

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDERICK CABRAL AND THOMAS  
BECKER,  
Appellants/Cross-Respondents,  
vs.  
WESTGATE RESORTS, LTD., A/K/A  
CENTRAL FLORIDA INVESTMENTS,  
Respondent/Cross-Appellant.

No. 39122

**FILED**

**FEB 17 2006**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Ribera*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a judgment entered after a bench trial and a cross-appeal from an order denying a motion to amend the judgment to include an attorney fees award. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Appellant/cross-respondent Frederick Cabral, through Continental Hospitality,<sup>1</sup> and appellant/cross-respondent Thomas Becker sued respondent/cross-appellant Westgate Resorts, Ltd. for damages on a variety of theories and for declaratory and injunctive relief, based on an alleged breach of a fee agreement with Westgate and a company named Inn Partners, LLC. Under the purported agreement, appellants agreed to find and purchase hotel casino property for Westgate and Inn Partners. Before appellants purchased any property, however, Westgate terminated the relationship, resulting in the underlying action.

The district court granted summary judgment to Westgate on most of appellants' claims, and, after a bench trial on the remaining claims for unjust enrichment and quantum meruit, determined that

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<sup>1</sup>On March 30, 2005, we dismissed this appeal as to Continental Hospitality. See Salman v. Newell, 110 Nev. 1333, 885 P.2d 607 (1994).



appellants were entitled to no recovery against Westgate. The district court also awarded Westgate \$13,216.75 in costs. Thereafter, Westgate filed a timely motion under NRCP 59 to amend the judgment to include an attorney fees award. The district court denied the motion. Appellants and Westgate appeal from the judgment and order, respectively.

The district court's factual findings will be upheld if substantial evidence supports them and they are not clearly erroneous.<sup>2</sup> Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion.<sup>3</sup> "Questions of law are reviewed de novo."<sup>4</sup>

Here, the district court found that appellants had negotiated real property purchases between others and had solicited prospective purchasers. Thus, regardless whether an agreement existed between appellants and Westgate, because appellants were acting as real estate brokers as defined by NRS 645.030(1), NRS 645.270 precluded them from obtaining compensation under the alleged contract because they are not licensed as brokers.<sup>5</sup>

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<sup>2</sup>Jordan v. Bailey, 113 Nev. 1038, 1044, 944 P.2d 828, 832 (1997).

<sup>3</sup>See Yamaha Motor Co. v. Arnoult, 114 Nev. 233, 955 P.2d 661 (1998).

<sup>4</sup>SIIS v. United Exposition Services Co., 109 Nev. 28, 30, 846 P.2d 294, 295 (1993).

<sup>5</sup>See Loomis v. Lange Financial Corp., 109 Nev. 1121, 865 P.2d 1161 (1993); (recognizing that those who come within the real estate licensing statutes, yet act without real estate licenses, do not have a right to recover for their services); Islandia, Inc. v. Marechek, 82 Nev. 424, 420 P.2d 5 (1966) (same). We note further that, as the alleged contract is unenforceable, there is thus no basis for declaratory or injunctive relief.

Further, concerning the propriety of equitable relief where, as here, a licensing statute otherwise precludes recovery, this court in Magill v. Lewis set forth a four-factor analysis: a party should not be precluded from recovery if, by applying the licensing statute, 1) “the public cannot be protected because the transaction has been completed,” 2) “no serious moral turpitude is involved,” 3) “the defendant is the one guilty of the greatest moral fault,” and 4) the defendant would otherwise be unjustly enriched at the expense of the plaintiff.<sup>6</sup> Having considered the record, we conclude that substantial evidence supports the district court’s determination that appellants do not fit within the parameters of Magill, and we thus affirm the district court’s judgment.<sup>7</sup>

Regarding the district court’s order denying Westgate’s motion to amend the judgment to include an attorney fees award, “[t]he decision to award attorney fees is within the sound discretion of the district court and will not be overturned absent a ‘manifest abuse of discretion.’”<sup>8</sup> Here, Westgate moved for attorney fees under NRS 18.010(2), arguing that appellants had brought their claim in bad faith without reasonable

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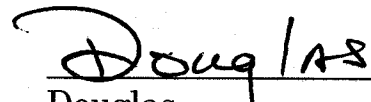
<sup>6</sup>74 Nev. 381, 386, 333 P.2d 717, 719 (1958); accord Shimrak v. Garcia-Mendoza, 112 Nev. 246, 252, 912 P.2d 822, 826 (1996) (allowing equitable relief for services rendered pursuant to an unenforceable contract).

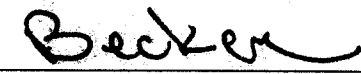
<sup>7</sup>Cf. Summa Corp. v. DeSure Corp., 103 Nev. 144, 734 P.2d 715 (1987) (providing that a claim for quantum meruit requires a showing of fraud or collusion); Unionamerica Mtg. v. McDonald, 97 Nev. 210, 212, 626 P.2d 1272, 1273 (1981) (stating that “[u]njust enrichment occurs [whenever] a person . . . retains a benefit which in equity and good conscience belongs to another”).

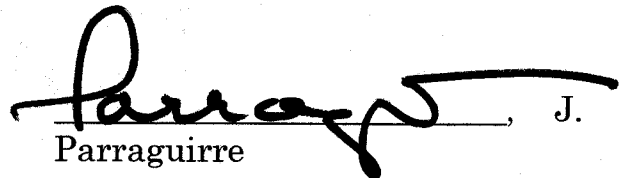
<sup>8</sup>Kahn v. Morse & Mowbray, 121 Nev. \_\_, \_\_, 117 P.3d 227, 238 (2005) (citation omitted).

ground, and under NRCP 68 and NRS 17.115, based on its \$1000 offer of judgment to appellants. The district court determined that appellants' claims were not brought in bad faith and that, under Beattie v. Thomas,<sup>9</sup> respondent's \$1000 offer of judgment did not warrant an attorney fees award. After reviewing the record, we conclude that the district court did not manifestly abuse its discretion when it denied Westgate an attorney fees award. Accordingly, we affirm the district court's order.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Mark R. Denton, District Judge  
Thomas Becker  
Frederick Cabral  
Deaner, Deaner, Scann, Malan & Larsen  
Clark County Clerk

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<sup>9</sup>99 Nev. 579, 668 P.2d 268 (1983).