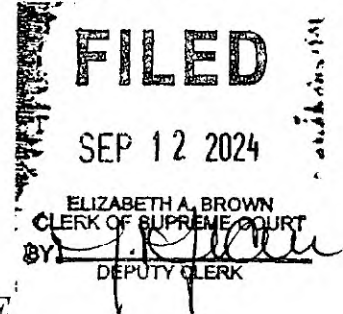


IN THE SUPREME COURT OF THE STATE OF NEVADA

STRAINZ, INC., A NEVADA
CORPORATION,
Appellant,
vs.
MKA CAPITAL, LLC, A NEW JERSEY
LIMITED LIABILITY COMPANY,
Respondent.

No. 85662



ORDER OF AFFIRMANCE

This is an appeal from a final judgment in a contract action. Second Judicial District Court, Washoe County; Lynne K. Jones, Judge.

Appellant Strainz, Inc. (Strainz) and nonparty Honu Enterprises, Inc. (Honu) entered into an Asset Transfer Agreement. Respondent MKA Capital, LLC (MKA) later entered into a Stock Purchase Agreement (SPA) with Honu and Strainz. Under the SPA, MKA would purchase 260,645 shares of Strainz common stock owned by Honu for \$200,000. After the asset transfer agreement between Strainz and Honu was unwound, MKA sued Strainz and Honu alleging various claims. The district court found that Strainz breached the SPA by failing to convert all its debt into equity, by failing to effectuate the Honu-Strainz merger, and by failing to deliver the shares of Strainz common stock to MKA. Finding that rescission was the appropriate remedy, the district court entered judgment for MKA of \$200,000, plus interest. Strainz now appeals.

We review a district court's finding that rescission is an appropriate remedy for an abuse of discretion. *See Awada v. Shuffle Master, Inc.*, 123 Nev. 613, 622, 173 P.3d 707, 713 (2007). In doing so, "we review a district court's factual findings deferentially and will not set them aside

unless they are clearly erroneous or not supported by substantial evidence.”
Kilgore v. Kilgore, 135 Nev. 357, 359, 449 P.3d 843, 846 (2019).


Strainz argues that it did not breach the SPA because the SPA contained only forward-looking statements regarding the debt-to-equity conversion. But Strainz conceded below that it had “a contractual duty to convert all outstanding debt to equity.” And Strainz does not dispute that it did not, in fact, convert all its debt into equity. The record also contains testimony that Strainz never provided MKA with a stock certificate evincing MKA’s ownership of the shares despite MKA’s initial attempts at obtaining documents evincing ownership of the shares. MKA’s sole member and manager further declared and testified that MKA would not have entered the SPA without Strainz’s debt being converted entirely into equity and had MKA known that it would not receive the shares. Thus, we conclude that the district court did not abuse its discretion by finding that there was a material breach of the SPA and rescission was appropriate. See *Canepa v. Durham*, 62 Nev. 417, 427, 153 P.2d 899, 903 (1944) (holding that rescission is appropriate where a partial failure of performance “defeats the very object of the contract[,] . . . renders that object impossible of attainment, or . . . concerns a matter of such prime importance that the contract would not have been made if default in that particular had been expected or contemplated”), *supplemented on other grounds*, 62 Nev. 417, 155 P.2d 788 (1945); Restatement (Third) of Restitution and Unjust Enrichment § 37 (2011) (providing that rescission is appropriate where the breach goes toward “the root” of a party’s obligations). Finally, to the extent that the district court made findings in its judgment that were inconsistent with findings made in its earlier order granting partial summary judgment

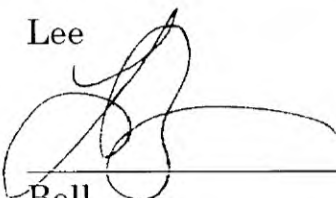
for MKA, we conclude that the findings in the final judgment are supported by substantial evidence.

Strainz also argues that rescission is inequitable because MKA purchased the shares before the Honu-Strainz merger was unwound and MKA would reap a windfall if it were to recover the full amount of its investment "paid to Honu, but from Strainz." This argument was not raised below. Because Strainz does not contend that it could not have raised this argument below, we decline to address it for the first time on appeal. See *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (holding that we need not address arguments raised for the first time on appeal). Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Herndon


_____, J.
Lee


_____, J.
Bell

cc: Hon. Lynne K. Jones, District Judge
Laurie A. Yott, Settlement Judge
Humphrey O'Rourke Law PLLC
MOBO Law, LLP/Reno
McDonald Carano LLP/Reno
McDonald Carano LLP/Las Vegas
Washoe District Court Clerk