

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ELAD GROSS, AN INDIVIDUAL,
Appellant,
vs.
YANIV GROSS, AN INDIVIDUAL,
Respondent.

ELAD GROSS, AN INDIVIDUAL,
Appellant,
vs.
YANIV GROSS, AN INDIVIDUAL,
Respondent.

No. 82336 COA

FILED

JAN 30 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

No. 83646-COA

ORDER OF AFFIRMANCE

Elad Gross appeals from a final judgment following a bench trial in a partnership and contract action and from a district court order awarding costs to respondent Yaniv Gross. Eighth Judicial District Court, Clark County; Gloria Sturman, Judge.

Elad and Yaniv, who are brothers, formed a partnership that initially involved the retail sale of magic kits and related products at mall kiosks in Nevada and California. The partnership expanded to include a wholesale business for distribution of magic products and related products. Both partners utilized partnership accounts for business and for various personal expenses.

Elad and Yaniv later agreed to expand the focus of their partnership to real estate investment. In furtherance of that decision, in 2011 they utilized partnership funds and additional funding contributed by family members to purchase a residential property for \$118,953.80 with the

intention of later renting it out. The partners agreed to title the residential property in Yaniv's name. The residential property needed extensive renovations and they agreed that Elad would perform those renovations and purchase materials with the use of partnership funds. Elad and his wife eventually moved into the residential property to save money while he worked on the renovations and Elad spent some of his personal funds on the renovations.

After the purchase of the residential property, the partnership's magic business became less successful. In addition, Elad's renovations ran over budget and were performed without permits. In 2012, Elad and Yaniv agreed to begin winding up their partnership. They also agreed that Elad and his wife would manage the winding up of the magic businesses until the completion of the dissolution of Elad and Yaniv's partnership and that they would continue to share profits during the winding-up period.

In 2013, Elad directed his wife to draft a check drawn from the partnership bank account to reimburse her for \$4,089. Elad also directed his wife to sign the check in Yaniv's name. Yaniv had not authorized the payment and he placed a hold on the bank account, leaving Elad without reasonable access to the partnership funds. Yaniv subsequently moved the partnership funds to new bank accounts that were solely under his control and limited Elad's access and control of partnership assets. Elad also created new bank accounts that were solely under his control in order to accept funds earned from various mall kiosks. Elad also signed new lease agreements for several kiosks and utilized the partnership name and assets in so doing. And, rather than winding up the partnership as he had previously agreed, Elad ran the magic kiosk business until 2019 but did not distribute profits to Yaniv.

Also in 2013, Yaniv evicted Elad from the residential property. The utilities and property taxes were both in Yaniv's name and Elad had stopped the payments for both of those accounts. After Yaniv took possession of the property, he discovered that the property was in a total state of disrepair, as unpermitted work had been performed and that work had caused serious safety problems. Moreover, a structure had been erected on the property in violation of the setback requirements. Yaniv soon discovered that the property was in such a state that it was uninhabitable and uninsurable, and that the potential fixes for the issues would require substantial expense.

Yaniv subsequently filed an action alleging breach of contract, breach of the implied covenant of good faith and fair dealing, quantum meruit/promissory estoppel, unjust enrichment, intentional interference with contract or prospective business advantage, and alter ego. Yaniv contended he was entitled to lost profits related to the magic business, damages related to the residence renovation, and damages from lost rents stemming from the uninhabitable nature of the residence. Yaniv also sought declaratory relief concerning the partnership assets and for dissolution of the partnership. Elad answered and pursued several counterclaims alleging that he was entitled to damages stemming from Yaniv's decision to deny him access to the partnership bank account and his contribution to the purchase of the residence and its care. Elad also recorded a notice of lis pendens against the residential property.

The parties engaged in extensive motion practice and, as relevant to this matter, the district court determined that Elad did not pursue a claim of quiet title as to the property and that he was only able to pursue monetary damages related to the property.

This matter subsequently proceeded to a bench trial. Multiple experts testified concerning the state of the residence and the extensive nature of the repairs it would require to be habitable. In addition, the district court admitted receipts for Elad's renovation expenses. Yaniv's experts also testified as to the amount of rent that the partnership could have received had the property been habitable and calculated that from 2012 through 2018, the property could have generated \$159,165 in rental income.

Yaniv also presented testimony from a forensic accountant regarding Yaniv's lost profits. The forensic accountant testified that he reviewed more than 22,000 transactions from the partnership bank accounts and assessed whether the expenses were for business or personal purposes in an effort to ascertain whether Yaniv was owed additional profits. The forensic accountant testified that he utilized available records concerning the revenues collected by the partnership from 2013 to 2019 but had to make some assumptions because some relevant records were not available to him. Additionally, the forensic accountant determined that Yaniv was owed more than \$1,000,000 from the retail kiosk business. The forensic accountant also testified that he reviewed records related to the wholesale business and concluded that Yaniv was owed an additional \$55,857.

In addition, both Yaniv and Elad testified concerning their partnership, management of their businesses, and use of funds from the partnership bank accounts. Elad testified that the three mall kiosks he oversaw could generate approximately \$30,000 in revenue per month. Elad also testified concerning his efforts to renovate the residential property and acknowledged that he was the party that performed those renovations.

Finally, several employees that were employed by Elad testified at trial. They testified concerning the operation of the kiosks and the magic business, including average revenues. And one employee testified that in 2013, Elad directed him to tell Yaniv that all of the employees had been fired and that the business had ceased operations, but those statements were not truthful.

After the trial, the district court entered a written order finding that both Elad and Yaniv breached the duties owed to one another and were thus liable for the resulting damages.

The district court found that Elad improperly declined to wind up the partnership and took partnership opportunities for himself. In addition, the court found that Elad utilized partnership intellectual property, kiosk locations, and good will in violation of the partnership agreement. The court also found that Elad's renovations to the residential property constituted waste and that the resulting damage required extensive repairs.

The district court also found that Yaniv improperly deprived Elad from access to the partnership bank account, improperly opened new partnership bank accounts, and improperly denied Elad access to partnership assets in violation of their partnership agreement.

The district court concluded that Yaniv was entitled to the following in damages: \$55,857 in lost profits from the wholesale business, \$80,000 in lost rental income for the residential property, and \$100,000 due to the cost to repair the residential property. In addition, the court noted that Yaniv's forensic accountant utilized some unsupported assumptions when it calculated Yaniv's post-2013 lost profits but it ultimately found, based on the evidence presented at trial, that Yaniv was owed \$330,000

from product sales stemming from Elad's post-2013 operation of the partnership.

The district court also concluded that Elad was entitled to the following in damages: \$50,000 based on the loss of access to the partnership bank account and Elad's interest in the residential property, \$60,000 in partnership and family funds contributed to the purchase of the residential property, \$80,000 in lost rental income for the residential property, and \$21,000 in personal funds spent on renovation of the residential property. The district court offset the damages awards and entered judgment in favor of Yaniv in the amount of \$354,857.

In addition, the district court ordered the dissolution of the partnership. It also found that the residential property belonged to the partnership but that Yaniv should have sole possession of the property and it therefore quieted title in favor of Yaniv and dissolved the *lis pendens*.

As the prevailing party, Yaniv subsequently sought allowable costs pursuant to NRS 18.020 and filed a memorandum of costs. Elad opposed Yaniv's requested costs, but the district court ultimately awarded Yaniv costs in the amount of \$64,910. These appeals followed.

On appeal, Elad argues that the district court abused its discretion when awarding damages and apportioning partnership property. Elad also requests an order directing the court to retax costs should he receive relief concerning any of his underlying arguments raised on appeal.

After a bench trial, we review a district court's legal conclusions *de novo* and uphold the district court's factual findings as long as they are supported by substantial evidence. *Vegas United Inv. Series 105, Inc. v. Celtic Bank Corp.*, 135 Nev. 456, 458-59, 453 P.3d 1229, 1231 (2019). Moreover, a district court's award of compensatory damages is reviewed for

abuse of discretion, *Diamond Enters., Inc. v. Lau*, 113 Nev. 1376, 1379, 951 P.2d 73, 74 (1997), and will be affirmed if it is supported by substantial evidence, *Wyeth v. Rowatt*, 126 Nev. 446, 470, 244 P.3d 765, 782 (2010). “Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion.” *Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (internal quotation marks omitted). Substantial evidence does not require “mathematical exactitude, but there must be an evidentiary basis for determining a reasonably accurate amount of damages.” *Mort Wallin of Lake Tahoe, Inc. v. Commercial Cabinet Co.*, 105 Nev. 855, 857, 784 P.2d 954, 955 (1989). When reviewing a damages award, “all favorable inferences must be drawn in favor of the prevailing party.” *Rd. & Highway Builders, LLC v. N. Nev. Rebar, Inc.*, 128 Nev. 384, 391, 284 P.3d 377, 382 (2012). This court is not at liberty to reweigh the evidence or the district court’s credibility determinations on appeal. *Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 366, 212 P.3d 1068, 1080 (2009).

“Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner’s share of the profits.” NRS 87.4333(2). During the winding up of a partnership, each partner is entitled to distribution of any surplus cash available after payment to creditors and to a settlement of all partnership accounts. NRS 87.4357(1), (2). Further, NRS 87.4336 provides that a partner owes a duty of loyalty and care to the other partners and to the partnership. And a partner may bring an action to enforce his or her rights under the partnership agreement. *See* NRS 87.4337(2)(a), (b). Moreover, when a partner initiates the dissolution of a partnership, the

partnership “continues until the winding up of partnership affairs is completed.” NRS 87.300.

First, Elad argues that the district court erred by awarding damages to Yaniv after it found that Yaniv breached the partnership agreement. Elad contends that he was the non-breaching partner and thus entitled to continue the partnership and retain profits after Yaniv dissociated, and that the court’s findings as to damages owed to Yaniv related to lost profits were without basis. Elad also appears to allege that the partnership ceased operations and he was entitled to operate his own business separate from Yaniv.

Elad’s argument is misplaced. The district court did not find that Elad was a non-breaching partner but instead specifically found that he breached the partnership agreement. At trial, testimony demonstrated that Elad and Yaniv mutually agreed to wind up the partnership businesses and to share profits during the winding-up period. However, rather than winding up those businesses, Elad for years utilized partnership intellectual property and assets to generate significant profits. And Elad did not provide Yaniv with a share of those profits and instead misled Yaniv as to the status of the partnership businesses. Because the winding up of the partnership was not completed, Elad did not actually start a separate business but instead continued the partnership without providing compensation to Yaniv. *See* NRS 87.300. In addition, the district court specifically found that Elad refused to participate in the winding-up process and he usurped partnership property and opportunities in violation of the partnership agreement. Moreover, because the winding-up process had not been completed and the partnership had not actually been dissolved prior to trial, the district court granted Yaniv’s request for declaratory relief and

ordered the dissolution of the partnership. *See* NRS 87.320(1)(d) (providing for a district court ordered dissolution of a partnership when “[a] partner willfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself or herself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with the partner”).

The district court therefore found that Elad breached the partnership agreement and that Yaniv was entitled to damages for that breach. And, based on the testimony concerning the profits Elad generated during that time period, the district court found that Yaniv was entitled to \$330,000 for his share of those profits. In addition, the district court found that testimony concerning Yaniv’s lost profits from the wholesale business was accurate and the district court therefore found that Yaniv was entitled to \$55,857 in lost profits from the wholesale business.

Pursuant to NRS 87.300, the partnership should have continued until the winding up of the partnership businesses was completed. Elad instead improperly misled Yaniv as to the status of the partnership businesses and he improperly failed to pay Yaniv an appropriate share of the profits. In addition, the testimony presented concerning the partnership profits provided an evidentiary basis for determining a reasonably accurate amount of damages owed to Yaniv. The district court’s findings as to lost profits owed to Yaniv were thus supported by substantial evidence, and we conclude that Elad fails to demonstrate the district court abused its discretion. *See Diamond Enters., Inc.*, 113 Nev. at 1379, 951 P.2d at 74; *Wyeth*, 126 Nev. at 470, 244 P.3d at 782. To the extent Elad also argued that he completed the winding-up process and started a new company, the district court’s findings to the contrary are also supported

by the record. *See Vegas United Inv. Series 105, Inc.*, 135 Nev. at 458-59, 453 P.3d at 1231. Therefore, Elad is not entitled to relief based on this claim.

Second, Elad argues that the district court abused its discretion by awarding the residential property to Yaniv without accounting for appreciation and profits. Elad also appears to argue that the district court should have found that he was a co-owner of the property along with Yaniv and was thus entitled to share in the title to the property.

Elad's argument lacks merit. The court made specific findings as to the value of the property and the partnership's lost profits. The court's order specifically accounted for the value of the property, finding that the renovations performed by Elad left it in a state of disrepair and needing a substantial amount of work to make it habitable. Moreover, the court awarded Elad damages related to the partnership payments toward the purchase of the property and the personal funds he expended on the renovation of the property. Finally, the court specifically found that Elad was entitled to his share of the lost profits for the property from the rental income the partnership was unable to earn because the property was uninhabitable.

Moreover, in a pretrial order, the court specifically found that Elad had not pleaded a counterclaim of quiet title to the residential property and he had not otherwise sought title to the residential property, *see Chapman v. Deutsche Bank Nat'l Tr. Co.*, 129 Nev. 314, 318, 302 P.3d 1103, 1106 (2013) ("A plea to quiet title does not require any particular elements, but each party must plead and prove his or her own claim to the property in question and a plaintiff's right to relief therefore depends on superiority of title." (internal quotation marks omitted)), and Elad does not challenge

that decision on appeal. And, during trial, the court explained that Elad only sought monetary damages relating to the property and did not seek an ownership interest. Following the conclusion of trial, the court found that the title to the residential property had been placed in Yaniv's name due to an agreement by both partners, and it ultimately quieted title in Yaniv's favor.

The district court's findings concerning the title to the residential property and damages related to the lost rental profits from the property were supported by the record. *See Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 669, 918 P.2d 314, 318 (1996) (noting a party bears the burden of proving good title in itself and "there is a presumption in favor of the record titleholder"), *abrogated on other grounds by Delgado v. Am. Family Ins. Grp.*, 125 Nev. 564, 570, 217 P.3d 563, 567 (2009), *as recognized by In re Frei Irrevocable Tr.*, 133 Nev. 50, 56 n.8, 390 P.3d 646, 652 n.8 (2017); *Rd. & Highway Builders*, 128 Nev. at 392, 284 P.3d at 382 (approving of "awards for lost profits or expectancy damages").

And, because the district court's findings were supported by substantial evidence, we conclude that Elad fails to demonstrate the court abused its discretion. *See Diamond Enters., Inc.*, 113 Nev. at 1379, 951 P.2d at 74; *Wyeth*, 126 Nev. at 470, 244 P.3d at 782. Therefore, Elad is not entitled to relief based on this claim.

Third, Elad argues that the district court erred by awarding damages for repair of the residential property because there was insufficient evidence as to the state of the property when the partnership purchased it as compared to the state of the property following Elad's renovations.

Elad testified at length as to the state of the property prior to the initiation of his renovations. In particular, Elad testified that there were problems with the roof, the framing, plumbing, electricity, walls, insulation, and that the home lacked a working bathroom or kitchen. Yaniv also testified that when the partnership purchased the property, it was impaired and needed renovations. And both Elad and Yaniv testified that Elad undertook the task of renovating the property. Elad provided lengthy testimony concerning his renovation efforts. Finally, several experts testified as to the renovations and explained that, in their opinions, the renovations were of such poor quality that substantial expense would be needed to correct them.

The district court found that the property was in a state of distress when the partnership purchased it, that Elad attempted to renovate the property, and that Elad's renovations were of such poor quality that it would cost an additional \$100,000 to correct them. The district court's findings concerning damages based on the repair costs for the residential property were supported by substantial evidence, and we conclude that Elad fails to demonstrate the district court abused its discretion. *See Diamond Enters., Inc.*, 113 Nev. at 1379, 951 P.2d at 74; *Wyeth*, 126 Nev. at 470, 244 P.3d at 782. Therefore, Elad is not entitled to relief based on this claim.

Fourth, Elad argues that the district court erred by awarding lost rental profits to Yaniv. Elad contends that such an award was improper because Yaniv was in possession and control of the residential property during the time period for which the award accounted for the lost rental profits.

“It is clear that when [a] plaintiff . . . is prevented from performing the balance of the term of his contract, lost profits are generally an appropriate measure of damages so long as the evidence provides a basis for determining, with reasonable certainty, what the profits would have been had the contract not been breached.” *Eaton v. J. H. Inc.*, 94 Nev. 446, 450, 581 P.2d 14, 17 (1978).


Yaniv testified that the partnership purchased the residential property for investment purposes and to earn rental income. And both Yaniv and Elad testified they agreed for Elad to complete renovation of the property so as to make it habitable. Multiple witnesses testified to the state of the property after Elad was evicted and explained that it was in such a poor state that it was not habitable and required expensive repairs before anyone could safely reside in the property. Yaniv also testified that the state of disrepair rendered the property uninsurable. Moreover, Yaniv testified that the status of the property made him unable to secure a loan against it or otherwise secure the funds necessary to fix the property so as to make it habitable and rentable. In addition, a forensic accountant testified that, if the property had been renovated in such a manner that would have permitted it to be rented, the partnership would have received \$159,165 in rental income from 2012 to 2018.

The district court found that the poor quality of Elad’s renovations resulted in substantial damage to the property and that it was in such a state of disrepair that it was uninhabitable. And, because the property was uninhabitable and Yaniv did not have ability to secure the financing to pay for the necessary repairs, Yaniv was therefore unable to rent the residential property after he took possession of it. Thus, the partnership was unable to earn rental income from the residential property

as a result of Elad's actions and the partnership lost profits in the amount of \$160,000. As Yaniv was entitled to 50 percent of the partnership's lost profits, the court awarded Yaniv \$80,000 in damages due to lost rental income. The district court's findings concerning lost-profit damages were supported by substantial evidence, and we conclude that Elad fails to demonstrate the court abused its discretion. *See Diamond Enters., Inc.*, 113 Nev. at 1379, 951 P.2d at 74; *Wyeth*, 126 Nev. at 470, 244 P.3d at 782. Therefore, Elad is not entitled to relief based on this claim.

Finally, Elad requests this court to direct the district court to retax costs if it finds that any of his underlying arguments have merit. However, as previously explained, we have concluded that none of Elad's underlying arguments are meritorious. Thus, we reject Elad's request to direct the district court to retax costs.

Having concluded that Elad is not entitled to relief, we
ORDER the judgments of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Gloria Sturman, District Judge
Dana Jonathon Nitz, Settlement Judge
Mincin Law, PLLC
Assly Sayyar, Attorney at Law, Inc.
Kravitz Schnitzer Johnson Watson & Zeppenfeld, Chtd.
Jones Lovelock
Eighth District Court Clerk