IN THE SUPREME COURT OF THE STATE OF NEVADA

THE TRUCK COMPANY, INC., A NEVADA CORPORATION, AND JACK RUGGLES, JR., AN INDIVIDUAL,
Appellants,
vs.
ROBERT STAMPER, AN INDIVIDUAL, AND WESTERN STATES MOBILE LUBE, D/B/A LUBE NEVADA, A NEVADA CORPORATION,
Respondents.

No. 39290

FILED

JUN 18 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellants The Truck Company, Inc. and Jack Ruggles, Jr. appeal from a judgment in a breach of contract action following a bench trial in favor of respondents Robert Stamper and Western States Mobil Lube, dba Lube Nevada (Lube Nevada). On appeal, appellants challenge the district court's findings of fact and award of attorney fees. We conclude that appellants' contentions lack merit.

First, appellants contend that the district court made several findings of fact that are not supported by substantial evidence. We have consistently provided that we will not disturb the district court's findings of fact if they are supported by substantial, though conflicting, evidence.[1]

[1]See LFC Mktg. Group, Inc. v. Loomis, 116 Nev. 896, 904, 8 P.3d 841, 846 (2000); Pandelis Constr. Co. v. Jones-Viking Assoc., 103 Nev. 129, 130, 734 P.2d 1236, 1237 (1987); Hobson v. Bradley & Drendel, Ltd., 98 Nev. 505, 506-07, 654 P.2d 1017, 1018 (1982).

In our review we are not at liberty to evaluate the credibility of the witnesses and weigh the testimony given.[2]

Appellants first argue that the district court erred in finding that The Truck Company was the alter ego of Ruggles, thereby piercing the corporate veil and holding Ruggles personally liable for the judgment. We have noted that the purpose of the alter ego doctrine is to promote justice when it appears that the protections afforded to corporations are being abused;[3] however, "[t]he corporate cloak is not lightly thrown aside."[4] Before the alter ego doctrine can be applied, the following elements must be proven by a preponderance of the evidence:

> (1) The corporation must be influenced and governed by the person asserted to be its alter ego[;]
>
> (2) There must be such unity of interest and ownership that one is inseparable from the other; and
>
> (3) The facts must be such that adherence to the fiction of [a] separate entity would, under the circumstances, sanction a fraud or promote injustice.[5]

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[2]See Rowland v. Lepire, 99 Nev. 308, 312, 662 P.2d 1332, 1334 (1983).

[3]LFC Mktg. Group, Inc., 116 Nev. at 903, 845-46, 8 P.3d at 845-46.

[4]Baer v. Amos J. Walker, Inc., 85 Nev. 219, 220, 452 P.2d 916, 916 (1969).

[5]McCleary Cattle Co. v. Sewell, 73 Nev. 279, 282, 317 P.2d 957, 959 (1957) (internal quotations and citations omitted, and placed in list format), quoted in Lorenz v. Beltio, Ltd., 114 Nev. 795, 807, 963 P.2d 488, 496 (1998).

We conclude that substantial evidence supports the district court's finding that The Truck Company was the alter ego of Ruggles. Ruggles was the sole shareholder and president of The Truck Company. The evidence established that Ruggles governed The Truck Company: all the company's documents were forwarded to Ruggles; Ruggles signed all the checks payable to Lube Nevada; and Ruggles instructed the bookkeeper to suspend the payments to Lube Nevada. Also, Stamper testified that Ruggles "calle[d] the shots." Further, Stamper indicated in his various letters to The Truck Company that The Truck Company paid numerous debts for Ruggles and Ruggles treated The Truck Company's assets as his own. Stamper testified that he and Patrick Walsh, The Truck Company's former president, entered into the payment plan because The Truck Company was having cash flow problems. Moreover, Ruggles admitted that six to eight months after Stamper repossessed the truck, he eliminated The Truck Company's fleet of trucks.

Appellants next argue that the district court erred in finding that Stamper's letter following repossession of the truck met the statutory notice requirements for sale of the repossessed truck. We disagree. The district court found that Stamper's letter substantially complied with the statutory notice requirements for a repossession sale,[6] and we conclude that substantial evidence supports that finding. Stamper's letter provided The Truck Company with notice that it was in default, the amount it needed to pay in order to redeem the truck, and that it had ten working days to redeem the truck. And, through Stamper's various letters, The Truck Company was on notice that it could make its default payment to

[6]See NRS 482.516.

Lube Nevada, and that Stamper would return the truck upon redemption. Furthermore, although Stamper did not specify his intent to sell the truck, he stated that Lube Nevada would seek a judgment against The Truck Company after ten working days, thereby apprising The Truck Company of when Stamper would seek a remedy.

We conclude that appellants' remaining challenges are without merit because the district court's findings of fact are supported by substantial evidence.[7] Thus, we affirm the district court's judgment.

Next, appellants contend that the district court erroneously awarded respondents $28,566 in attorney fees. We conclude that the district court did not abuse its discretion in making such award.[8]

In response to appellants' appeal, respondents contend that they are entitled to attorney fees under NRAP 38 because appellants' appeal is frivolous. We disagree and conclude that appellants' appeal is not so frivolous as to warrant sanctions.[9]

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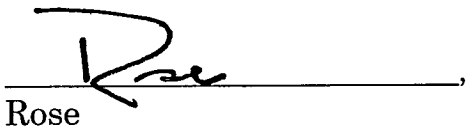
[7]Appellants contend that the district court failed to give The Truck Company credit for two checks it paid to Lube Nevada. However, these checks were not at issue before the district court because they were paid before Stamper and Walsh entered into the payment plan.

[8]See Nelson v. Peckham Plaza Partnerships, 110 Nev. 23, 26, 866 P.2d 1138, 1139-40 (1994) (reviewing a district court's award of attorney fees under an abuse-of-discretion standard).

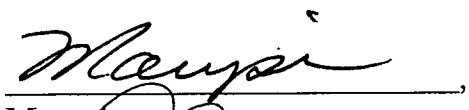
[9]See Bd. of Gallery of History v. Datecs Corp., 116 Nev. 286, 288, 994 P.2d 1149, 1150 (2000) (noting that NRAP 38(b) authorizes this court to award attorney fees "if it determines that the appeals process has been misused").

Having considered appellants' contentions and concluding that they lack merit, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Rose



_____, J.
Maupin

_____, J.
Gibbons

cc: Hon. Kathy A. Hardcastle, District Judge
Markoff & Boyers
Woods, Erickson, Whitaker & Miles, LLP
Clark County Clerk