FILED
11/06/2026
ELIZABETH A. BROWN
CLERK OF SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF NEVADA

SIGNIA, LTD. F/K/A SIGNIA MARKETING, LTD., A COLORADO LIMITED LIABILITY COMPANY, Appellant/Cross-Respondent, vs. MALE EXCEL MEDICAL, P.A., A FLORIDA PROFESSIONAL ASSOCIATION; AND MALE EXCEL, INC., A NEVADA CORPORATION, Respondents/Cross-Appellants.	No. 87353
SIGNIA, LTD. F/K/A SIGNIA MARKETING, LTD., A COLORADO LIMITED LIABILITY COMPANY, Appellant/Cross-Respondent, vs. MALE EXCEL MEDICAL, P.A., A FLORIDA PROFESSIONAL ASSOCIATION; AND MALE EXCEL, INC., A NEVADA CORPORATION, Respondents/Cross-Appellants.	No. 88924

ORDER AFFIRMING IN PART, REVERSING IN PART, AND REMANDING

These are consolidated appeals and cross-appeals from a district court judgment after a bench trial and a post-judgment order awarding attorney fees and costs in a contract and tort action. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

These appeals challenge a district court's resolution of a business dispute between a sales agency and a telehealth provider of erectile dysfunction medication. Male Excel Medical, P.A., is an independent, physician-owned medical group with a network of U.S.-based healthcare providers who provide clinical telehealth services to patients.

Male Excel, Inc., operates and manages Male Excel Medical's website, communicates with patients, and collects payment. In 2019, Male Excel, Inc., entered into a Master Services Agreement (MSA) with Signia Marketing, Ltd., a marketing and sales company. The MSA tasked Signia with making sales calls to potential customers, managing existing customers, and fielding customer service calls. Male Excel Medical, Male Excel, Inc. (collectively Male Excel), and Signia also entered into a separate contract, the Business Associate Agreement (BAA), which required Signia to keep Male Excel's clients' protected health information confidential.

The relationship between the parties quickly deteriorated. Male Excel leadership believed Signia artificially inflated sales figures and commissions figures and falsely represented the number of prescriptions Signia sold, the number of hours it worked for Male Excel, and its adherence to Male Excel's protocols. After these concerns arose, Male Excel sued Signia.

Male Excel largely prevailed in the lawsuit. The district court found "Signia engaged in a series of unauthorized actions" in contravention of its contractual obligations. In total, the district court awarded Male Excel $2,051,745 in damages. The district court also awarded Male Excel costs and attorney fees based on Signia's failure to achieve a better result at trial than was offered in Male Excel's Offer of Judgment. The district court, however, did not rule entirely in Male Excel's favor. The court rejected Male Excel's intentional misrepresentation claim because Male Excel failed to demonstrate that Signia employees committed fraud for the benefit of Signia.

Signia now appeals, asserting several claims of error, including the district court's failure to consider Male Excel's alleged breach of contract

when Male Excel failed to provide notice before terminating the contract. Signia further contends the district court lacked sufficient evidence to find that Signia breached contractual obligations in the MSA and BAA and failed to properly identify the specific provision that Signia allegedly breached. Finally, Signia asserts the district court improperly held in Male Excel's favor on the unjust enrichment claim because the parties had a valid, written contract.

Male Excel cross-appeals, challenging the district court's ruling on its intentional misrepresentation claim and the court's failure to award pre-offer attorney fees pursuant to a contractual fees provision. We affirm several of the district court's conclusions but reverse with respect to the issues of (1) Male Excel's unjust enrichment claim, (2) Male Excel's intentional misrepresentation claim, and (3) the court's failure to consider a contractual prevailing party fee provision in the MSA, and remand to the district court for consideration of these claims.

Substantial evidence supports the district court's conclusions that Signia breached both the MSA and the BAA and that Male Excel did not breach

Signia argues the MSA required Male Excel to give sufficient notice and an opportunity to cure any breach before terminating its agreement with Signia, and the district court erred by finding the breach was not amenable to being cured. Signia also argues the district court lacked sufficient evidence to conclude Signia failed to satisfy its contractual obligations to meet industry standards and comply with applicable laws. Signia further contends the district court erred when it found Signia had breached the BAA by failing to keep client health information confidential. Finally, Signia claims the district court failed to identify any specific contractual provision Signia breached and erred when it concluded Signia breached the MSA.

We will not set aside a district court's findings of fact and conclusions of law if they are supported by substantial evidence and not clearly erroneous. *Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 486, 117 P.3d 219, 223 (2005). Substantial evidence is evidence "a reasonable mind might accept as adequate to support a conclusion." *J.D. Constr., Inc. v. IBEX Int'l Grp., LLC*, 126 Nev. 366, 380-81, 240 P.3d 1033, 1043 (2010) (citations omitted) (internal quotation marks omitted).

Here, substantial evidence supports the district court's conclusion that Signia's malfeasance excused Male Excel from Male Excel's contractual obligations. Male Excel brought claims of breach of contract of the MSA and BAA, as well as claims of breach of the covenant of good faith and fair dealing under both contracts. The district court found four instances of material breach by Signia: overbilling, inflated performance metrics, performing unauthorized transactions, and failure to perform its obligations in a professional and diligent manner. The provisions of the MSA establish that either Signia or Male Excel could have terminated the MSA with 30 days' notice without cause or 10 days' notice for breach; but upon the occurrence of a breach not amenable to cure, no such notice was needed. The court concluded Signia's breaches "discharged Male Excel's duty to further perform the payment obligation." Though the district court did not specifically address this notice provision in its order, the court excused Male Excel from performance under the contract, impliedly finding that Signia's breaches were not amenable to cure. Under the facts presented here, we conclude the district court had substantial evidence to support its findings on this issue, and we conclude no grounds exist to set them aside.

The district court's findings also demonstrate sufficient evidence to show that Signia failed to meet industry standards and comply with applicable laws. The district court found that Signia overbilled Male Excel and engaged in other unauthorized activity. These findings adequately support a conclusion that Signia's conduct fell short of its obligations under both the contract and the law. Committing fraud necessarily falls outside of both legal and industry standards.

Substantial evidence in the record also supports the district court's determination that Signia breached the BAA. The district court found the BAA obligated Signia to refrain from using or disclosing protected health information (PHI) as well as to provide Male Excel with reports of any breach of PHI without undue delay. Based on evidence presented at the trial, the district court concluded Signia breached the BAA by misusing PHI to inflate sales figures and receive unearned payments. Signia also failed to monitor its personnel to identify any breach of the BAA or inappropriate use of PHI and failed to report known improper use of PHI to Male Excel. Finally, Signia refused to grant Male Excel access to audit its information and data. Each of the district court's findings support a conclusion that Signia mishandled PHI and failed to report these breaches, therefore failing to meet its contractual obligations under the BAA.

Additionally, Signia contends the district court erred when it rejected Signia's counterclaims for breach of contract against Male Excel and failed to offset damages accordingly. Because substantial evidence supports the district court's conclusion that Male Excel was either excused from paying Signia's invoices or equity allowed Male Excel to refuse to pay, no breach of contract occurred. Signia's argument about offsetting damages

therefore also lacks merit. Accordingly, we conclude the district court did not err when it denied Signia's counterclaims.

As for the district court's failure to identify the specific MSA provision that Signia breached, the district court need not have found Signia ran afoul of a specific provision of the contract to rule in Male Excel's favor. This court can imply the connection between factual findings and legal conclusions when the record supports it. *Hardy v. First Nat'l Bank of Nev.*, 86 Nev. 921, 923, 478 P.2d 581, 582-83 (1970) (holding that the record clearly supported a judgment against the appellant despite the court failing to make specific findings as to the appellant's affirmative defenses). Here, the district court found Signia engaged in fraud and overbilling. At the very least, Signia's conduct violates the covenant of good faith and fair dealing, and falls below the general terms of any contract or industry standard. As a result, the district court need not have specifically cited a provision of the MSA to conclude Signia breached its contract with Male Excel. We conclude no grounds for relief exist on this issue.

The district court properly considered evidence and testimony when it awarded damages to Male Excel

Signia challenges the district court's award of compensatory damages to Male Excel. Signia contests several subparts of the damages award, contending that because Male Excel Medical and Male Excel, Inc., are two separate entities, the award of damages to "Male Excel," collectively, was improper. Signia further argues the awards of damages for false overpayments, increased merchant processing fees due to cancellation of a processing contract, refunds, and medical provider fees lacked a sufficient evidentiary basis.

This court "will affirm an award of compensatory damages unless the award is so excessive that it appears to have been given under

the influence of passion or prejudice." *Bongiovi v. Sullivan*, 122 Nev. 556, 577, 138 P.3d 433, 448 (2006). The district court awarded damages to "Male Excel," which collectively included Male Excel Medical and Male Excel, Inc. We conclude that all three parties—Signia, Male Excel Medical, and Male Excel, Inc.—were parties to the BAA, which the district court concluded Signia had breached. The BAA lists both Male Excel, Inc., and Male Excel Medical as parties to the agreement. As a result, both entities are entitled to damages as a result of Signia's breach of the BAA, so the district court did not need to separate the amount of damages between them.

We also conclude the district court properly considered the evidence and the testimony adduced at trial when it awarded compensatory damages. Specifically, the district court properly considered expert testimony and explained its reasoning for each award of damages, including the challenged award for overpayment. The district court heard from two expert witnesses, Nile Nickel and Dr. Chen Song, regarding the calculation of damages. Dr. Song testified that Nickel calculated the overpayment damages to fall between $721,000 and $762,000. Dr. Song's calculations yielded a lower number, $171,000. But Dr. Song confirmed Nickel's numbers were accurate due to additional factors Nickel considered—Dr. Song's figure merely represented a subset of the grand total that Nickel calculated. We conclude expert testimony provided sufficient evidence to support the district court's damages award because both experts agreed that the total amount of overpayments could be as high as $762,000 and that Signia caused those damages.

As for the award for the increased processing fees, the district court found Male Excel's prior processing merchant cancelled its contract with Male Excel and the only factor that changed prior to the cancellation

was the rate of returns, refunds, and chargebacks on customer accounts. The district court considered Nickel's testimony, which attributed a substantial number of those additional costs to Signia. Because Nickel determined Signia had caused the changed factor, the district court could reasonably rely on that opinion to then find Signia therefore caused the cancellation of the contract and the subsequent costs. We conclude substantial evidence supported this finding of causation and the district court's award of $443,033, $429,345, and $20,455.

Finally, as for the refunds and medical provider fees, the district court properly relied on expert testimony to award such damages. For the refunds, the district court reasonably relied on Dr. Song's testimony that calculated an average of $20 Male Excel had to spend per customer return. The district court then multiplied $20 by 1,137, the number of returns made. As a result, the district court had substantial evidence to award $22,740 based on expert calculations. For the medical provider fees, the district court again reasonably relied on testimony from Dr. Song, as well as from Nickel and Male Excel's CEO, that Male Excel paid anywhere from $50,000 to well over $100,000 to medical providers. The district court therefore had substantial evidence to award $50,000 based on the various testimony. We also take this opportunity to clarify that because this award stemmed from a breach of the MSA, and only Male Excel, Inc. was a party to the MSA, the award only pertains to Male Excel, Inc. But this does not affect the reasonableness of the award, so we affirm.

Because we see no evidence of excessive damages, we decline to overturn the district court's award of compensatory damages.

The district court exercised proper discretion when it imposed a spoliation sanction against Signia

Signia challenges the district court's imposition of a spoliation sanction against Signia. Signia argues Male Excel untimely requested the sanction because Male Excel waited until closing arguments at trial, creating an unreasonable delay. Signia also contends that because of the delay, it did not have a chance to rebut the adverse presumption. We review such matters for an abuse of discretion. *Bass-Davis v. Davis*, 122 Nev. 442, 447, 134 P.3d 103, 106 (2006). The district court here based its decision on testimony from a Signia employee who testified that he deleted 175 usernames from its software and discarded a laptop containing Signia data shortly after Male Excel terminated its relationship with Signia. The district court also considered testimony from another Signia employee who terminated the telephone service associated with Male Excel's account without requesting data. That employee testified that Signia made no effort to preserve other workstation data. The evidence demonstrated Signia failed to retain relevant information and failed to comply with a litigation hold. The district court could not have made the spoliation finding without that testimony, so the court awarded the sanction at the proper time. Because the evidence supports the district court's adverse inference sanction, and imposing it was not an abuse of discretion, we affirm the district court's finding.

The district court did not abuse its discretion when it awarded post-offer fees and costs to Male Excel

Signia asserts the district court abused its discretion when it awarded post-offer-of-judgment fees and costs to Male Excel. Signia argues the district court erred in finding that Signia's rejection of the offer of judgment was grossly unreasonable, that Male Excel's offer was reasonable, and that Signia did not bring its defenses and counterclaims in good faith.

District courts consider the following factors when exercising the discretion to award fees under NRCP 68:

> (1) whether the plaintiff's claim was brought in good faith; (2) whether the defendants' offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount.

Yamaha Motor Co., U.S.A. v. Arnoult, 114 Nev. 233, 251, 955 P.2d 661, 672 (1998) (quoting *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983)). This court will not disturb the lower court's ruling on appeal, unless the district court's exercise of discretion was arbitrary or capricious. *Id.*

Here, Male Excel made an offer of judgment of $940,395.78. Signia failed to obtain a better result at trial, instead suffering an ultimate judgment of more than $2 million. In this vein, the district court properly considered the value of the offer of judgment and concluded the *Beattie* factors weighed in favor of awarding these fees. The district court then evaluated the reasonableness of the $788,844.14 attorney fee award. We conclude the district court exercised sound discretion when it awarded Male Excel attorney fees under NRCP 68.

The district court erred in certain respects regarding the unjust enrichment and intentional misrepresentation claims as well as attorney fees.

While we affirm the district court on the contract and fees issues raised by Signia, we conclude the district court erred when it ruled in favor of Male Excel on its unjust enrichment claim. Regarding Male Excel's cross-appeal, we reverse the district court's denial of Male Excel's intentional misrepresentation claim because the district court erred when it required Male Excel to prove that any misrepresentation made by Signia

employees was done for the benefit of Signia. We also reverse the district court's denial of attorney fees to Male Excel, Inc. under the prevailing party language of the MSA.

Because written contracts exist in this case, Male Excel cannot succeed on an unjust enrichment claim, and we reverse the district court on this issue

Signia argues the district court erred in ruling in favor of Male Excel on Male Excel's unjust enrichment claim. Because written contracts existed, Male Excel cannot prevail on the claim for unjust enrichment. Nevada law does not permit recovery under an unjust enrichment theory where an express, written contract exists. *LeasePartners Corp. v. Robert L. Brooks Tr. Dated Nov. 12, 1975*, 113 Nev. 747, 755, 942 P.2d 182, 187 (1997). Male Excel concedes that if this court affirms the award on its breach of contract claims, the unjust enrichment judgment should be reversed; however, Male Excel argues if this court reverses on the breach of contact claim, the unjust enrichment claim should stand. Here, the district court concluded Signia had breached both the written MSA and the BAA contracts. Because the district court found in favor of Male Excel on its breach of contract claims, we reverse the finding of the district court of unjust enrichment.

The district court erred when it required Male Excel to prove that Signia employees acted for the benefit of Signia for purposes of Male Excel's intentional misrepresentation claim

Male Excel asserts on cross-appeal the district court incorrectly concluded Male Excel failed to prove its intentional misrepresentation cause of action against Signia because the district court considered an element not required under the law. This court reviews a district court's legal conclusions de novo. *Hi-Tech, LLC v. Pavestone, LLC*, 140 Nev. Adv. Op. 59, 555 P.3d 1184, 1187 (2024).

A plaintiff seeking to prove an intentional misrepresentation claim must demonstrate by clear and convincing evidence that (1) the defendant made a representation about a material fact, (2) the representation was false, (3) the defendant knew the representation was false when it was made or the defendant knew that it did not have sufficient information to make the representation, (4) the defendant intended for the plaintiff to rely upon the false representation and act accordingly, (5) the plaintiff was unaware of the falsity of the representation, (6) the plaintiff relied on the representation, (7) the plaintiff was justified in relying upon the representation, and (8) the plaintiff sustained damages as a result of its reliance on the misrepresentation. *Barmettler v. Reno Air, Inc*., 114 Nev. 441, 447, 956 P.2d 1382, 1386 (1998); *Bulbman, Inc. v. Nev. Bell*, 108 Nev. 105, 110-11, 825 P.2d 588, 592 (1992).

Here, the district court concluded Male Excel lost on the misrepresentation claim because it failed to demonstrate that Signia directed its employees to engage in misconduct. The district court noted, "actions taken by Signia's employees must be traceable to and for the benefit of Signia for Signia to be liable for those misrepresentations; conduct by an employee that is adverse to Signia's interests and for the employee's sole benefit will not be attributable to Signia." The court did not address any of the other elements or make any additional findings as to this claim.

We conclude that the district court erred by imposing an additional requirement. Generally, a corporation is bound by the actions of its agents acting within the scope of employment. *See Nev. Nat'l Bank v. Gold Star Meat Co*., 89 Nev. 427, 429-30, 514 P.2d 651, 653 (1973) (holding that a bank was properly found liable for factual misrepresentations by manager); Restatement (First) of Agency § 261 (A.L.I. 1933) ("A principal

who puts an agent in a position that enables the agent, while apparently acting within his authority, to commit a fraud upon third persons is subject to liability to such third persons for the fraud."). A claim for intentional misrepresentation does not require a separate showing that employees making representations within the scope of their employment acted for the benefit of their employer. Because the district court erred when it imposed an additional requirement, we reverse and remand to the district court for further proceedings consistent with this order to determine whether Male Excel proved its intentional misrepresentation claim.

In its complaint, Male Excel sought punitive damages but never had the opportunity to seek those damages due to the district court's dismissal of the intentional misrepresentation claim. Because the district court erred in finding against Male Excel on the issue of misrepresentation, we remand the case for the court to determine whether punitive damages are appropriate.

The district court erred when it failed to award attorney fees under the MSA's prevailing-party provision

In addition to the post-offer-of-judgment fees and costs awarded, Male Excel argues it is entitled to attorney fees under the MSA. Whether a party is eligible to recover attorney fees under a contract is a question of law that this court reviews de novo. *Pardee Homes of Nev. v. Wolfram*, 135 Nev. 173, 176, 444 P.3d 423, 425-26 (2019). The MSA provides fees to the prevailing party in a contract dispute: "if either party institutes a civil action of any kind to enforce this Agreement, the non-prevailing party will pay the prevailing party all fees, costs and expenses, including reasonable attorneys' fees, incurred in connection with the action." The district court's Fees Order includes no mention of this fee provision, even though the district court made an earlier finding that Male Excel was

"entitled to seek reimbursement of its reasonable attorneys' fees and costs under the terms of the MSA." In light of the language in the MSA, we conclude that the district court erred and reverse the district court's fees award and remand this issue to the district court to consider pre-offer-of-judgment fees to Male Excel, Inc. under the MSA.

Ultimately, we reverse the district court's (1) decision with respect to Male Excel's unjust enrichment claim, (2) denial of Male Excel's intentional misrepresentation claim, and (3) denial of attorney fees under the prevailing party language of the MSA. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART, REVERSED IN PART, AND REMANDED to the district court for consideration of Male Excel's intentional misrepresentation claim and request for punitive damages, as well as the award of attorneys fees under the prevailing party language of the MSA.

Herndon, C.J.

Pickering, J.

Parraguirre, J.

Bell, J.

Stiglich, J.

Cadish, J.

Lee, J.

cc: Hon. Mark R. Denton, District Judge
Paul M. Haire, Settlement Judge
Brownstein Hyatt Farber Schreck, LLP/Las Vegas
Hone Law
Eighth District Court Clerk