

IN THE SUPREME COURT OF THE STATE OF NEVADA

NUMALE CORPORATION, A NEVADA CORPORATION; BRAD PALUBICKI, AN INDIVIDUAL; JUSTIN PULLIAM, AN INDIVIDUAL; AND CARLOS FELICIANO, AN INDIVIDUAL,
Appellants,

vs.

CHRISTOPHER ASANDRA, AN INDIVIDUAL,
Respondent.

NUMALE CORPORATION, A NEVADA CORPORATION,
Appellant,


vs.

CHRISTOPHER ASANDRA, AN INDIVIDUAL,
Respondent.

No. 86463

FILED

JUN 13 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

No. 86984

ORDER OF AFFIRMANCE

These are consolidated appeals from a district court final judgment following a bench trial in a contract action (Docket No. 86463) and an order awarding attorney fees and costs (Docket No. 86984). Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Respondent Christopher Asandra was a shareholder of appellant NuMale Corporation (NuMale or NuMale Corporate) and worked as a physician at a NuMale clinic in Beverly Hills (the Beverly Hills Clinic).¹ Asandra and NuMale entered a Settlement Agreement wherein the parties agreed that Asandra would take over ownership of the Beverly Hills Clinic

¹Brad Palubicki, Justin Pulliam, and Carlos Feliciano were also NuMale shareholders. Although listed as appellants, they have no personal interest in the outcome of this appeal.

and that NuMale would make a series of payments to Asandra. NuMale made one payment but then stopped, claiming that the Settlement Agreement entitled it to deduct certain expenses that the Beverly Hills Clinic incurred before the Settlement Agreement was executed. In particular, NuMale contended that it was entitled to deductions for roughly \$107,000 in expenses that were paid by NuMale's Milwaukee, Wisconsin clinic (the Milwaukee Clinic) on behalf of the Beverly Hills Clinic for equipment leases.² NuMale also contended that it was entitled to deductions for roughly \$105,000 in "loans" that NuMale Corporate had made to the Beverly Hills Clinic in the second half of 2020.

NuMale then filed the underlying action seeking declaratory relief regarding what expenses the Settlement Agreement entitled NuMale to deduct from its payments to Asandra. Asandra asserted a breach-of-contract counterclaim wherein he sought \$650,000, which represented the remaining amount of NuMale's unpaid payments without any of NuMale's requested deductions. The district court granted partial summary judgment for Asandra on the breach-of-contract counterclaim, determining that NuMale materially breached the Settlement Agreement by failing to continue making the series of payments. The district court then held a bench trial on the parties' remaining claims, after which the district court entered a final judgment awarding Asandra \$650,000 and determining NuMale was not entitled to any deductions. Thereafter, the district court awarded Asandra roughly \$32,000 in attorney fees based on an offer of judgment that NuMale rejected.

²Trial testimony indicated that the leases were under the Milwaukee Clinic's name but that the equipment was at the Beverly Hills Clinic.

On appeal, NuMale challenges the partial summary judgment and the final judgment (Docket No. 86463), as well as the award of attorney fees (Docket No. 86984). As explained below, we affirm.

Docket No. 86463

NuMale preliminarily argues that the district court erred in granting Asandra summary judgment on the breach-of-contract counterclaim.³ It suggests that because the Settlement Agreement did not provide that time was of the essence, it was justified in withholding the series of payments until the conclusion of the underlying litigation. We disagree, as there is no provision in the Settlement Agreement suggesting that NuMale can cease its scheduled series-of-payment obligations if it believes it is entitled to certain deductions. *See Cain v. Price*, 134 Nev. 193, 196, 415 P.3d 25, 29 (2018) (citing the Restatement (Second) of Contracts § 237 (Am. Law. Inst. 1981), for what constitutes a material breach); *Wood v. Safeway*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (reviewing de novo a district court's decision to grant summary judgment). This is particularly the case when NuMale has failed to explain why it would be entitled to withhold roughly \$650,000 in payments to Asandra when its claimed deductions amounted to only roughly \$212,000.

NuMale next contends that the district court erred in its final judgment when it determined that NuMale was not entitled to deductions. It contends that the district court both misinterpreted the Settlement

³Given that the district court's partial summary judgment did not adjudicate the issues regarding NuMale's claimed deductions, it is unclear how NuMale's argument in this respect is relevant. In any event, we conclude that its argument lacks merit.

Agreement and ignored evidence at trial. At issue is Section I.a in the Settlement Agreement, which provides:

Effective October 28, 2020, the Beverly Hills Clinic is effectively Dr. Asandra's clinic – *he is responsible for all liabilities* (payroll, rent, bills, etc.) and is entitled to all assets (including current A/R and all income generated **going forward**). For sake of clarity, *if there is a shortfall in the checking account, the responsibility for the shortfall is Dr. Asandra's* but NuMale Corporation will front the shortfall and will be entitled to deduct it from the amounts owed to Dr. Asandra outlined below.

(Emphases added).

The district court found that the payments the Milwaukee Clinic made on equipment leases for the Beverly Hills Clinic did not constitute “liabilities” of the Beverly Hills Clinic based on Trial Exhibit 4. That exhibit showed that when the Settlement Agreement was executed, the payments had already been made, such that they were not an existing liability for the Beverly Hills Clinic. Relatedly, the district court found that there was no evidence that NuMale Corporate “loaned” money to the Beverly Hills Clinic based on Exhibits 5 and 13. Those exhibits showed that as of October 31, 2020, NuMale Corporate's records listed a \$0 balance for the Beverly Hills Clinic. And based on Trial Exhibit 11, the district court found that there was no “shortfall” in the Beverly Hills Clinic's checking account during the relevant time frame such that NuMale was not entitled to make any deductions under that provision of the Settlement Agreement.

NuMale contends that the district court erred by ignoring Brad Palubicki's testimony that he believed “liabilities” included liabilities preceding execution of the Settlement Agreement. Regardless of Palubicki's testimony, the above-referenced exhibits constitute substantial evidence to support the district court's decision. *See Wells Fargo Bank, N.A. v. Radecki,*

134 Nev. 619, 621, 426 P.3d 593, 596 (2018) (reviewing a district court’s factual findings following a bench trial for substantial evidence and its legal conclusions de novo); *Weddell v. H2O, Inc.*, 128 Nev. 94, 101, 271 P.3d 743, 748 (2012) (“Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion.” (internal quotation marks omitted)). Moreover, the Settlement Agreement itself contradicts Palubicki’s testimony, as it expressly provides that Asandra “*is responsible for all liabilities* (payroll, rent, bills, etc.) and is entitled to all assets (including current A/R and all income generated *going forward*).” (Emphasis added).

NuMale also appears to take issue with payments it made to the Beverly Hills Clinic from November 2020 through December 2020 on the ground that those payments were made after the Settlement Agreement was executed. But the district court found that NuMale was responsible for those payments under Section I.c, which required NuMale to “continue to provide all management services it has traditional[ly] provided, i.e., HR, payroll and accounting functions through 12/31/20 in order to facilitate transition, and will not charge Dr. Asandra a management fee in order to provide these management services.” To the extent that NuMale specifically takes issue with the payments during this time frame, we are not persuaded that the district court’s finding was clearly erroneous. *Wells Fargo*, 134 Nev. at 621, 426 P.3d at 596 (“The district court’s factual findings will be left undisturbed unless they are clearly erroneous or not supported by substantial evidence.”). Similarly, to the extent that NuMale sought reimbursement for a roughly \$615 payment it allegedly made in January 2021, the district court found that there was no credible evidence suggesting that this payment was the responsibility of the Beverly Hills Clinic. We

likewise are not persuaded that this finding was clearly erroneous. Accordingly, we affirm the partial summary judgment and final judgment being challenged in Docket No. 86463.

Docket No. 86984


After the district court granted Asandra partial summary judgment but before trial, Asandra made a joint unapportioned offer of judgment to NuMale, Brad Palubicki, Justin Pulliam, and Carlos Feliciano, offering to settle the underlying litigation in exchange for \$560,000. None of the parties accepted the offer. As indicated, Asandra obtained a \$650,000 judgment against NuMale but did not prevail on his counterclaims against Palubicki, Pulliam, and Feliciano. Nonetheless, the district court awarded Asandra roughly \$32,000 in attorney fees under NRCP 68(c)(3), to be payable by NuMale only.


On appeal, NuMale argues that “[b]ecause [Asandra] lost on his theory of liability against Brad Palubicki, Justin Pulliam and Carlos Feliciano—who were included in Asandra’s unapportioned offer of judgment—his offer of judgment was not enforceable against NuMale.” Although NuMale cites *M.C. Multi-Family Development L.L.C. v. Crestdale Associates, Ltd.*, 124 Nev. 901, 916-17, 193 P.3d 536, 546 (2008), *Doe ex rel. Doe v. Keala*, 361 F. Supp. 2d 1171, 1175-77 (D. Haw. 2005), *Jones v. Fleetwood Motor Homes*, 127 F. Supp. 2d 958, 968-69 (N.D. Ill. 2000), and *Twiddy v. Guttenplan*, 678 So. 2d 488, 489 (Fla. Dist. Ct. App. 1996), for support, none of those cases held that an offeror who obtains a more favorable judgment against a single offeree is precluded from seeking attorney fees simply because the offeror failed to obtain a judgment against other offerees. And aside from the lack of authority to support NuMale’s argument, the argument itself belies common sense. Because NuMale does

not otherwise coherently contend Asandra's offer failed to satisfy the requirements of NRCP 68(c)(3), we necessarily affirm the district court's award of attorney fees. *See Thomas v. City of N. Las Vegas*, 122 Nev. 82, 90, 127 P.3d 1057, 1063 (2006) ("[W]hen the attorney fees matter implicates questions of law, the proper review is de novo."). Consistent with the foregoing, we

ORDER the judgments of the district court AFFIRMED.⁴


_____, J.
Herndon


_____, J.
Lee


_____, J.
Bell

cc: Hon. Mark R. Denton, District Judge
Thomas J. Tanksley, Settlement Judge
Clark Hill PLLC
King Scow Koch Durham LLC
Eighth District Court Clerk

⁴To the extent that NuMale has raised arguments on appeal that we did not specifically address, we are not persuaded that those arguments warrant reversal. Relatedly, we decline to consider NuMale's arguments that were raised for the first time in its reply brief. *See Francis v. Wynn Las Vegas, LLC*, 127 Nev. 657, 671 n.7, 262 P.3d 705, 715 n.7 (2011).