



IN THE SUPREME COURT OF THE STATE OF NEVADA

PORTEX GROUP, LLC AND SAMSON  
NAZARYAN, INDIVIDUALLY,  
Appellants,  
vs.  
DONALD ALUISI, INDIVIDUALLY  
AND COPPERBROOK LAS VEGAS,  
LLC,  
Respondents.

No. 90210

*ORDER OF REVERSAL*

This is an appeal from a district court's amended judgment in a contract and property action. Eighth Judicial District Court, Clark County; Danielle K. Pieper, Judge.

This dispute arises from disagreements over the management and governance of a commercial property owners' association (the Association). In the underlying action, respondents Copperbrook Las Vegas, LLC and Donald Aluisi complained that appellants Portex Group, LLC and Samson Nazaryan violated the Association's Grant of Reciprocal Easements and Declaration of Covenants (CC&Rs). Respondents alleged that appellants' conduct caused the lack of a functioning association and, by extension, caused the respondents' property value to diminish by \$290,000. Respondents asserted several causes of action, including breach of contract, breach of the covenant of good faith and fair dealing, contractual interference, intentional and negligent misrepresentation, unjust enrichment, alter ego, negligence, and defamation.

After trial, the district court found for respondents and issued an award of \$320,000 in general damages and \$587,552.77 in attorney fees and costs. Appellants now appeal that judgment, arguing that the district

court erred in finding appellants were the actual and proximate cause of a nonfunctioning, incorporated association. Appellants' contend that the district court should not have found for respondents and awarded general damages, attorney fees and costs. We agree and accordingly reverse the final judgment.

This court "will uphold a district court's factual findings if supported by substantial evidence, unless they are clearly erroneous." *Goodrich & Pennington Mortg. Fund, Inc. v. J.R. Woolard, Inc.*, 120 Nev. 777, 782, 101 P.3d 792, 795 (2004). Causation consists of actual and proximate causation. *Id.* at 784, 101 P.3d at 797. "To demonstrate actual caus[ation], the plaintiff must prove that, but for the [defendant's conduct,] the plaintiff's damages would not have occurred." *Id.* (citation modified). Proximate cause is "any cause which in natural foreseeable and continuous sequence, unbroken by any efficient intervening cause, produces the injury complained of and without which the result would not have occurred." *Id.* (citation modified). "[P]roximate cause, is essentially a policy consideration that limits a defendant's liability to foreseeable consequences that have a reasonably close connection with both the defendant's conduct and the harm which that conduct created." *Id.* (quoting *Dow Chemical Co. v. Mahlum*, 114 Nev. 1468, 1481, 970 P.2d 98, 107 (1998)).

Appellants argue the causation findings rest on speculation and that the district court failed to identify which specific actions by appellants caused respondents' damages—the \$290,000 diminution of respondents' property value. Appellants highlight that the diminution-in-value award was based entirely on respondents' expert's opinion that the absence of a functioning association caused the \$290,000 diminution. And they argue that because respondents admitted that the former declarant of the Association caused such dysfunction, appellants could not be the actual and

proximate cause of the diminution-in-value damages. Lastly, appellants contend that, even together, appellants and respondents lacked the necessary votes to incorporate the Association, respondents failed to encourage participation by the other owners, and respondents failed to introduce any evidence that the remaining owners were willing to participate in Association business.

Here, the district court awarded \$320,000 in damages based on the diminution in respondents' property value.<sup>1</sup> At trial, respondents' expert witness, Keith Harper, testified that the lack of a functioning association caused the value of respondents' property to diminish by \$290,000. Respondents also introduced documents prepared by a commercial realtor on Aluisi's behalf, which stated that the "reason for the 'as-is' pricing is due to the unincorporated association." Respondents explain that the lack of incorporation—caused by appellants' actions—led to the Association's inability to collect fees, open a corporate bank account, secure liability insurance, or hire property management. The district court's amended judgment included consideration of both the testimony from the expert and the commercial realtor's report.

We agree with appellants that the district court clearly erred in finding that appellants were the actual cause of the lack of a functioning, incorporated Association. The record first shows that the Association's dysfunction existed *before* appellants owned property in the commercial

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<sup>1</sup>The parties agree that the \$320,000 figure includes the \$290,000 diminution-in-value damages. We note, however, that the origin of the excess \$30,000 in general damages is unclear. Respondents claim the district court awarded the excess \$30,000 as hedonic damages, but such argument is not supported by the record. In any event, we need not address this issue as we reverse the full amount awarded, based on our holding here.

center and began participating in Association business. During Aluisi's deposition and at trial, respondents admitted that the Association's former declarant, Andrew Sobel, *created* the dysfunction that plagued the Association, including the inconsistent management and the lack of incorporation. Moreover, Sobel initially owned the subject commercial pad, Pad C, before selling it to appellants. Thus, regardless of appellants' actions, the Association's dysfunction and, by extension, the diminution in respondents' property value existed even before appellants joined the Association.

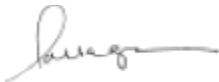
The record further shows that appellants were the only owner in the Association that attempted to assist respondents in remedying the Associations' issues, even if their conduct was less than ideal. The parties agree that in order to incorporate the Association and cure its dysfunction, the owners were required to first amend the CC&Rs. An amendment to the CC&Rs required "a sixty-seven percent (67%) majority of the voting power of the Association." With 128 total votes, a 67% majority would require a minimum of 86 votes to amend the CC&Rs. Together, Portex and Copperbrook could have only mustered 62 votes of the 128 total votes available. We note the record shows that the other owners demonstrated no interest in participating in Association business, made no meaningful effort to do so, and did little to help establish a functioning Association. Consequently, even without any disputes between the parties, incorporation was never possible without the other members' participation. While we acknowledge respondents' argument that appellants' actions frustrated their ongoing efforts to incorporate, we nevertheless conclude that appellants' conduct could not be the actual cause of a dysfunctional, unincorporated Association since the issue existed prior to appellants' involvement.

Regarding proximate cause, the same reasons mentioned above similarly show why appellants' conduct was not the natural, foreseeable, and continuous cause of respondents' damages. We therefore conclude that, at most, appellants frustrated respondents' efforts in remedying a pre-existing condition that would have nonetheless persisted without participation by the other owners in the Association. But based on the sole award of diminution-in-value damages caused by the lack of a functioning, incorporated Association, it was clearly erroneous for the district court to find that appellants were the actual and proximate cause of respondents' damages. Accordingly, we

ORDER the judgment of the district court REVERSED<sup>2</sup>.



Pickering, J.



Parraguirre, J.



Bell, J.

cc: Hon. Danielle K. Pieper, District Judge  
Dana Jonathon Nitz, Settlement Judge  
Avalon Legal Group LLC  
McCormick, Barstow, Sheppard, Wayte & Carruth, LLP/Las Vegas  
McCormick, Barstow, Sheppard, Wayte & Carruth, LLP/Fresno  
Eighth District Court Clerk

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<sup>2</sup>Appellants also present arguments on alter ego liability, general damages and attorney fee awards. We do not address such arguments, because our holding on causation renders such arguments moot. *See Miller v. Burk*, 124 Nev. 579, 588-89 & n.26, 188 P.3d 1112, 1118-19 & n.26 (2008) (explaining that this court need not address issues that are unnecessary to resolve the case at bar).