

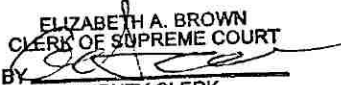
IN THE SUPREME COURT OF THE STATE OF NEVADA

PACIFIC WEST LLC, A NEVADA
LIMITED-LIABILITY COMPANY,
Appellant,
vs.
JOSEPH A. MAGLIARDITI,
Respondent.

No. 88933

FILED

APR 16 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER AFFIRMING IN PART,
REVERSING IN PART, AND REMANDING*

This is an appeal from a district court order of dismissal. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

Appellant Pacific West LLC (PW) is a Nevada limited liability company that owned a 20.5% interest in CY 4422Y, LLC (CY), a California limited liability company. Nonparty to this appeal M1 Accelerator, LLC (M1) is a Nevada limited liability company and manager for CY. Respondent Joseph A. Magliarditi is the manager of M1. CY amended its Operating Agreement in 2021, to which PW alleges it did not consent. Under the amended Operating Agreement, a member's interest in CY may be involuntarily repurchased if the member fails to comply with an obligation required for CY to obtain financing. CY attempted to obtain a loan, which required all members with at least 20% to personally guarantee the loan. PW refused to provide a guaranty but attempted to transfer a 0.5% interest to a nonparty trust so that CY could obtain the loan without PW's personal guaranty. Magliarditi and M1 blocked that transfer and PW's 20.5% interest was involuntarily repurchased. PW sued CY, M1, Magliarditi, and others. The district court granted Magliarditi's motion to

dismiss the complaint as to Magliarditi as an individual and certified the order as final. PW now appeals.

We rigorously review a district court order dismissing a complaint under NRCP 12(b)(5). *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227, 181 P.3d 670, 672 (2008). “Accordingly, this court will recognize all factual allegations in . . . [the] complaint as true and draw all inferences in its favor.” *Id.* at 228, 181 P.3d at 672. The “complaint should be dismissed only if it appears beyond a doubt that [the nonmoving party] could prove no set of facts, which, if true, would entitle it to relief.” *Id.* Additionally, “[w]e review the district court’s legal conclusions de novo.” *Id.*

PW first argues that the district court erred by granting Magliarditi’s motion to dismiss PW’s fiduciary-duty-and-constructive-trust claim against Magliarditi because “as M1’s manager and controller, [Magliarditi] owed fiduciary duties to [CY] and each of its members.” The parties agree that California law governs PW’s breach-of-fiduciary-duty cause of action. To claim a breach of fiduciary duty under California law, a plaintiff must show the existence of a fiduciary duty, the breach of that duty, and that the breach proximately caused the damages. *Roberts v. Lomanto*, 5 Cal. Rptr. 3d 866 (Ct. App. 2003). In dismissing PW’s breach-of-fiduciary-duty claim against Magliarditi, the district court found that PW’s first amended complaint “acknowledges that [Magliarditi], individually, is not a member of CY, nor is he personally a manager of CY.” The court further found that Magliarditi “is also not a party to CY’s Amended Operating Agreement.” And that “[a]s a result, [Magliarditi] did not owe a duty to [PW], nor has [PW] alleged that [Magliarditi] owed any personal duty to [PW].”

We conclude the district court did not err by dismissing the breach-of-fiduciary-duty claim against Magliarditi, as PW failed to plead any facts supporting its contention that Magliarditi owed a duty to PW in his individual capacity. And the factual allegations underpinning PW's breach-of-fiduciary-duty claim are all pleaded in terms of Magliarditi's position as M1's manager. PW relies on the "second-tier controller" doctrine, a Delaware theory of liability first espoused in *In re USACafes, L.P. Litig.*, 600 A.2d 43, 46 (Del. Ch. 1991), for its contention that Magliarditi owed a duty to PW. But PW did not raise the "second-tier controller" doctrine before the district court, so we need not address that doctrine here. *See Dermody v. City of Reno*, 113 Nev. 207, 210, 931 P.2d 1354, 1357 (1997) (holding that "[p]arties may not raise a new theory for the first time on appeal, which is . . . different from the one raised below" (citation modified)); *cf. Oliver v. Barrick Goldstrike Mines*, 111 Nev. 1338, 1345, 905 P.2d 168, 172 (1995) (explaining the purpose of the rule that a party waives the right to be heard on appeal on an issue it did not raise in an opposition to a motion for summary judgment is "to prevent appellants from raising new issues on appeal concerning which the prevailing party had no opportunity to respond and the district court had no chance to intelligently consider during proceedings below"). Thus, we conclude the district court did not err by dismissing the breach-of-fiduciary-duty claim against Magliarditi individually.

Additionally, we reject PW's argument that the district court erred by not allowing its aiding-and-abetting-a-breach-of-fiduciary-duty claim to proceed. PW did not adequately raise this claim against Magliarditi in his personal capacity. Regardless of whether California or Nevada law applies to this claim, PW failed to allege that Magliarditi, in

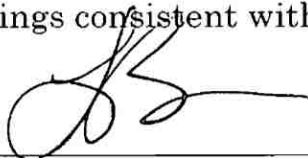
his individual capacity, aided and abetted someone other than himself. See *Nasrawi v. Buck Consultants LLC*, 179 Cal. Rptr. 3d 813, 824 (Ct. App. 2014) (“A defendant is liable for aiding and abetting another in the commission of an intentional tort, including a breach of fiduciary duty, if the defendant knows *the other’s conduct* constitutes a breach of duty and gives substantial assistance or encouragement to the other to so act.” (emphasis added) (citation modified)); *Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1490, 970 P.2d 98, 112 (1998) (holding that “liability attaches for civil aiding and abetting if the defendant substantially assists or encourages *another’s conduct* in breaching a duty to a third person”) (emphasis added), *abrogated on other grounds by GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11 (2001).

And because PW does not challenge the district court’s dismissal of its breach-of-contract and breach-of-implied-covenant-of-good-faith-and-fair-dealing claims against Magliarditi, we need not address those claims on appeal. Accordingly, we affirm the district court’s dismissal of the claims for breach of a fiduciary duty, breach of contract, and breach of the implied covenant of good faith and fair dealing against Magliarditi.


PW also argues that the district court erred by dismissing PW’s conversion and conspiracy claims against Magliarditi, individually. We agree. It is not clear at this juncture that PW “could prove no set of facts, which, if true, would entitle it to relief” as to those claims under Nevada or California law. *Buzz Stew*, 124 Nev. at 228, 181 P.3d at 672; see *Wantz v. Redfield*, 74 Nev. 196, 198, 326 P.2d 413, 414 (1958) (outlining the elements for conversion); *Consol. Generator-Nevada, Inc. v. Cummins Engine Co., Inc.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (outlining the elements for civil conspiracy). It is well-settled law in California “that an

agent of a corporation who directs the corporation to commit a tort is personally liable for the tort.” *Stan Lee Trading, Inc. v. Holtz*, 649 F. Supp 577, 581 (C.D. Cal. 1986). Similarly, Nevada has recognized that “the statutes limiting personal liability of members and managers of an LLC for debts and obligations of the LLC are not intended to shield members or managers from liability for personal negligence.” *Gardner v. Eighth Jud. Dist. Ct.*, 133 Nev. 730, 734, 405 P.3d 651, 655 (2017). Here, PW alleged that CY’s amended operating agreement required PW to personally guarantee a loan. To escape that requirement, PW asserted that it attempted to sell .5% of its interest in CY. PW alleged that Magliarditi worked with CY’s corporate counsel to block that sale, which enabled Magliarditi’s entity to repurchase PW’s entire 20.5% interest in CY, at a reduced price. While Magliarditi may have taken some or all of these allegedly wrongful actions in his capacity as M1’s manager, accepting PW’s factual allegations as true and drawing all inferences in PW’s favor, we cannot say beyond a doubt that PW could prove no set of facts, which, if true, would entitle PW to relief on these claims. *Buzz Stew*, 124 Nev. at 228, 181 P.3d at 672. And therefore, we conclude the district court erred by dismissing PW’s conversion and conspiracy claims against Magliarditi individually. We therefore

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Bell


_____, J.
Stiglich


_____, J.
Cadish

cc: Hon. Timothy C. Williams, District Judge
Bailey Kennedy
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Eighth District Court Clerk