

IN THE SUPREME COURT OF THE STATE OF NEVADA

JC HOSPITALITY, LLC, A DELAWARE LIMITED LIABILITY COMPANY,
Appellant,

vs.

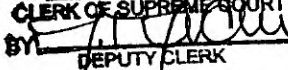
MBLV, LLC, AN ARIZONA LIMITED LIABILITY COMPANY; MRA HOSPITALITY, LLC, AN ARIZONA LIMITED LIABILITY COMPANY; AND JD MASSEI, LLC, AN ARIZONA LIMITED LIABILITY COMPANY,

Respondents.

No. 86032

FILED

AUG 27 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

JC HOSPITALITY, LLC, A DELAWARE LIMITED LIABILITY COMPANY,
Appellant,

vs.

MBLV, LLC, AN ARIZONA LIMITED LIABILITY COMPANY; MRA HOSPITALITY, LLC, AN ARIZONA LIMITED LIABILITY COMPANY; AND JD MASSEI, LLC, AN ARIZONA LIMITED LIABILITY COMPANY,

Respondents.

No. 86678

ORDER OF REVERSAL AND REMAND

These are consolidated appeals from a district court order granting a motion for preliminary injunction and an application for an order to show cause for a pre-judgment writ of possession, and an order denying a motion for reconsideration and/or stay. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

These appeals stem from the default of a lease agreement between appellant JC Hospitality, LLC (JCH), owner/operator of Virgin Hotels—Las Vegas (the Virgin Resort), and respondent MBLV, LLC

(MBLV), owner of Money, Baby!, a restaurant formerly located in the Virgin Resort. After JCH served MBLV with a notice of default, MBLV vacated the premises. MBLV later attempted, but failed, to retrieve certain disputed items from the premises. JCH then took over the restaurant space and began using the disputed items in furtherance of a new business venture. MBLV continued to pay third-party financing for some of the items JCH was using. Later, the district court granted MBLV's motion for a preliminary injunction for the possession of the disputed items and its application for an order to show cause why a pre-judgment writ of possession should not issue for the items.

In order to obtain the preliminary injunction, MBLV was required to demonstrate, *inter alia*, a likelihood of success on the merits of its conversion claim. *See Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004). Similarly, in order to obtain a pre-judgment writ of possession pursuant to NRS 31.850(1), MBLV was required to show that it was "the owner of the property claimed (particularly describing it), or [] lawfully entitled to the possession thereof." JCH argues that MBLV lacks any possessory interest in the items left, either because MBLV was required to leave trade fixtures behind or because MBLV abandoned the items under the terms of the lease.¹ In pertinent part, Section 22(c) of the lease defines abandonment as the failure to occupy and operate for 5 consecutive days, and Section 5.2

¹We do not reach the issue of whether the items are properly characterized as trade fixtures. As further discussed in this order, our review is stymied by the lack of factual findings and reasoning as to whether MBLV abandoned the items under the terms of the lease.

states that in the event of abandonment, any of the tenant's personal property left on the premises shall become the property of the landlord.

"While the granting of a preliminary injunction lies within the discretion of the district court, the reasons for its issuance must be sufficiently clear." *Clark Cnty. Sch. Dist. v. Buchanan*, 112 Nev. 1146, 1150, 924 P.2d 716, 719 (1996). "Review on appeal is limited to the record, and the district court's decision will not be disturbed absent an abuse of discretion or unless it is based on an erroneous legal standard." *Univ. & Cmty. Coll. Sys. of Nev.*, 120 Nev. at 721, 100 P.3d at 187. "An abuse of discretion can occur when the district court . . . disregards controlling law." *MB Am., Inc. v. Alaska Pac. Leasing*, 132 Nev. 78, 88, 367 P.3d 1286, 1292 (2016). Additionally, while this court's review of the interpretation of a contract is de novo, *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005), abandonment is a question of fact, see *Weill v. Lucerne Mining Co.*, 11 Nev. 200, 212-13 (1876). "An appellate court is not particularly well-suited to make factual determinations in the first instance." *Ryan's Express v. Amador Stage Lines*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012).

"Conversion is a distinct act of dominion wrongfully exerted over another's personal property in denial of, or inconsistent with his title or rights therein or in derogation, exclusion, or defiance of such title or rights." *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 606, 5 P.3d 1043, 1048 (2000) (internal quotation marks omitted). However, the right to possession may be lost by abandonment. *Mallett v. Uncle Sam Gold & Silver Mining Co.*, 1 Nev. 156, 164 (1865); see also *Schmidt v. Sadri*, 95 Nev. 702, 704, 601 P.2d 713, 714 (1979) (discussing abandonment as a defense to claims of forcible entry and unlawful detainer, trespass, conversion, and infliction of mental distress, related to the sale and cleaning of a house);

7 American Law of Torts § 24:4 (“Abandonment of property is a complete defense to the tort of conversion.”). Abandonment is at issue when the right to possession is in controversy. *See Schmidt*, 95 Nev. at 705, 601 P.2d at 715 (stating that a parties’ denial of an allegation raised in the complaint of rightful possession, placed abandonment at issue).

The district court and the parties recognized that abandonment was a key issue in determining the likelihood of success on the conversion claim during oral argument, and the district court repeatedly asked the parties about this issue at the hearing. However, the district court’s orders do not state its reasoning as to how MBLV could be in default without abandoning the disputed items under the terms of the lease. Neither of the district court’s orders made any findings as to the abandonment issue, and neither specifically states whether MBLV failed to occupy and operate for 5 consecutive days, which would facially constitute an abandonment of the items under the terms of the lease. In particular, we note a lack of findings and reasoning that relate to the time between the notice of default on June 22, 2022, the subsequent closure of Money, Baby!, and the attempts from MBLV to retrieve property on July 21, 2022.

MBLV appears to contend that the district court’s determination that JCH had no personal property rights in the disputed items, after hearing briefing and oral argument on the abandonment issue, necessarily decided the abandonment issue because the district court inquired whether there was a distinction between abandonment and default when finding that MBLV retained property rights in the disputed items. However, MBLV’s citations to the district court’s hearing on this issue appear to merely be questions from the judge, not factual findings or reasoning. *Cf. Las Vegas Novelty, Inc. v. Fernandez*, 106 Nev. 113, 118, 787

P.2d 772, 775 (1990) (holding that a preliminary injunctive order that lacks a statement of reasons for issuance is not necessarily invalid “so long as the reasons for the injunction are readily apparent elsewhere in the record and are sufficiently clear to permit meaningful appellate review”).

The district court abused its discretion by disregarding the controlling law on abandonment in its orders when determining the likelihood of success on the merits of the conversion claim. *MB Am., Inc.*, 132 Nev. at 88, 367 P.3d at 1292. The district court’s orders lack factual findings or reasoning as to the abandonment issue, and neither its reasoning nor factual findings are otherwise sufficiently clear from the record. See *Las Vegas Novelty, Inc.*, 106 Nev. at 118, 787 P.2d at 775; *Clark Cnty. Sch. Dist.*, 112 Nev. at 1150, 924 P.2d at 719. As this court “is not particularly well-suited to make factual determinations in the first instance,” *Ryan’s Express*, 128 Nev. at 299, 279 P.3d at 172, we therefore

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court to make factual findings pertaining to the issue of abandonment and for proceedings consistent with this order.



_____, J.
Herndon



_____, J.
Lee



_____, J.
Bell

cc: Hon. Timothy C. Williams, District Judge
Eleissa C. Lavelle, Settlement Judge
Lewis Roca Rothgerber Christie LLP/Las Vegas
Armstrong Teasdale, LLP/Las Vegas
Reed Smith LLP/Los Angeles
Eighth District Court Clerk