As the record demonstrates, Earth Limousines permitted Rojas to represent herself as possessing authority. For instance, Rojas sent a letter about settling the claim to Yapa-Mudiyanselage with Earth Limousines copied on, and referenced in, the letter. For several months, Earth Limousines made no attempt to repudiate the letter, deny Rojas's authority, or suggest that Rojas was exceeding her authority. This demonstrates that Earth Limousines acquiesced to Rojas acting on its behalf.

In addition, the circumstances prevent Earth Limousines from denying the existence of Rojas's authority. Rojas's employer, D.B. Ford, was the adjuster for the insurer of Earth Limousines, and an insurer is an agent of its insured for purposes of litigation arising from an insurance policy. *See NAD*, 115 Nev. at 78, 976 P.2d at 998. Thus, in negotiating and settling the claim Yapa-Mudiyanselage reasonably relied on the representations made by Rojas. Indeed, Earth Limousines presented no evidence demonstrating why it would be unreasonable for Yapa-Mudiyanselage to believe Rojas had authority to enter into the agreement. Therefore, Earth Limousines, as the principal, is bound to the agreement.

Earth Limousines attempts to argue several other alleged errors, but they are largely unsupported by legal citation and cogent argument. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that it is a party's responsibility to present cogent arguments supported by relevant authority). For example, Earth Limousines argues that there is a material disputed fact about whether an agreement exists because Yapa-Mudiyanselage did not negotiate directly with it. However, because substantial evidence supports the district court's finding that Rojas had apparent authority, the fact that Yapa-Mudiyanselage did not negotiate directly with Earth Limousines is irrelevant.

Next, Earth Limousines argues that the district court effectively granted summary judgment by granting Yapa-Mudiyanselage's motion to enforce, and that this court should remand for discovery. But Earth Limousines fails to demonstrate why discovery would be necessary or what it would reveal. Further, additional discovery would likely be futile because there are enough undisputed facts for the district court to have found that Rojas had apparent authority to enter into the settlement agreement and, thus, no further factual development is required on this issue.

Earth Limousines next argues "that there was no breach and that [Yapa-Mudiyanselage] completely failed to mitigate his damages." While the district court's order never explicitly found that Earth Limousines breached the agreement, it implicitly found breach when it found that Earth Limousines owed the amount identified in the settlement and did not pay Yapa-Mudiyanselage, and then ordered Earth Limousines to pay Yapa-Mudiyanselage. The record supports these findings. In

addition, Yapa-Mudiyanselage was under no obligation to accept partial payment of the settlement amount and Earth Limousines has not established that the mitigation of damages doctrine applies in this situation.

Earth Limousines also argues that the district court erred because the agreement is ambiguous as to the payment method and date, and that parol evidence is required to determine the intent of the agreement. However, when an agreement fails to specify a payment method and date, the debt generally becomes immediately due. *Borden v. Clow*, 21 Nev. 275, 278, 30 P. 821, 822 (1892). Thus, Earth Limousines' argument is without merit, as the settlement agreement never mentions payments, and it therefore requires a lump-sum payment that immediately became due. Accordingly, we find these arguments unpersuasive.

Therefore, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Garg Golden Law Firm
Henness & Haight, Injury Attorneys
Eighth District Court Clerk