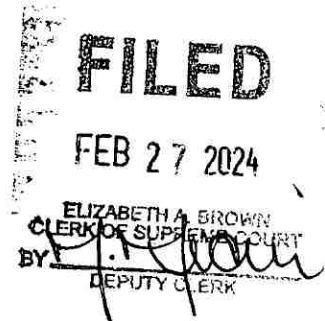


IN THE SUPREME COURT OF THE STATE OF NEVADA

NATHANIAL TERRY,  
Appellant,  
vs.  
LAMONT'S WILD WEST BUFFALO,  
LLC,  
Respondent.

No. 84617



*ORDER OF AFFIRMANCE*

This is an appeal from a final judgment following a bench trial in a contract action. Eighth Judicial District Court, Clark County; Nadia Krall, Judge.

In early October 2017, Nathaniel Terry responded to an advertisement for the purchase of buffalo<sup>1</sup> that LaMont's Wild West Buffalo, LLC, placed on a sales bulletin. Terry discovered that LaMont's also owned some white buffalo, and he negotiated for their purchase as well. This initiated a business relationship between LaMont's and Terry.

The parties met in person for the first time on October 23, 2017, in Las Vegas at two separate locations: Tahiti Village and T-Bone Chophouse. LaMont's was represented by its owners. The meetings were both social and business related. During one of the meetings, LaMont's offered to help facilitate the purchase of more buffalo on Terry's behalf, but

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<sup>1</sup>In their briefing, the parties use the terms "bison" and "buffalo" interchangeably. In this order, we use only the term "buffalo" to maintain consistency.

no writings memorialized the discussion. From about late-October to December, LaMont's coordinated Terry's purchase of more than 400 buffalo from various sellers. The total purchase price of the buffalo amounted to more than two-million dollars. In addition to coordinating these purchases, representatives of LaMont's also traveled to scout buffalo, attended the Custer buffalo auction and bid on Terry's behalf, and even personally transported some of the buffalo purchased for Terry to his ranch.

The parties met again in Las Vegas on December 15, 2017, to attend the National Finals Rodeo together. The next morning over breakfast, the parties had a discussion and handshake agreement that Terry would owe LaMont's a "fair finder's fee" for its service as an order-buyer. In January 2018, the final orders were delivered to Terry's ranch, but LaMont's received no follow up communication. Thereafter, LaMont's sent an invoice for its finder's fee in March 2018, but Terry never paid, and LaMont's never heard from Terry again.

In August 2019, LaMont's filed suit against Terry for breach of contract, breach of the implied covenant of good faith and fair dealing, quantum meruit, unjust enrichment, promissory estoppel, and fraudulent misrepresentation. The claim for fraudulent misrepresentation was dismissed, and the remaining claims went to trial. After a three-day bench trial, the district court found that a contract existed, Terry had breached it, and even if no contract existed, LaMont's could have recovered on its alternative equitable claims. The district court awarded LaMont's \$88,083.28 in damages and prejudgment interest. Terry now appeals the final judgment, arguing that the district court clearly erred in (1) finding the existence of a contract and that he breached it, (2) finding that LaMont's could recover on alternative theories of liability (quantum meruit, unjust

enrichment, and promissory estoppel), and (3) awarding damages without an evidentiary basis.<sup>2</sup>

*The district court did not err in finding that an oral contract existed*

Terry argues that the district court's finding that a contract existed was clearly erroneous because there was not substantial evidence of an intent to contract. We disagree.

The existence of a contract is a question of fact, and we defer to such findings unless they are clearly erroneous, meaning no evidence supports them, or they are not supported by substantial evidence. *May v. Anderson*, 121 Nev. 668, 672-73, 119 P.3d 1254, 1257 (2005); *see also Pink v. Busch*, 100 Nev. 684, 688, 691 P.2d 456, 459 (1984) ("Where there is no evidence in support of the lower court's findings, they are clearly erroneous and may be reversed."). Substantial evidence is that which a reasonable mind would accept as adequate to support a conclusion. *Whitemaine v. Aniskovich*, 124 Nev. 302, 308, 183 P.3d 137, 141 (2008). When conflicting testimony is presented below, we defer to the district court's findings almost exclusively as they are in the best position to determine a party's credibility. *See, e.g., Barelli v. Barelli*, 113 Nev. 873, 881, 944 P.2d 246, 250 (1997) ("Because there is conflicting evidence in the record regarding whether there was an oral agreement, we will not disturb the district court's finding that none existed."); *Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007) ("We

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<sup>2</sup>We decline to address LaMont's judicial estoppel argument because it was waived for failure to raise the issue below. "A point not urged in the trial court . . . is deemed to have been waived . . ." *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

leave witness credibility determinations to the district court and will not reweigh credibility on appeal.”).

A contract is formed through offer, acceptance, mutual assent, and consideration. *May*, 121 Nev. at 672, 119 P.3d at 1257. Further, a valid contract cannot exist if the material terms are uncertain or there is no mutual assent as to the terms. *Id.* We have held that the outward acts of parties can reasonably be interpreted as acceptance and the manifestation of mutual assent where the parties intended to partake in conduct and one party knew that the other party may infer from his conduct that he assented. *Alter v. Resort Props. of Am.*, No. 59583, 2014 WL 2466282, \*2 (Nev. May 30, 2014) (Order Affirming in Part, Reversing in Part and Remanding); see Restatement (Second) of Contracts §19 (Am. L. Inst. 1981).

Substantial evidence supports the findings that LaMont’s made an offer, Terry accepted the offer, the “fair finder’s fee” constituted consideration, and the terms of the agreement were certain. Both parties testified that LaMont’s offered to facilitate the growing of Terry’s herd, supporting a finding that LaMont’s made an offer to contract. As to acceptance, the witnesses’ testimony conflicts, thus we defer to the district court’s credibility determination in finding LaMont’s witnesses more credible. LaMont’s witnesses testified that Terry orally agreed to LaMont’s offer to procure more buffalo on his behalf. Additionally, Terry’s conduct supports the district court’s finding of acceptance, as testimony demonstrated that Terry had not complained of the services being provided, had not told LaMont’s to stop providing services, or otherwise indicated that he did not want LaMont’s to procure buffalo on his behalf. Terry had also thanked LaMont’s for its work and continued to allow LaMont’s to facilitate

additional purchases, thus corroborating LaMont's testimony, and establishing acceptance.

We also agree that the terms of the contract were clear and established by substantial evidence. An expert report was admitted into evidence explaining that oral contracts are common for order-buyer relationships in the buffalo industry and that the compensation is typically a commission in the form of a percentage of the total sales paid by the buyer. Further, LaMont's witnesses testified to the terms of the agreement—that it would be compensated fairly for facilitating the purchases for Terry. Beyond testimony and expert opinion, the district court relied on two text messages that indicated Terry owed LaMont's payment for its services, various invoices, emails, and the circumstances of the transactions to reasonably conclude that a contract existed between LaMont's and Terry.

Accordingly, we conclude that the district court did not err in finding that an enforceable oral contract existed between LaMont's and Terry.<sup>3</sup>

*The district court did not err in finding that LaMont's could have recovered on an alternative theory of equitable relief*

Although LaMont's need not rely on its alternative theories of equitable relief, as an enforceable contract was deemed to exist, Terry still argues that the district court erred in finding that LaMont's *could have*

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<sup>3</sup>Terry's arguments related to breach of contract and breach of the implied covenant of good faith and fair dealing rest solely on Terry's assertion that no contract existed. Since we find no error in the district court's determination that a contract existed, and it is undisputed that Terry failed to pay LaMont's for its services, we affirm the district court's findings of breach of contract and breach of the implied covenant of good faith and fair dealing.

recovered under such alternative theories. We find no error in the district court's determination that, if necessary, LaMont's could satisfy the legal requirements to recover under the doctrines of quantum meruit, unjust enrichment, and promissory estoppel. We address each theory in turn below and review for clear error. *See Certified Fire Prot., Inc. v. Precision Constr., Inc.*, 128 Nev. 371, 377, 283 P.3d 250, 254 (2012).

The doctrine of quantum meruit acts as a gap-filler in contracts to supply an absent price term where a contract is implied in fact; it requires that the parties had an intent to contract and that the general obligations are sufficiently clear. *Certified Fire Prot.*, 128 Nev. at 379-80, 283 P.3d at 256; *Sack v. Tomlin*, 110 Nev. 204, 208, 871 P.2d 298, 302 (1994) ("The doctrine of quantum meruit generally applies to an action . . . involving work and labor performed which is founded on an oral promise on the part of the defendant to pay the plaintiff as much as the plaintiff reasonably deserves for his labor in the absence of an agreed upon amount."). However, quantum meruit is also the restitution mechanism for unjust enrichment when the plaintiff confers a benefit on the defendant, the defendant accepts and retains the benefit, and it would be inequitable to allow the defendant to retain the benefit without payment. *Certified Fire Prot.*, 128 Nev. at 380-81, 238 P.3d at 256-57.

The district court appears to have addressed quantum meruit in the context of unjust enrichment, consistent with what LaMont's pled in its complaint. Terry argues that quantum meruit *must* be assessed as a gap-filler for an implied-in-fact contract. In either case, we conclude that the district court did not err in finding LaMont's *could have* prevailed on either theory.



The district court properly found that LaMont's could prevail on a theory of unjust enrichment because LaMont's conferred the benefit of its services on Terry, who knew nothing of the buffalo industry, by helping him procure a herd of buffalo. Terry also accepted and retained the benefit by receiving the herd of buffalo without having to personally negotiate their purchase. The same substantial evidence that supported the finding of a contract sufficiently supports the conclusion that Terry would have been unjustly enriched if there were no contract; therefore, Terry would have been obligated to make restitution in quantum meruit (for the reasonable value of the services) to LaMont's. Even if quantum meruit needed to be used as a gap-filler, the same substantial evidence proving the contract supports the elements of the agreement, and thus quantum meruit would "gap-fill" the missing price term if necessary. Accordingly, the district court did not err in finding that LaMont's could have recovered on quantum meruit or unjust enrichment if there were no enforceable contract.

As to promissory estoppel, Terry argues that the district court erred in finding that Terry made a promise to LaMont's to pay for its help. The doctrine of promissory estoppel is used where there is insufficient consideration but an agreement has been made. *Pink*, 100 Nev. at 689, 691 P.2d at 459. To prove promissory estoppel the party asserting estoppel must show that: (1) the opposing party was apprised of the true facts, (2) the opposing party intended that their conduct would be acted upon or acted such that the party asserting promissory estoppel believed it was intended, (3) the party asserting was ignorant of the true state of facts, and (4) the party asserting relied to its detriment on the conduct of the opposing party. *Id.*

The district court found that Terry made a promise to LaMont's to pay a commission for its help in procuring a herd of buffalo. Again, the same substantial evidence supporting the underlying contract claim also supports the district court's finding that Terry knew LaMont's was acting to help procure the herd in reliance on the promise that it would be paid. Thus, we conclude that the district court's finding that LaMont's could have recovered under the theory of promissory estoppel was not erroneous.

*The district court's award of damages was appropriate*

Finally, Terry argues that the district court's award of a 4% commission was clearly erroneous and determined without any evidentiary basis. We disagree.

"We will affirm an award of compensatory damages unless the award is so excessive that it appears to have been given under the influence of passion or prejudice," or is not supported by evidence. *Bongiovi v. Sullivan*, 122 Nev. 556, 577, 138 P.3d 433, 448 (2006); *cf. Rd. & Highway Builders, LLC v. N. Nev. Rebar, Inc.*, 128 Nev. 384, 391, 284 P.3d 377, 381 (2012) (holding that we will only reverse a jury's award of compensatory damages if all evidence indicates the jury verdict is wrong). Here, the record contains substantial evidence of the actions LaMont's undertook to earn its commission and the district court's award was based on a properly admitted expert report that indicated the standard commission for order-buyers in the buffalo industry is anywhere from 3% to 10% of the total purchase price. Accordingly, we conclude that the district court's award was supported by evidence, and therefore proper.

We conclude that the district court did not err in determining that a legally binding contract existed and that LaMont's could have



recovered under an alternative basis of equitable relief if a contract were not formed. Furthermore, the district court's award of damages was proper.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.



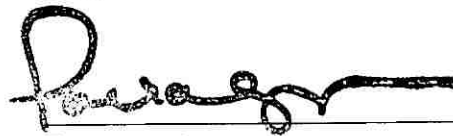
Herndon

J.



Lee

J.



Parraguirre

J.

cc: Hon. Nadia Krall, District Judge  
Kristine M. Kuzemka, Settlement Judge  
Hutchings Law Group, LLC  
McDonald Carano LLP/Las Vegas  
Eighth District Court Clerk