IN THE SUPREME COURT OF THE STATE OF NEVADA

DEBRA MITMAN, AN INDIVIDUAL; AND FLANDERS MLK INVESTORS, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Appellants/Cross-Respondents,
vs.
LA 1, LLC, A MICHIGAN LIMITED LIABILITY COMPANY,
Respondent/Cross-Appellant.

No. 83350

LA 1, LLC, A MICHIGAN LIMITED LIABILITY COMPANY,
Appellant,
vs.
DEBRA MITMAN, AN INDIVIDUAL; AND FLANDERS MLK INVESTORS, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Respondents.

No. 84031

ORDER OF AFFIRMANCE

Consolidated appeal and cross-appeal from final judgment and an order denying attorney fees in a business court dispute. Eighth Judicial District Court. Clark County; Elizabeth Goff Gonzalez, Judge.

This matter involves consolidated appeals in a case arising out of a business dispute. Respondent/cross-appellant LA1, LLC sued appellants/cross-respondents Debra Mitman and Capital Equities, Inc., as well as non-party defendants Capital Holdings, LLC and Flanders MLK Investors, LLC, alleging that it was entitled to a 33% share of profits from the sale of real property. Following a six-day bench trial and a punitive damages hearing, the district court found Mitman liable for breach of contract, breach of fiduciary duty, and conversion. The district court

23-38598

awarded LA1 $637,707.69 in compensatory damages and $637,707.69 in punitive damages. Following the judgment, LA1 moved for an award of attorney fees and costs, plus prejudgment interest. The district court denied the motion for attorney fees, finding that Mitman brought her defenses in good faith and they were not frivolous. The district court declined to consider the motion for prejudgment interest, finding that LA1 failed to comply with Eighth Judicial District Court (EDCR) Rules 2.20 and 2.24. Mitman appeals and LA1 cross-appeals, both challenging the district court's judgment. LA1 also appeals the district court's denial of attorney fees.

The district court did not abuse its discretion in finding LA1's breach of contract and conversion claims were timely

The parties dispute the facts and events preceding this litigation. However, the district court was limited to the amended operating agreements (AOAs) of the companies and determined that neither party testified credibly at trial. Based on the limited documentary evidence before us, we agree with the district court that the timeline is uncontroverted despite the parties' disaccord over the liability of various entities.

Findings of fact are given deference and will not be set aside unless they are clearly erroneous or not supported by substantial evidence. *Sowers v. Forest Hills Subdivision*, 129 Nev. 99, 105, 294 P.3d 427, 432 (2013). The application of the statute of limitations is a question of law that this court reviews de novo where the facts are uncontroverted. *Day v. Zubel*, 112 Nev. 972, 977, 922 P.2d 536, 539 (1996).

LA1's second breach of contract claim was timely

Mitman contends that the applicable statute of limitations time-bars LA1's claims. We disagree.

We conclude that the district court correctly determined that LA1's second claim for breach of contract was timely. "[A]n action for breach of contract accrues as soon as the plaintiff *knows or should know* of facts constituting a breach." *Bemis v. Estate of Bemis*, 114 Nev. 1021, 1025, 967 P.2d 437, 440 (1998). The statute of limitations for a breach of a written agreement is six years. NRS 11.190(1)(b). Mitman incorrectly bases the statute of limitation accrual on the date the AOAs were executed; however, the operative accrual date is the date Mitman breached the AOAs by failing to disburse LA1 its share of the sale profits for each property. Mitman sold the Fort Apache property in 2015 and LA1 immediately demanded its share. When its demand went unanswered, it filed its initial complaint in January 2017. Mitman sold the MLK property in 2020 during the pendency of this lawsuit. Because LA1 brought claims as to each of these properties within six years of the date Mitman breached the AOAs, we conclude the district court did not err in finding that LA1 timely brought its second breach of contract claim.

LA1's conversion claim was timely

Mitman argues that a three-year statute of limitations bars LA1's claim of conversion. Mitman only disputes the finding that she converted LA1's Flanders Fort Apache membership interest, asserting that the conversion would have occurred in 2013 when she first deeded the property into Flanders Fort Apache as her 100% interest.

We conclude that the district court correctly found that the conversion claim was timely. Conversion claims must be brought within three years. NRS 11.190(3)(c). The statute of limitations for conversion begins to run when the injured party becomes aware of the taking. *Bemis*, 114 Nev. at 1025, 967 P.2d at 440. In this case, the statute of limitations began to run in 2015, when LA1 discovered that Mitman failed to disburse

the proceeds of the Fort Apache sale. Mitman argued that it began to run when the properties were transferred into their respective LLCs, essentially asserting that the transfer was the conversion and the statute of limitations should have begun running at that time. However, Mitman cannot prove that LA1 knew or reasonably should have known of the transfer until 2015. Thus, because LA1 brought its conversion claim against Mitman regarding the sale of the Fort Apache property within three years of it discovering Mitman's alleged conversion of LA1's membership interest in that property, the district court did not err in determining that LA1 timely brought its claim.

All necessary parties were joined in the action below

Mitman contends that we should reverse the judgment below or dismiss LA1's claims because it failed to join all necessary parties to the lawsuit. Along with Mitman, John Bentley, Bryan Morganstern, and Blake McKee were members of the property purchase group. She argues LA1 should have joined Bentley, Morganstern, and McKee as parties. LA1 responds that Bentley was eventually included, as Mitman added Bentley as a third-party defendant and the district court entered a default against him. LA1 also argues that when both of its membership interests were converted, Mitman (and not Morganstern or McKee) was the only manager. Thus, it appropriately sued her alone initially.

We conclude that the district court could accord complete relief because all necessary parties joined in the action below. *See* NRCP 19(a)(1); *Potts v. Vokits*, 101 Nev. 90, 92, 692 P.2d 1304, 1306 (1985) ("An indispensable party is a party who is 'necessary' to an action but who, for some reason, cannot be made a party to that action."). Mitman's contention that Bentley should have been joined as a party lacks merit because he was joined as a defendant through her third-party complaint. In fact, the

district court entered a default against him. Furthermore, the other Flanders LLC managers, including Bentley, were no longer managers of those LLCs at the time Mitman breached the AOA's by not distributing LA1 its share of the sale proceeds. Mitman was the sole manager of the Flanders LLCs when she converted LA1's membership interests. Bentley had already been removed, and Morganstern and McKee resigned as managers of both Flanders Fort Apache and Flanders MLK. Mitman was also the one who conducted the sales and distributed the proceeds from the sales. Thus, we conclude that Bentley was properly joined and that neither Morganstern nor McKee needed to be joined for the district court to accord complete relief.

The district court did not abuse its discretion by allowing LA1 to amend its claims

Mitman argues that LA1's theory of the case changed drastically when the district court permitted it to amend its complaint a fifth and sixth time. LA1 alleged new theories of liability based on documents it discovered between its third amended complaint and the fourth amended complaint (which it amended days later to the operative amended fourth amended complaint). Mitman contends that LA1 went from claiming a 38% interest in Capital Holdings to claiming a 33% interest in all the Flanders LLCs, and that the district court's decision permitting such amendment was an abuse of discretion. LA1 argues that it had good cause to amend its complaint because Mitman concealed the AOAs. We agree with LA1.

"A district court's ruling on a motion to amend pleadings rests within the court's sound discretion and will not be disturbed absent a showing of abuse of discretion." *Whealon v. Sterling*, 121 Nev. 662, 665, 119 P.3d 1241, 1244 (2005). NRCP 15 provides that a party may amend its complaint after a responsive pleading has been filed "only with the opposing

party's written consent or the court's leave," and that "[t]he court should freely give leave when justice so requires." NRCP 15(a)(2).

We conclude that the district court did not abuse its discretion in permitting LA1 to amend its complaint. As the district court noted, no party produced the AOAs until LA1 subpoenaed the three other companies in 2020. Both parties denied knowing about the AOAs, despite LA1's emails acknowledging that the AOA signature lines had to be updated among LA1's members, and Mitman's signature on the AOAs. The district court's findings acknowledge this curious discovery and note that the parties mismanaged the LLCs. LA1's amendment changed its claimed 38% interest in Capital Holdings to a claimed 33% interest in Flanders Fort Apache and Flanders MLK. LA1 based its amendment on the newly discovered AOAs and made a good faith attempt to correct its original misstatements and claims. Mitman's claim that LA1 should have known about its proper membership interest before the 2020 production lacks merit. No evidence demonstrates that LA1 received the finalized executed AOAs.[1] Thus, even though LA1 did not seek leave to file its fourth amended complaint until several years into the litigation, we conclude that the district court did not abuse its discretion in permitting the additional facts and claim to be added based on LA1's discovery of the AOAs.

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[1]Judicial estoppel does not apply here because Mitman did not show LA1 engaged in intentional wrongdoing or attempted to obtain an unfair advantage. "Judicial estoppel should be applied only when 'a party's inconsistent position [arises] from intentional wrongdoing or an attempt to obtain an unfair advantage.'" *NOLM, LLC v. County of Clark*, 120 Nev. 736, 743, 100 P.3d 658, 663 (2004) (quoting *Kitty-Anne Music Co. v. Swan*, 4 Cal. Rptr. 3d 796, 800 (Cal. Ct. App. 2003)).

The district court's findings are supported by substantial evidence

Findings of fact are given deference and will not be set aside unless they are clearly erroneous or not supported by substantial evidence. *Sowers*, 129 Nev. at 105, 294 P.3d at 432. Both parties argue that the district court's verdict is unsupported by substantial evidence, with each party appealing the claims on which they lost. Yet neither party fleshes out their arguments. They argue that substantial evidence is lacking while giving bare recitations of the elements of each claim. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an argument that is not cogently argued or lacks the support of relevant authority). Despite the parties' failure to cogently argue these issues, we conclude that each of the district court's challenged factual findings are supported by substantial evidence.

Mitman breached the contract and violated her fiduciary duties

Mitman argues that no valid contract existed between Mitman and LA1 because LA1 was not aware of the AOAs. Thus, she posits, the parties lacked mutual assent. We disagree and find the AOAs to be binding and enforceable.

"Basic contract principles require, for an enforceable contract, an offer and acceptance, meeting of the minds, and consideration." *Certified Fire Prot., Inc. v. Precision Constr., Inc.*, 128 Nev. 371, 378, 283 P.3d 250, 255 (2012) (quoting *May v. Anderson*, 121 Nev. 688, 672, 119 P.3d 1254, 1257 (2005)). The district court found that the AOAs were valid as all necessary parties signed the AOAs. While Mitman contends that Bentley's signing of the AOAs differs from a member of LA1 signing the AOAs, the distinction does not matter here. Bentley was a manager and authorized signatory for LA1. NRS 86.221(3) only requires that an amendment to an

operating agreement be signed by a manager. *See* NRS 86.221(3) ("The certificate of amendment must be signed by a manager of the company or . . . a member."). Moreover, substantial evidence supports the district court's finding that Mitman knew about LA1. Brett Goett acted as the Flanders LLC's attorney, learned the name of LA1's correct signatory, and addressed the fact that it was never corrected. The other signatories sent Mitman all this information. Mitman's reception of the information about LA1 makes the question of whether Goett's knowledge was properly imputed to her irrelevant. Any of Mitman's claimed ignorance regarding the AOAs lacks merit as she testified that the signatures were hers and that she just did not read the AOAs. *See Yee v. Weiss*, 110 Nev. 657, 662, 877 P.2d 510, 513 (1994) ("[O]ne is bound by any document one signs in spite of any ignorance of the document's content, providing there has been no misrepresentation.").

Mitman wired LA1 distributions from the Southern Highland and Flamingo property sales with Bentley's authorization. Her actions put her on notice that the proceeds were going to an individual other than Bentley. And Mitman's arguments that LA1 thought the correct contract was with Capital Holdings or Capital Holdings NV are moot as LA1 amended its claims to clarify that it was a member of Flanders LLC. Finally, LA1 correctly points out that it was not required to provide consideration and the original wire transfer of $300,000 was not past consideration. The AOAs were meant to clarify the original transaction and membership shares. *See* 15 Richard A. Lord, *Willison on Contracts*, §8.11 (4th ed. 2014) (explaining that a "subsequent promise[ ] in consideration of some act previously done by the promisee at the request of the promisor" is exempt from the rule against past consideration). Thus, the district court

had substantial evidence before it to find that Mitman is liable for the second breach of contract and breach of fiduciary duty claims. We uphold its findings. *See Sowers*, 129 Nev. at 105, 294 P.3d at 432 ("This court will uphold the factual findings of the district court so long as these findings are not clearly erroneous and are supported by substantial evidence.").

Mitman converted LA1's membership interests in the Flanders Fort Apache Investors, LLC and Flanders MLK Investors, LLC

Mitman contends that LA1 never had a membership interest, much less a property interest, in Flanders Fort Apache or Flanders MLK because it did not execute the AOAs for those properties. Thus, she argues that she is not liable for conversion. LA1 argues it established its membership interest in both Flanders Fort Apache and Flanders MLK because the AOAs provided LA1 with its membership interest which, in turn, makes the distributions from the sales of the property its personal property.

Substantial evidence supports the district court's finding that Mitman converted LA1's membership interest in both MLK and Fort Apache. "Conversion is 'a distinct act of dominion wrongfully exerted over another's personal property in denial of, or inconsistent with his title or rights therein or in derogation, exclusion, or defiance of such title or rights.'" *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 606, 5 P.3d 1043, 1048 (2000) (quoting *Wantz v. Redfield*, 74 Nev. 196, 198, 326 P.2d 413, 414 (1958)). Mitman's justification is that she, in good faith, believed Bentley gave his membership shares to her to extinguish an unrecorded debt that he owed to her. But her assertion does not negate the fact that the AOAs clearly state that LA1 is a member and LA1 was never formally removed as a member. So, even if true, her reason does not constitute a defense, as wrongful intent is not an element of conversion. *See id.* ("Further,

conversion is an act of general intent, which does not require wrongful intent and is not excused by care, good faith, or lack of knowledge."). Accordingly, the record below supports the conclusion that Mitman converted LA1's membership interests.

The economic loss doctrine does not bar LA1's recovery

Mitman also argues that the economic loss doctrine bars LA1's recovery because LA1's entire complaint is based on identical breach of contract and conversion claims. The economic loss doctrine prevents a plaintiff from recovering on an unintentional tort claim for purely economic losses. *Sadler v. PacifiCare of Nev., Inc.*, 130 Nev. 990, 996, 340 P.3d 1264, 1268 (2014). The economic loss doctrine serves to distinguish between contract law and tort law. *Id.*

We conclude that the economic loss doctrine does not bar recovery as LA1's claim of conversion is distinct from its claim of breach of contract as the two claims are based on separate incidents of Mitman's conduct. LA1 bases its claim of breach of contract on Mitman's failure to pay LA1 its membership distribution from the property sale, which the AOAs required her to do. It bases its claim of conversion on Mitman taking the proceeds from the sale for herself. While the economic loss doctrine may bar recovery for tort claims premised on a defendant's breach of contract, it "does not bar recovery in tort where the defendant had a duty imposed by law rather than by contract and where the defendant's intentional breach of that duty caused purely monetary harm to the plaintiff." *Giles v. Gen. Motors Acceptance Corp.*, 494 F.3d 865, 879 (9th Cir. 2007) (analyzing Nevada law); *see also Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135, 734 P.2d 1238, 1240 (1987) (declining to apply the economic loss doctrine to an intentional tort suit even though the parties had a contractual relationship because the tort arose from conduct independent from the breach of

contract). The AOAs required Mitman to deliver a share of the property-sale proceeds to LA1. The law imposed an obligation for her to not convert those proceeds by keeping them herself. Because LA1 premised its claim of conversion on Mitman intentionally and maliciously taking the profits from the sales of the properties, we conclude the economic law doctrine does not apply.

Mitman testified and acknowledged that she took LA1's share of the proceeds from the Fort Apache and MLK properties and her conduct was not merely negligent. Moreover, the district court found that Mitman consciously disregarded LA1's rights, acted with malice in converting LA1's property, lied throughout the trial, and made *another* sale (the MLK sale) during the pendency of the lawsuit before the AOAs had been discovered. It thus properly determined that Mitman both breached the AOAs and committed the tort of conversion. Because the conversion claim is a separate and distinct tort from the breach of contract claim, the district court did not err.[2]

The district court did not err in its findings of fact or conclusions of law

LA1 argues in its cross-appeal that the district court made two erroneous findings of material facts. LA1 points out that the district court incorrectly referred to Flanders Fort Apache when it meant Flanders MLK in paragraph 68 of the amended findings of fact and conclusions of law. It adds that the district court erred in finding that there were no written operating agreements for the Flanders LLCs prior to the amended versions because Mitman produced the original agreements.

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[2]We note that although the district court provides recovery to LA1 on this conversion claim, it does not provide *additional* damages on top of the contract breach.

LA1 does not point out how these factual findings affected the judgment. *See* NRCP 61 (stating that harmless errors are those that do not affect the parties' substantial rights). Nor does it argue that it was prejudiced by the errors. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that we need not consider arguments that the parties fail to cogently argue). Thus, the district court's errors do not provide any basis for relief.[3]

Capital Equities is not liable for conversion

LA1's cross-appeal also argues that Capital Equities converted its proceeds from the Fort Apache sale. Mitman responds that LA1 never demonstrated Capital Equites exerted dominion over LA1's membership interest or converted its interest.

Substantial evidence in the record demonstrated that Capital Equities did not convert LA1's membership interest in Flanders Fort Apache. Although Capital Equities received the proceeds from the sale, it did not retain proceeds from Fort Apache separate and distinct from Mitman's share. Nor does LA1 identify any evidence in the record that Capital Equities exerted any dominion over LA1's membership interests. *See Evans*, 116 Nev. at 606, 5 P.3d at 1048 (noting that conversion requires

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[3]The errors, if any, are immaterial and harmless as the district court discusses Flanders Fort Apache and MLK separately. The error in paragraph 68 is a singular error and is not repeated through the other parts of the district court's findings, as it correctly listed the total damages in various other parts of the judgment. Likewise, the district court's finding that there was no written operating agreement prior to the AOAs for Flanders Fort Apache and Flanders MLK reflects the record below. Despite references to the original operating agreement in the AOAs, the parties only produced an executed copy of the Flanders Flamingo operating agreement. There is no such document in evidence for Flanders Fort Apache or Flanders MLK.

"a distinct act of dominion"). Thus, the district court properly denied LA1's claim for conversion against Capital Equities.

Capital Equities was not unjustly enriched

LA1's cross-appeal argues that Capital Equities was unjustly enriched because it retained LA1's money despite not being a part of Flanders LLC's written agreement. Mitman contends that the district court properly concluded that the profits from the sale of the Southern Highlands property were disbursed, so there was no unjust enrichment.

Unjust enrichment is an equitable remedy where the defendant deprives the plaintiff of money or property "against the fundamental principles of justice or equity and good conscience." *Asphalt Prods. Corp. v. All Star Ready Mix, Inc.*, 111 Nev. 799, 802, 898 P.2d 699, 701 (1995) (quoting *Topaz Mut. Co. v. Marsh*, 108 Nev. 845, 856, 839 P.2d 606, 613 (1992) (other internal citations omitted)). An adequate remedy at law precludes recovery on equitable remedies. *Benson v. State Eng'r*, 131 Nev. 772, 782 n.7, 358 P.3d 221, 228 n.7 (2015).

Because the district court properly found Mitman was liable for breach of contract for improperly withholding LA1's funds from the sale of the Fort Apache and MLK properties, no unjust enrichment claim could lie against either Mitman or Capital Equities for those properties. *Id.* The district court correctly determined that there was only a lack of contract regarding the Southern Highlands property. And because LA1 received its share of proceeds from the sale of Southern Highlands, it could not succeed on an unjust enrichment claim as to that property. As such, LA1's claim that Capital Equities was unjustly enriched based on the AOAs and related disbursements fails. Nor has LA1 shown that Capital Equities, and not Mitman, retained any of LA1's money. Thus, the district court properly denied LA1's claim for unjust enrichment against Capital Equities.

Capital Equities is not Mitman's alter ego

LA1 also argues in its cross-appeal that Capital Equities is Mitman's alter ego because they shared a sufficient unity of interest and ownership. Mitman argues that LA1 is simply citing the elements for alter ego without explaining why Capital Equities should be liable.

NRS 78.747 provides that:

> (2) A person acts as the alter ego of a corporation only if:
>
> (a) The corporation is influenced and governed by the person;
>
> (b) There is such unity of interest and ownership that the corporation and the person are inseparable from each other; and
>
> (c) Adherence to the notion of the corporation being an entity separate from the person would sanction fraud or promote a manifest injustice.

LA1 recites the elements for alter ego liability without citing facts to show why Capital Equities is Mitman's alter ego. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38 (explaining that a party is responsible for cogently arguing its position). Regardless, we conclude that the district court did not err in denying LA1's claim for alter ego because Capital Equities is a separate entity and used for multiple purposes other than the investments that occurred here. Despite Mitman's testimony that she is one and the same as Capital Equities, the record supports that Capital Equities is her brokerage company used for multiple other purposes such that it is not inseparable from Mitman. *See* NRS 78.747(2)(b). Thus, LA1 failed to show that recognizing the distinction between Capital Equities and Mitman "would sanction fraud or promote a manifest injustice." NRS 78.747(2)(c).

The punitive damages award is appropriate and supported by substantial evidence

Mitman argues that punitive damages were not warranted because she did not intend to injure LA1 or act with conscious disregard of its rights. Mitman also contends that the punitive damages award was excessive since her conduct was not greatly reprehensible. LA1 argues that Mitman had clear knowledge of the identity of LA1's managing members, made conscious decisions to refuse to provide information to LA1 regarding the properties, refused to pay LA1 its share by claiming it was money owed to her by Bentley, continued to withhold documents throughout the litigation, and testified falsely during trial. LA1 adds that Mitman was not merely negligent, because she continuously misrepresented the Flanders MLK ownership interests and concealed the sale even during the lawsuit.

NRS 42.005 authorizes a punitive award "upon a showing of fraud, oppression or malice by clear and convincing evidence." *Wichinsky v. Mosa*, 109 Nev. 84, 89, 847 P.2d 727, 730 (1993). In this context, malice is defined as "conduct which is intended to injure a person or despicable conduct which is engaged in with a conscious disregard of the rights . . . of others." NRS 42.001(3). To make sure that a punitive damages award is not "grossly excessive or arbitrary" as prohibited by the Fourteenth Amendment's Due Process Clause, this court has adopted the United States Supreme Court's three-prong standard for evaluating whether a punitive damages award is excessive. *Bongiovi v. Sullivan*, 122 Nev. 556, 582-83, 138 P.3d 433, 451-52 (2006) (citing *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 416-18 (2003)). We consider "(1) the degree of reprehensibility of the defendant's conduct, (2) the ratio of the punitive damage award to the actual harm inflicted on the plaintiff, and (3) how the

punitive damages award compares to other civil or criminal penalties that could be imposed for comparable misconduct." *Id.* (cleaned up).

As a threshold matter, the district court's findings that Mitman acted with malice and in conscious disregard of LA1's rights are supported by clear and convincing evidence as discussed above. *See Evans*, 116 Nev. at 612, 5 P.3d at 1052 ("This court will not overturn an award of punitive damages supported by substantial clear and convincing evidence of malice.").

The punitive award also passes the tripartite test for excessiveness. First, Mitman's conduct was reprehensible because of her conscious disregard and malice for LA1's membership share. She sold the MLK property during the pendency of this matter and continued to lie about the distribution, all while knowing the AOAs, and LA1's rights thereunder, were being actively litigated. Second, the amount of the award is appropriate, as the district court awarded a 1:1 ratio of actual to punitive damages, which we do not consider excessive here. The statutory limit provides a maximum 3:1 ratio for awards of $100,000 or more. NRS 42.005(1)(a); *Bongiovi*, 122 Nev. at 583, 138 P.3d at 452 (approving of a punitive damages award in the same amount as compensatory damages and noting that such was within statutory limits). Third, the punitive award in this case is comparable to other civil penalties that could be imposed for comparable misconduct. *See, e.g.*, *Bongiovi*, 122 Nev. at 583 (awarding $250,000 in punitive damages for malicious conduct). Thus, the punitive damages awarded is supported by clear and convincing evidence of malice and it does not violate Mitman's due process rights.

The district court did not abuse its discretion in denying LA1's requests for attorney fees

LA1 argues that it is entitled to attorney fees under NRS 18.010(2)(b) and NRCP 68. An award of attorney fees is generally reviewed for an abuse of discretion. *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 82, 319 P.3d 606, 616 (2014).

LA1 is not entitled to attorney fees under NRS 18.010(2)(b)

LA1 contends that the district court improperly denied its motion for attorney fees. LA1 points out that the fourth claim in its original complaint was for conversion against Mitman for the proceeds from the Fort Apache sale—a claim on which it prevailed. Mitman responds that the district court properly denied LA1's request for attorney fees because she was not liable for any of the claims LA1 raised prior to 2020, when LA1 filed its fourth amended complaint. As relevant here, NRS 18.010(2)(b) permits the district court to allow attorney fees to the prevailing party if the "defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party." We have previously held that "[f]or the purposes of NRS 18.010(2)(b), a claim is frivolous or groundless if there is no credible evidence to support it." *Rodriguez v. Primadonna Co.*, 125 Nev. 578, 588, 216 P.3d 793, 800 (2009).

LA1 fails to demonstrate that Mitman's defenses were frivolous or groundless. First, LA1 mischaracterizes the district court's position as having found that Mitman prevailed on the causes of action it brought in its original complaint. The district court did no such thing. Instead, it found that Mitman's defenses to those claims were nonfrivolous. It was correct to do so. LA1's claim of conversion changed in substance between its original complaint and its fourth amended complaint, so Mitman's defenses to the claims from the original complaint could not have been frivolous—she

forced LA1 to restate its claim with different predicate facts and against different parties.

Second, LA1 alleges that Mitman concealed documents, failed to disclose discoverable information, and filed improper motions. But it fails to demonstrate how the district court abused its discretion in determining that Mitman's defenses were nonfrivolous. "Under NRS 18.010(2)(b), we consider whether the claim pursued by the losing party against the prevailing party was based on reasonable grounds." *Id.*, 125 Nev. at 588, 216 P.3d at 800-01. LA1's arguments address Mitman's litigation conduct but not the elements of her defenses. It fails to explain how the methods Mitman used in conducting her defense bear on the merits of her defense. Frivolous litigation conduct differs from frivolous assertion of a claim or defense; this is evident from the fact that Mitman *succeeded* on some of her defenses, including her defenses to the claims raised by LA1 in its first two complaints, despite her improper tactics. *See Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1354, 971 P.2d 383, 387 (1998) (explaining that a party's success at trial undermines the argument that its claim was frivolous for purposes of attorney fees under NRS 18.010(2)(b)). The remedy for improper litigation conduct would be a motion for sanctions, not a motion for attorney fees premised on the assertion of frivolous defenses. Because LA1 fails to identify any evidence suggesting that Mitman's defenses were frivolous, its arguments of error lack merit, and it is not entitled to attorney fees under NRS 18.010(2)(b).

LA1 is not entitled to attorney fees under NRCP 68(f)

LA1 made an unapportioned offer of judgment to Mitman, Capital Holdings, LLC, and the Flanders MLK investors in 2018. It now argues that since it obtained a more favorable judgment against Mitman than it offered to her, it should be entitled to attorney fees under NRCP

68(f). It observes that Mitman's defenses were not brought in good faith and that it prevailed on its conversion claim it asserted in its second amended complaint (the operative complaint at the time LA1 extended its offer of judgment). Mitman argues that the district court properly denied LA1's request for attorney fees because, at the time LA1 extended its offer of judgment, Flanders MLK was not a party to the case and the causes of action for which Mitman and Flanders MLK were held liable did not exist.

NRCP 68 allows a party to "serve an offer in writing to allow judgment to be taken in accordance with its terms and conditions" in an attempt to resolve the action "[a]t any time more than 21 days before trial." NRCP 68(a). An offer pursuant to this rule is only available for fourteen days, NRCP 68(d)(1), or "it will be considered rejected by the offeree and deemed withdrawn by the offeror." NRCP 68(e). NRCP 68(f) permits a penalty for rejecting an offer of judgment if the offeree later "fails to obtain a more favorable judgment" at trial. As is relevant to this case, an offeree who rejects an offer of judgment and does not obtain a more favorable judgment later "must pay the offeror's post-offer costs and expenses," including expert witness fees and "applicable interest on the judgment from the time of the offer to the time of entry of the judgment," as well as reasonable attorney fees and costs "incurred from the time of the offer." NRCP 68(f)(1)(B).

While LA1 claims that the second amended complaint was the operative complaint, the district court correctly recognized that the second amended complaint was not filed until after the offer of judgment expired; therefore, the first amended complaint was the operative complaint for purposes of analyzing LA1's offer. Flanders MLK was not added as a party until LA1 filed its second amended complaint. It is unclear how LA1

thought it could extend an offer of judgment to Flanders MLK prior to adding Flanders MLK as a defendant. That procedural deficiency spoils LA1's offer of judgment with respect to Flanders MLK. *See* NRCP 68(a) (stating that an offer of judgment "is an offer to resolve all claims in the action *between the parties* to the date of the offer") (emphasis added). An offer of judgment can only bind parties to a lawsuit, and Flanders MLK was not a party at the time LA1 extended its offer.

Second, LA1 did not obtain a favorable judgment against Capital Holdings: it only prevailed on claims against Mitman individually. Neither party addressed NRCP 68(c)(2)'s requirements, despite the district court having addressed the rule in part below, but we now clarify that the requirements must be demonstrated before a party can recover attorney fees based on an unapportioned offer of judgment to multiple defendants. LA1 could not therefore meet NRCP 68(c)(2)'s requirements to obtain attorney fees and the district court had no need to reach the *Beattie* factors.[4] LA1 did not prove any common theory of liability against Mitman and Capital Holdings, so it did not meet the requirements of NRCP 68(c)(2)(A). *RTTC Comms., LLC v. Saratoga Flier, Inc.*, 121 Nev. 34, 42, 110 P.3d 24, 29 (2005). The rule creates two requirements a party seeking attorney fees based on an unapportioned offer of judgment to multiple defendants must show: first, it must demonstrate a single common theory of liability against the offerees; and second, it demonstrate that the offerees shared an entity capable of authorizing settlement. NRCP 68(c)(2). The district court found

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[4]The district court addressed NRCP 68(c)(2) but moved on to the *Beattie* factors prior to determining whether the rule was satisfied. We may affirm the district court on any ground supported by the record, even if not relied upon by the district court. *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010).

that Capital Holdings was a sham defendant and that LA1 failed to prove any theory of liability involving both Mitman and Capital Holdings. It further found that LA1 failed to prove that Capital Holdings and Mitman shared any agent or entity capable of authorizing settlement. Because LA1 cannot demonstrate either unity of liability or unity of settlement authority, much less both factors, it cannot meet NRCP 68(c)(2)'s requirements to invoke attorney fees.

This result also conforms to the purpose of NRCP 68. That purpose "is to encourage settlement," and the conditions of NRCP 68(c)(2) "assuage the concerns that joint unapportioned offers of judgment do not encourage settlement, since such offers are only allowed in circumstances where that purpose can be served." *RTTC Comms*, 121 Nev. at 42, 110 P.3d at 29. Where, as here, the offerees do not share some basis for liability to the offeror, then the offer of judgment serves no purpose. Its aim is to encourage the parties to "resolve all claims in the action," NRCP 68(a), and if extended to a party without a cogent theory of liability against that party (i.e., Capital Holdings), the offer cannot properly encourage settlement.

Even if LA1 had met NRCP 68(c)(2)'s requirements, the district court did not err in applying the *Beattie* factors to deny LA1's request. In *Beattie v. Thomas*, this court explained that when a district court exercises its discretion whether to award fees and costs to a prevailing offeror under NRCP 68, the trial court must carefully evaluate four factors. 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983). First, whether the claims were brought in good faith. *Id.* at 588, 668 P.2d at 274. Second, whether the "offer of judgment was reasonable and in good faith in both its timing and amount." *Id.* Third, whether the "decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith." *Id.* at 589, 668 P.2d at 274. And,

lastly whether the fees sought "are reasonable and justified in amount." *Id.* In considering this fourth factor, we have further instructed courts to "consider the *Brunzell* factors."[5] *Gunderson*, 130 Nev. at 81, 319 P.3d at 615-16.

The district court walked through the *Beattie* factors. *See Wynn v. Smith*, 117 Nev. 6, 13, 16 P.3d 424, 428-29 (2001) (providing that as long as "the record clearly reflects that the district court properly considered the *Beattie* factors, we will defer to its discretion"). The district court reiterated its findings that Mitman's defenses were brought in good faith, that the offer was reasonable, and that Mitman's rejection of the offer was not grossly unreasonable or in bad faith. Finally, the district court then declined to consider whether the fees sought were reasonable and justified, citing *Frazier v. Drake,* 131 Nev. 632, 644, 357 P.3d 365, 373 (Nev. Ct. App. 2015), since two of the three factors weighed in Mitman's favor.

LA1 now contends that the district court erred in finding that Mitman's defenses were brought in good faith because it also found that Mitman acted with malice in converting the proceeds from the property sale. But it cites no authority for the proposition—and we are aware of none, either—stating that one's intent when committing a tort is relevant to whether their defense to that claim is brought in good faith. Mitman's malice in committing conversion is distinct from whether she brought her defense to the claim in good faith. Without further reason to disturb the district court's findings regarding the *Beattie* factors, we affirm the district court's denial of attorney fees under NRCP 68.

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[5]*See Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) (listing factors the district court should weigh when considering whether requested attorney fees are reasonable and justified).

The district court lacked jurisdiction to amend the judgment to include prejudgment interest

LA1 asserts that it is entitled to an award of prejudgment interest. But by the time it moved to amend the judgment to include prejudgment interest, Mitman had already appealed from the district court's final judgment. At that point, the district court lost jurisdiction over the judgment. *See Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529 (2006) (stating that a timely filing of a notice of appeal divests the district court of jurisdiction to act). Because LA1's motion sought to amend a judgment that had already been appealed, the district court lacked jurisdiction to amend the judgment. While the district court ended up declining to entertain the merits of LA1's motion on other grounds, we "affirm the district court if it reaches the right result, even when it does so for the wrong reason." *Las Vegas Convention & Visitors Authority v. Miller*, 124 Nev. 669, 689 n.58, 191 P.3d 1138, 1151 n.58 (2008). We therefore affirm the district court's decision to decline, at that time, to entertain LA1's request to amend the judgment to include prejudgment interest.[6]

LA1 is not entitled to fees pursuant to NRAP 38 for this appeal

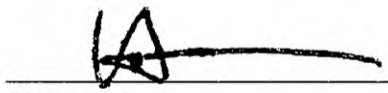
LA1 argues that it is entitled to attorney fees for this appeal because Mitman's arguments are without merit and inconsistent with the district court's factual findings. However, LA1 has not shown Mitman's appeal was frivolous. *See* NRAP 38(a) (permitting this court to impose monetary sanctions if the appeal is frivolous). LA1's argument is one sentence long and conclusory. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38 (stating that we need not consider claims that were not

[6]We note that LA1 may request prejudgment interest before the district court once that court reacquires jurisdiction over the judgment.

cogently argued). This court has not awarded NRAP 38 sanctions prior to completing briefing or its consideration of the case. Thus, LA1's request is premature and even then, it has not shown that Mitman appealed in bad faith or frivolously.

Accordingly, we:

ORDER the judgment of the district court AFFIRMED.



_____, J.
Herndon

_____, J.
Lee

_____, J.
Parraguirre

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Lansford W. Levitt, Settlement Judge
Albright Stoddard Warnick & Albright
Miller Shah, LLP/Philadelphia
Miller Shah, LLP/San Francisco
Law Office of Justin Patrick Stovall
Eighth District Court Clerk