IN THE SUPREME COURT OF THE STATE OF NEVADA

LV.NET LLC, A NEVADA LIMITED LIABILITY COMPANY; AND MARTY MIZRAHI, Appellants, vs. CHEETAH WIRELESS TECHNOLOGIES, INC.; AND MITCHELL GONZALEZ, Respondents.	No. 87383
LV.NET LLC, A NEVADA LIMITED LIABILITY COMPANY; AND MARTY MIZRAHI, Appellants/Cross-Respondents, vs. CHEETAH WIRELESS TECHNOLOGIES, INC., Respondent/Cross-Appellant, and MITCHELL GONZALEZ, Respondent.	No. 88048

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal and cross appeal from findings of liability and an award of compensatory and punitive damages on multiple contract and tort claims.[1] Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Appellant/cross-respondent LV.NET LLC (LVN) is an internet and co-location services provider led by its CEO, appellant/cross-respondent Martin Mizrahi. Respondent/cross-appellant Cheetah Wireless

[1]The Honorable Linda Marie Bell, Justice, did not participate in the decision of this matter.

Technologies (Cheetah), led by its president, respondent Mitchell Gonzalez, provides wi-fi services to larger businesses, municipalities, and utilities. In 2010, LVN and Cheetah entered into a Memorandum of Understanding (MOU) to create a profit-sharing agreement. Under the MOU, LVN would provide Cheetah with certain amenities, such as co-location space and internet signal, in exchange for 50% of Cheetah's "Wi-Fi Network related profit." In addition, LVN would pay Cheetah a 12.5% commission for LVN services sold by a Cheetah agent. Further, Cheetah was to deposit funds generated from its wi-fi network sales to its account with Bank of Las Vegas and track all income and expenses in QuickBooks.

The parties' relationship subsequently deteriorated. Gonzalez testified that a month after the MOU was signed, Mizrahi pushed for Cheetah to move its bank account to LVN's bank, thereby allowing Mizrahi to manage the funds. Later, Mizrahi pushed harder for LVN and Cheetah to merge. Gonzalez eventually agreed to transfer Cheetah's bank account to LVN and merge the two companies' financial books, but no formal merger occurred as shareholders in each company retained their respective shares. Over the next few years, Cheetah and its investors stopped receiving the 50% profit share and 12.5% commission payments owed under the MOU. Cheetah's bookkeeper was instructed by Mizrahi to reclassify much of Cheetah's revenue within QuickBooks from profit share to commission, resulting in losses to Cheetah. Mizrahi made additional changes to the MOU spreadsheets including re-classifying certain sales from profit share to commission; changing the profit-loss calculations such that all losses were borne by Cheetah; and reducing commissions payable to Cheetah.

In 2016, Cheetah and Gonzalez sued LVN and Mizrahi. Cheetah asserted claims against LVN for breach of contract and contractual breach of the implied covenant of good faith and fair dealing. Cheetah also

asserted claims against LVN and Mizrahi for tortious breach of the implied covenant of good faith and fair dealing, unjust enrichment, conversion, fraud, breach of fiduciary duty, specific performance, and declaratory relief.

During litigation, the parties retained their own forensic accounting experts. In his preliminary report, referenced during a bench trial, Cheetah's expert, David Weekly, opined that: (1) Mizrahi did not prepare the MOU spreadsheets accurately or reliably; (2) there was an absence of internal controls and adequate documentation; (3) Mizrahi retroactively made "substantial changes" to his MOU spreadsheet that directly benefitted LVN; and (4) the current MOU spreadsheet was unreliable. Weekly testified that Cheetah's damages were $1,245,875, which LVN's expert attempted to rebut.

The district court ultimately entered judgment in favor of Cheetah on seven of its claims. Relying on Weekly's testimony, the court awarded Cheetah $1,245,875 in compensatory damages against LVN on the breach of contract, contractual breach of the implied covenant of good faith and fair dealing, unjust enrichment, conversion, and breach of fiduciary duty claims. While the district court found that each such claim independently entitled Cheetah to $1,245,875 in damages, each award was subsumed in the other so as not to duplicate damages. The district court also awarded $250,000 in punitive damages against LVN and Mizrahi, jointly and severally, on the fraud and tortious breach of the covenant of good faith and fair dealing claims. There were no compensatory damages awarded on the fraud and tortious breach of the covenant of good faith and fair dealing claims. The district court also awarded Cheetah NRCP 68 attorney fees as against LVN only.

LVN and Mizrahi appeal on multiple issues including the district court's findings of liability and awards of compensatory and

punitive damages, the award of prejudgment interest, and the award of attorney fees. Cheetah cross appeals from the award of attorney fees, seeking an award of attorney fees as against LVN and Mizrahi.

LVN is liable for compensatory damages

LVN appeals the district court's compensatory damages award on the breach of contract and conversion claims, but not on the breach of fiduciary duty, contractual breach of the covenant of good faith and fair dealing, and unjust enrichment claims. LVN also challenges the compensatory damages calculation. For the reasons stated below, we affirm the district court's compensatory damages award.

We do not reach the merits of LVN's appeal of liability for compensatory damages because the issue is moot. "[W]hen a district court provides independent alternative grounds in support of a decision later challenged on appeal, the appellant generally must successfully challenge all of those grounds in its appellate briefing to obtain a reversal." *Hung v. Berhad*, 138 Nev. 547, 549, 513 P.3d 1285, 1287 (Ct. App. 2022). Further, an appellant's failure to raise an issue in its briefing on appeal generally results in a waiver of that issue. *Id.* at 549, 513 P.3d at 1287.

LVN challenges its liability for compensatory damages on the ground that substantial evidence does not support the district court's findings of liability on Cheetah's breach of contract and conversion claims. However, LVN fails to challenge the district court's finding of liability for breach of fiduciary duty, contractual breach of the duty of good faith and fair dealing, and unjust enrichment. Those unchallenged claims constitute independent, alternative grounds of liability for the same award of compensatory damages. Thus, even if this court concluded that substantial evidence did not support liability as to the appealed claims, LVN would still be liable for compensatory damages. *Hung*, 138 Nev. at 550, 513 P.3d at

1288 (reasoning that failure to challenge each alternative ground for a ruling leaves the unchallenged ground intact). Accordingly, we affirm the district court's findings of liability for compensatory damages.

Compensatory damages were properly calculated

LVN also challenges the district court's compensatory damages calculation on the grounds that: (1) the district court improperly relied on unqualified expert testimony, and (2) the district court improperly awarded damages measured past the MOU's termination date. We conclude that the district court did not abuse its discretion when calculating compensatory damages.

The district court did not abuse its discretion in relying on Weekly's expert testimony

LVN argues that the district court abused its discretion when it relied on Weekly's testimony for arriving at its compensatory damages calculation because it failed to qualify Weekly as an expert at trial. We disagree. "Whether expert testimony will be admitted, as well as whether a witness is qualified to be an expert, is within the district court's discretion, and this court will not disturb that decision absent a clear abuse of discretion." *Barlow v. State*, 138 Nev. 207, 218, 507 P.3d 1185, 1197 (2022) (internal quotation marks and citation omitted). To testify as an expert witness under NRS 50.275, a witness must satisfy three requirements: (1) "be qualified in an area of scientific, technical or other specialized knowledge"; (2) "his or her specialized knowledge must assist the trier of fact to understand the evidence or to determine a fact in issue"; and (3) the "testimony must be limited to matters within the scope of his or her specialized knowledge." *Hallmark v. Eldridge*, 124 Nev. 492, 499, 189 P.3d 646, 650 (2008) (citation modified).

We determine that LVN waived its argument that Weekly was not qualified as an expert. LVN filed a motion in limine to preclude Weekly from "offering any evidence or testimony outside of the field of accounting." In the motion, LVN specifically took issue with some of Weekly's opinions regarding the "reasonableness" of certain actions and Gonzalez's credibility. This differs significantly from LVN's arguments on appeal, where LVN argues that the district court improperly failed to evaluate Weekly's qualifications and methodology under *Hallmark*, thus implicitly challenging Weekly's qualifications as an accountant. Because this argument differs from LVN's arguments in its motion in limine, and because LVN never objected to Weekly's testimony at trial, we determine that LVN has waived its challenge to Weekly's qualifications on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (stating that an argument not raised before the trial court is waived and will not be considered on appeal).

The district court did not abuse its discretion in calculating compensatory damages

LVN also argues that compensatory damages were improperly calculated. LVN argues that Nevada law requires that damages are measured as of the time of the breach, but that here, damages were awarded through December 2018 even though the parties' relationship terminated no later than June 7, 2016 when Cheetah's complaint was filed.

This court gives wide discretion to the district court in calculating damages and reviews an award of damages for an abuse of discretion. *Diamond Enters., Inc. v. Lau*, 113 Nev. 1376, 1379, 951 P.2d 73, 74 (1997). "A district court's findings will not be disturbed on appeal unless they are clearly erroneous and are not based on substantial evidence." *Id.* at 1378, 951 P.2d 74 (internal quotation marks omitted). "Compensatory

damages are awarded to make the aggrieved party whole," and in a contract case, to place the aggrieved party "in the position [it] would have been in had the contract not been breached." *Hornwood v. Smith's Food King No. 1*, 107 Nev. 80, 84, 807 P.2d 208, 211 (1991).

We conclude that the district court did not abuse its discretion in its compensatory damages calculation. LVN fails to provide relevant citations to the record pointing to evidence that the district court awarded damages beyond the date of the contract's termination. *See* NRAP 28(e)(1) ("[E]very assertion in briefs regarding matters in the record must be supported by a reference to the page and volume number, if any, of the appendix where the matter relied on is found."). Further, our review of the record indicates that the district court's compensatory damages calculation was based on substantial evidence. Indeed, the district court relied upon Weekly's expert opinion which accounted for amounts due under the MOU and the value of transferred equipment and assets, thereby making Cheetah "whole." Accordingly, we conclude that LVN has not met its burden to show that the district court abused its discretion and we affirm.

Substantial evidence supports the district court's finding of fraud as to LVN and Mizrahi, but does not support the district court's finding of tortious breach of the covenant of good faith and fair dealing

LVN argues that the district court's findings of fraud and tortious breach of the covenant of good faith and fair dealing as to LVN and Mizrahi are not supported by substantial evidence. As to both LVN and Mizrahi, we affirm the district court's finding of fraud. As to tortious breach of the covenant of good faith and fair dealing, we find that the district court's finding is not supported as to both LVN and Mizrahi.

"Where the trial court, sitting without a jury, makes a determination predicated upon conflicting evidence, that determination will

not be disturbed on appeal where supported by substantial evidence." *Trident Const. Corp. v. West Elec., Inc.*, 105 Nev. 423, 427, 776 P.2d 1239, 1242 (1989). Substantial evidence is that which a reasonable mind could accept as sufficiently supporting a conclusion. *Howard v. Hughes*, 134 Nev. 664, 666, 427 P.3d 1045, 1048 (2018). "Questions of law are reviewed de novo." *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 606, 5 P.3d 1043, 1048 (2000) (citation modified).

Substantial evidence supports the district court's finding of fraud against LVN and Mizrahi

LVN argues that it cannot be liable for fraud because the MOU was ambiguous, and there was insufficient evidence to support a finding of fraud. We disagree. First, assuming *arguendo* that the MOU was ambiguous (and we are not convinced that it was), contractual ambiguity does not preclude a finding of fraud. Indeed, claims grounded in tort and contract can coexist because a duty in tort may arise independent of the contract. *See Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135, 734 P.2d 1238, 1240 (1987)). Thus, the district court was permitted to find fraud where the requisite elements of the tort were met. *Id.*

Second, there was substantial evidence in the record supporting the district court's fraud finding. The essential elements of a fraud claim are: a false misrepresentation, "defendant's knowledge or belief that the representation is false," an "intention to induce the plaintiff to act or refrain from acting in reliance on the misrepresentation," "plaintiff's reliance on the misrepresentation," and "damage to the plaintiff." *Bulbman, Inc. v. Nev. Bell*, 108 Nev. 105, 111, 825 P.2d 588, 592 (1992). LVN primarily disputes that there was sufficient evidence in the record to support that there were fraudulent misrepresentations and fraudulent intent. But the district court found evidence of multiple misrepresentations made by LVN and Mizrahi

to induce Cheetah to enter into the MOU, including that: LVN would provide certain services to Cheetah at no cost, while later charging Cheetah for the services; LVN would share 50% of wi-fi network profits while retroactively reclassifying that revenue stream as a commission; and LVN would pay Cheetah commission on certain sales but failing to do so. Further, the district court's findings that Mizrahi moved to merge the businesses' funds immediately upon signing the MOU and failure to maintain the MOU spreadsheets reliably supports the district court's finding that there was fraudulent intent. Accordingly, we conclude that there was substantial evidence to support the district court's fraud finding and affirm.

Substantial evidence does not support the district court's finding of tortious breach of the duty of good faith and fair dealing

LVN also argues that the district court's finding of liability for tortious breach of the covenant of good faith and fair dealing as to both LVN and Mizrahi is unsupported by substantial evidence. We agree and reverse the district court's finding of liability as to both LVN and Mizrahi on this ground.

First, we conclude that Mizrahi cannot be liable for tortious breach of the covenant of good faith and fair dealing because he was not a party to the MOU. A contract is a mandatory prerequisite to a claim for tortious breach of the covenant of good faith and fair dealing, because without a contract, there is no covenant of good faith and fair dealing. *See Clark Cnty. v. Bonanza No. 1*, 96 Nev. 643, 648–49, 615 P.2d 939, 943 (1980) ("As a general rule, none is liable upon a contract except those who are parties to it."); *JPMorgan Chase Bank, N.A. v. KB Home*, 632 F. Supp. 2d 1013, 1023 (D. Nev. 2009) (providing that implied duty of good faith and fair dealing "presupposes the existence of a contract") (internal quotation marks

omitted). Therefore, as a non-party to the MOU, Mizrahi simply cannot be liable for tortious breach of the covenant of good faith and fair dealing and we reverse.

Second, as to LVN, we conclude that no special relationship existed between LVN and Cheetah sufficient to support a claim for tortious breach of the duty of good faith and fair dealing. While every contract contains an implied covenant of good faith and fair dealing, the tort for breach of the implied covenant of good faith and fair dealing only arises where there is (1) a "special relationship" that is "characterized by elements of public interest, adhesion, and fiduciary responsibility," *Ins. Co. of the W. v. Gibson Tile Co.*, 122 Nev. 455, 462, 134 P.3d 698, 702 (2006), and (2) "grievous and perfidious misconduct" by "the party in the superior or entrusted position," *Great Am. Ins. Co. v. Gen. Builders*, 113 Nev. 346, 354-55, 934 P.2d 257, 263 (1997). Whether a duty arises in tort is a question of law that we review de novo. *Sanchez ex rel. Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009).

Here, the district court supported its finding of liability on the ground that Gonzalez agreed to Mizrahi's demands that LVN and Cheetah merge finances, and as a result, LVN exercised complete control over Cheetah's finances. But neither a capitulation to such demands, nor merging of finances, creates the type of relationship that supports a tortious breach claim. *See Great Amer. Ins. Co.*, 113 Nev. at 355, 934 P.2d at 263 (listing types of special relationships). Where the parties are "both experienced commercial entities represented in the present transaction by professional and experienced agents, [who] were never in inherently unequal bargaining positions" there is no "special relationship" sufficient to sustain a claim for the tortious breach of the covenant of good faith and fair

dealing. *Id.* We therefore reverse the district court's finding of liability as to LVN.

The punitive damages award cannot stand without underlying compensatory damages

The district court awarded Cheetah $1,245,875 in compensatory damages against LVN only under Cheetah's first, second, fourth, fifth, and seventh claims for relief (breach of contract, contractual breach of the covenant of good faith and fair dealing, unjust enrichment, conversion, and breach of fiduciary duty, respectively). Separately, the court awarded Cheetah $250,000 in punitive damages as against both LVN and Mizrahi, jointly and severally, under Cheetah's third and sixth claims (tortious breach of the covenant of good faith and fair dealing and fraud). Given our other conclusions, fraud remains the only claim that could support the district court's punitive damages award. *See generally Ins. Co. of the W. v. Gibson Tile Co.*, 122 Nev. at 464, 134 P.3d at 703 (stating that an "award of punitive damages cannot be based upon a cause of action sounding solely in contract"). Problematically, however, the district court failed to award underlying compensatory damages on the fraud claim, so we are compelled to reverse. It is settled law that an award of punitive damages cannot stand alone without underlying compensatory damages. *See, e.g.*, *Paullin v. Sutton*, 102 Nev. 421, 424, 724 P.2d 749, 751 (1986); *Alper v. Stillings*, 80 Nev. 84, 86, 389 P.2d 239, 240 (1964). Accordingly, we reverse the district court's punitive damages award.

The district court properly applied NRS 17.130(2) interest

LVN next argues that the district court erred in applying the NRS 17.130(2) prejudgment interest rate instead of the interest rate in NRS 99.040. When awarding prejudgment interest, the district court must determine "(1) the rate of interest; (2) the time when it commences to run;

and (3) the amount of money to which the rate of interest must be applied." *Paradise Homes, Inc. v. Central Sur. & Ins. Corp.*, 84 Nev. 109, 116, 437 P.2d 78, 83 (1968). NRS 99.040 applies where "there is no express contract in writing fixing a different rate of interest" in cases "[u]pon contracts, express or implied, other than book accounts." NRS 99.040(1)(a). Further, NRS 99.040 mandates that interest be calculated "from the time it becomes due." *Id.* Thus, according to LVN, NRS 99.040 should have applied and interest should have been calculated from the time of each breach instead of from the time the complaint was served. We disagree.

We conclude that the district court did not abuse its discretion in applying NRS 17.130(2) interest. *See Logan v. Abe*, 131 Nev. 260, 267, 350 P.3d 1139, 1144 (2015) (prejudgment interest awards are reviewed for an abuse of discretion). While the district court awarded contract-based damages, its compensatory damages award was also for conversion, suggesting that at least part of the district court's award sounded in tort, and therefore, this was not solely a case "upon contract." *See* NRS 99.040(1)(a). Therefore, we affirm.

We affirm the district court's attorney fee award

Both LVN and Cheetah appeal the district court's award of NRCP 68 attorney fees to Cheetah based on Cheetah's unapportioned offer of judgment to LVN, LASVEGAS.NET, and Mizrahi. LVN argues that the award was invalid because Cheetah's offer of judgment was unapportioned. Cheetah argues on cross appeal that the district court erred in awarding Cheetah attorney fees as against LVN only. We review a district court's award of NRCP 68 attorney fees for an abuse of discretion. *Ozawa v. Vision Airlines, Inc.*, 125 Nev. 556, 562, 216 P.3d 788, 792 (2009).

Cheetah's unapportioned offer of judgment was valid. Under NRCP 68(c)(2), an offer of judgment made to multiple defendants is valid if:

"(1) there is a single common theory of liability against all the offeree defendants, such as where the liability of some is entirely derivative of the others or where the liability of all is derivative of common acts by another and (2) the same entity, person or group is authorized to decide whether to settle the claims against the offerees." We conclude that Cheetah asserted a single common theory of liability against LVN and Mizrahi. Further, LVN and Mizrahi appeared to share a common settlement authority, as all defendants were represented by the same attorney. LVN's primary argument is that Cheetah failed to meet both prongs of NRCP 68(c)(2) where LASVEGAS.NET, a named defendant, had no claims asserted against it and did not have common settlement authority. But based on LVN's representations, Cheetah and the district court were under the impression that LASVEGAS.NET and LVN were "one and the same." Because LVN failed to dispel this misconception until trial, NRCP 68(c)(2) has been satisfied.[2]

Although the parties dispute whether Cheetah's cross appeal was timely, in accordance with our previous order, we determine that it was. *See LV.NET LLC v. Cheetah Wireless Tech. Inc.*, No. 87383/88048, (Order Regarding Motions, July 14, 2025). On the merits, Cheetah asserts that there was a "clerical error" in awarding compensatory damages and attorney fees against LVN only and not Mizrahi. But Cheetah motioned for

[2]LVN also argued that the district court erred by failing to make express findings on the record as to each factor in *Beattie v. Thomas*, 99 Nev. 579, 588-89, 688 P.2d 268, 274 (1983). Because it is settled law that the district court is not required to make express findings on each factor, we dispose of this argument here. *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015) (to support an award of attorney fees, the district court need only demonstrate that it considered the *Beattie* factors and the award is supported by substantial evidence).

the district court to correct its attorney fee award, and the district court explicitly clarified that it meant to award compensatory damages against LVN only, punitive damages against LVN and Mizrahi, and attorney fees against LVN only. Based on this, we see no reason to conclude that the district court abused its discretion.[3] Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court to amend the judgment consistent with this order.[4]

Herndon, C.J.

Pickering, J.

Parraguirre, J.

Stiglich, J.

Cadish, J.

Lee, J.

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[3]We have considered the parties' other arguments not specifically addressed in this order and conclude that they are mooted by certain conclusions in this order, lack merit, or do not otherwise alter our determination.

[4]We grant LVN's motion to withdraw erroneous citation and correct statement of law filed on January 23, 2026.

cc: Hon. Susan Johnson, District Judge
Paul M. Haire, Settlement Judge
Ben Moshe & Stein
Howard & Howard Attorneys PLLC/Las Vegas
Eighth District Court Clerk