

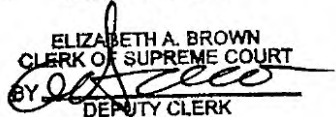
IN THE SUPREME COURT OF THE STATE OF NEVADA

INCorp SERVICES, INC., A NEVADA
CORPORATION,
Appellant,
vs.
BRE/HC LAS VEGAS PROPERTY
HOLDINGS, L.L.C., A DELAWARE
LIMITED LIABILITY COMPANY,
Respondent.

No. 83487

FILED

DEC 15 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court preliminary injunction order in a commercial landlord-tenant dispute. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.¹

Respondent BRE/HC Las Vegas Property Holdings, LLC filed a breach of contract action against its tenant, appellant InCorp Services, Inc. BRE/HC alleged, in part, that InCorp had breached the parties' lease agreement by performing renovations to the leased premises without first obtaining the proper permits. BRE/HC further alleged that, during its renovations, InCorp removed multiple fire sprinklers and failed to timely or properly replace those sprinklers as required by the local fire safety code.² Finally, BRE/HC alleged that InCorp abandoned its renovations, rendering the unfinished reception and lobby area an eyesore in full view of the building's common areas. Shortly after filing suit, BRE/HC moved for a

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

²BRE/HC initially provided InCorp with 14 days to correct the fire sprinkler deficiency, and although InCorp asserts that it replaced the sprinklers as requested, BRE/HC contends that InCorp did not obtain the proper permit or approval to do so.

preliminary injunction requiring InCorp to grant it access to the leased premises to perform certain repairs and to enjoin InCorp from committing acts of “nuisance, harassment, and intimidation.”

InCorp first argues that the district court abused its discretion by granting BRE/HC’s request for a preliminary injunction because it did not sufficiently analyze the requisite factors.³ *See Chateau Vegas Wine, Inc. v. S. Wine & Spirits of Am., Inc.*, 127 Nev. 818, 824, 265 P.3d 680, 684 (2011) (providing that this court reviews a district court’s decision to grant a preliminary injunction for an abuse of discretion); *see also* NRS 33.010 (explaining that an injunction may be granted where it appears “that the plaintiff is entitled to the relief demanded” or “that the commission or continuance of some act, during the litigation, would produce great or irreparable injury to the plaintiff”). We disagree. “A party seeking a preliminary injunction must show a likelihood of success on the merits of their case and that they will suffer irreparable harm without preliminary relief.” *Shores v. Glob. Experience Specialists, Inc.*, 134 Nev. 503, 505, 422 P.3d 1238, 1241 (2018). BRE/HC demonstrated that it had a likelihood of success on the merits of its breach-of-contract claims by showing that InCorp denied it access to the leased premises in violation of the lease and created a nuisance to other building tenants. *See id.* at 507, 422 P.3d at 1242 (“While the moving party need not establish certain victory on the merits, it must make a prima facie showing through substantial evidence

³To the extent InCorp suggests that the district court did not properly analyze the necessary factors for an injunction because it did not discuss its analysis at the hearing on the motion, we disagree and note that the written order adequately documented the district court’s analysis. *See Rust v. Clark Cty. Sch. Dist.*, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987) (explaining that oral pronouncements from the bench are ineffective and only a written judgment has legal effect).

that it is entitled to the preliminary relief requested.”). For example, BRE/HC provided photos demonstrating the visibility of InCorp’s unfinished lobby area, of the blow-up dolls, as well as a declaration from another tenant discussing how InCorp’s conduct constituted a nuisance and caused it safety concerns. BRE/HC also demonstrated that it would suffer irreparable harm in the absence of an injunction, as it showed that InCorp’s behavior was interfering with its business and damaging its relationship with other tenants. *See Finkel v. Cashman Profl, Inc.*, 128 Nev. 68, 74, 270 P.3d 1259, 1263 (2012) (explaining that actions which cause damage to a business’ goodwill or reputation constitutes irreparable harm for purposes of obtaining an injunction); *Sobol v. Capital Mgmt. Consultants, Inc.*, 102 Nev. 444, 446, 726 P.2d 335, 337 (1986) (concluding that “acts committed without just cause which unreasonably interfere with a business . . . may do an irreparable injury and thus authorize the issuance of an injunction”). The district court’s order also makes clear that it “weigh[ed] the public interest and the relative hardships of the parties in deciding whether to grant a[n] injunction.” *Clark Cty. Sch. Dist. v. Buchanan*, 112 Nev. 1146, 1150, 924 P.2d 716, 719 (1996). These factors further support our conclusion that the district court did not abuse its discretion granting BRE/HC injunctive relief because it is in the best interest of the building’s other tenants and visitors to ensure that the applicable fire codes are strictly observed. *See Chateau Vegas Wine*, 127 Nev. at 824, 265 P.3d at 684. Moreover, it requires BRE/HC to make the requisite repairs to InCorp’s lobby, a space it does not use, at its own expense; therefore, it should not cause InCorp any financial hardship or interfere with its business operations. Because “the reasons for the injunction are readily apparent” when reading the district court’s order, *Las Vegas Novelty, Inc. v.*

Fernandez, 106 Nev. 113, 118-19, 787 P.2d 772, 775-76 (1990), we conclude that the district court adequately analyzed the pertinent factors and decline to set aside the injunction on this basis.

We also reject InCorp's argument that the district court's factual findings lack substantial evidentiary support. See *S.O.C., Inc. v. Mirage Casino-Hotel*, 117 Nev. 403, 407, 23 P.3d 243, 246 (2001) (explaining that this court will not set aside a district court's factual findings if they are supported by substantial evidence). In seeking injunctive relief, BRE/HC provided evidence of the unfinished lobby, of the vandalism to the protective film it installed over the glass entryway to the leased premises, of the blow-up dolls in InCorp's lobby, and sworn testimony of a neighboring tenant who complained of the nuisance caused by InCorp's unfinished lobby and blow-up doll displays. Thus, we conclude that the district court's factual findings are supported by substantial evidence. While InCorp submitted a declaration from its contractor stating that it obtained the requisite permits and approvals before performing renovations to InCorp's lobby, InCorp did not attach documentary evidence of those permits and approvals. See *Young v. Nev. Title Co.*, 103 Nev. 436, 440, 744 P.2d 902, 904 (1987) (explaining that "[t]he best evidence rule requires production of an original document where the actual contents of that document are at issue and sought to be proved"). And although the parties submitted competing declarations, we decline to override the district court's determination that BRE/HC's evidence was more credible.⁴ See *Ellis v. Carucci*, 123 Nev. 145,

⁴We decline to consider InCorp's argument that the district court had to conduct an evidentiary hearing because it failed to seek such a hearing in the district court. See *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (providing that an argument not raised in the district court is "waived and will not be considered on appeal").

152, 161 P.3d 239, 244 (2007) (refusing to reweigh the district court's credibility determinations on appeal).

We also reject InCorp's argument that the injunction should be set aside because it does not sufficiently describe what conduct is prohibited or required. *See Kress v. Corey*, 65 Nev. 1, 20, 189 P.2d 352, 361 (1948) ("An injunction should be so clear and certain that a party may readily know what he is restrained from doing and that he must obey it at his peril."). The district court's order clearly explains that, upon reasonable advanced notice of no less than 24 hours, InCorp is required to give BRE/HC access to the leased premises in order to correct the fire sprinkler issue and obtain county approval and to repair the vandalized film over the glass entryway. It also clearly prohibits InCorp from engaging in further acts of nuisance, including displaying blow-up dolls and strobe lights, or damaging the protective film on the glass entryway.⁵

Finally, we reject InCorp's argument that the district court abused its discretion by denying its competing motion for a preliminary injunction. *See Chateau Vegas Wine*, 127 Nev. at 824, 265 P.3d at 684. InCorp's requested injunction went beyond merely maintaining the status quo, *see Dangberg Holdings Nev., LLC v. Douglas Cty.*, 115 Nev. 129, 146, 978 P.2d 311, 321 (1999) (explaining that a preliminary injunction maintaining the status quo may be appropriate if the other requirements are satisfied), and it failed to provide evidence of its purported damages, *see Coronet Homes, Inc. v. Mylan*, 84 Nev. 435, 437, 442 P.2d 901, 901 (1968) (explaining that, without evidence "establishing the material allegations of

⁵We decline to address InCorp's request to set aside the district court's order sanctioning it for violating the preliminary injunction, as that order is not before us in this appeal.

the complaint, . . . the application for a preliminary injunction [should be denied"). Nor did InCorp demonstrate that it would suffer irreparable harm in the absence of an injunction, as its claimed damages to the lobby and allegedly missing equipment are all items which can be remedied with monetary damages. *See Excellence Cmty. Mgmt. v. Gilmore*, 131 Nev. 347, 353, 351 P.3d 720, 723-24 (2015) (defining "irreparable harm" as an injury for which compensatory damages are inadequate). Based upon the foregoing, we

ORDER the judgment of the district court AFFIRMED.⁶


Parraguirre, C.J.


Stiglich, J.


Gibbons, Sr.J.

cc: Hon. Timothy C. Williams, District Judge
James A. Kohl, Settlement Judge
Popova Law, PLLC
Rice Reuther Sullivan & Carroll, LLP
Eighth District Court Clerk

⁶The Honorable Mark Gibbons, Senior Justice, participated in the decision of this matter under a general order of assignment.