IN THE SUPREME COURT OF THE STATE OF NEVADA

JACK GAAL, INDIVIDUALLY; AND JACK'S PLACE BAR AND GRILL LLC, Appellants, vs. LAS VEGAS 101, INC., Respondent.	No. 83133

RESPONDENT LAS VEGAS 101, INC.'S ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record hereby certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order for this court to evaluate possible disqualification or recusal.

1. Respondent Las Vegas 101, Inc. is a Nevada corporation doing business in Clark County, Nevada. Respondent, has the following shareholders:

   a. 50% of shares: Jeffrey Nyman;

   b. 50% of shares: Linda Hentges Nyman.

2. Respondent Las Vegas 101, Inc. was represented by Rock Rocheleau, Esq., of Rocheleau Law Group dba Right Lawyers, and Assly Sayyar, Esq., of Assly Sayyar, Attorney at Law, Inc., at trial, and is represented on appeal by undersigned counsel.

Dated: March 9, 2022.

JONES LOVELOCK

/s/ *Stephen A. Davis, Esq.*

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I. INTRODUCTION

This appeal pertains to a breach of a brokerage agreement. Appellants Jack Gaal ("Gaal") and Jack's Place Bar and Grill LLC ("Jack's Place" or the "Business," and together with Gaal, "Appellants") entered into a brokerage agreement (the "Listing Agreement") to sell the Business, the building where Jack's Place operates and the land on which the building is situated (the building and land are separately referred to as the "Premises"), and the sports bar and grill operations and inventory which was open to the public, with the brokerage assistance of Respondent Las Vegas 101, Inc. ("FCBB"). Both Gaal and his wife ("Ms. Gaal"), make numerous oral and written representations that they had the authority to sell the Business—including the Premises—to FCBB, including a written personal guarantee that Gaal had the authority to sell the Business.

FCBB found a buyer, Angel Soto (the "Buyer"), who entered into an Asset Purchase Agreement (the "Purchase Agreement"), to buy the Business along with the Premises for $1,000,000.00. Then, Appellants breached both the Listing Agreement and the Purchase Agreement by failing to produce due diligence documents as required. After Appellants breached both agreements, Gaal asserted for the first time that he individually could not sell the Premises as it was owned by his Trust and that new agreements would be required that listed the Trust as the "seller". In making her findings in this action, the District Court judge stated that

Gaal most likely claimed this last-minute trust requirement was not met—and only after he breached both agreements—in an attempt to get out of the contracts Appellants signed with FCBB and the buyer and/or to reduce the fees Appellants owed to FCBB under the terms of the Listing Agreement.

FCBB declined to change the agreements to address the trust issue as it was not necessary to effectuate the closing, the deal fell apart as a result of Appellants' refusal to produce due diligence materials, the Buyer demanded his $30,000.00 in earnest money back, and FCBB filed the action below for breach of contract and breach of the implied covenant of good faith and fair dealing. After a four-day bench trial, the District Court found for FCBB on both claims, and judgment was entered for FCBB and against Appellants for $212,725.70.

The central issue of this appeal is whether a property owner must be a party to a brokerage agreement for that agreement to be a valid contract under NRS 645.320. The answer is no. NRS 645.009 and NRS 645.320 require that the "client" be a party to the agreement—not the specific title property owner—and therefore a valid and enforceable contract exists between the parties. Alternatively, the District Court's determination that Gaal had the apparent authority to sign for the Trust is supported by substantial evidence. Appellants' remaining arguments are either waived, not cogently argued, and/or without merit.

II. ISSUES ON APPEAL

1. NRS 645.320(4) requires that a brokerage agreement be signed by the "client . . . , or their authorized representatives," to be enforceable. NRS 645.009 defines a "client" as, "a person who has entered into a brokerage agreement with a broker or a property management agreement with a broker." Did the District Court err as a matter of law when determining that an owner is different than a Client under NRS 645.009 and 645.320, and thus a valid and enforceable contract exists between Appellants and FCBB?

2. Alternatively, under Nevada law, apparent authority to bind a principle exists when an agent subjectively has the power to act on behalf of a principle. Was the District Court's determination that Gaal had the apparent authority to bind the Trust to the sale of the real estate that was subject to the underlying contract supported by substantial evidence?

3. Guarantees for a contract are valid and enforceable under Nevada law, even when the underlying contract is unenforceable. Did the District Court err as a matter of law when it found that Gaal was liable for breach of his personal guarantee in the Listing Agreement?

4. The District Court has wide discretion to admit or exclude evidence. Did the District Court abuse its discretion when it:

a. Excluded Mr. Northup's testimony, even though Appellants admitted at trial that another witness would testify to the same information and there was no apparent prejudice to Appellants, Appellants conceded they failed to timely disclose Mr. Northrup pursuant to NRCP 16.1 during discovery, and Appellants were permitted to make a factual offer of proof of Mr. Northrup's testimony into the record at trial; and

b. Did not take judicial notice of tax returns that were offered to prove the Trust's ownership of the Premises, but the District Court otherwise accepted the fact that the Trust was the true owner of the Premises at trial?

5. Any argument not raised and/or not cogently argued in District Court is waived on appeal. Did Appellants waive the following arguments on appeal since they were not made at trial:

a. That the Listing Agreement or the Purchase Agreement were somehow vague and/or ambiguous;

b. That FCBB failed to obtain a qualified buyer;

c. That the District Court's determination that Appellants breached the implied covenant of good faith and fair dealing is reversible error?

6. This Court will not reverse and remand on any error; the error must be of such import that it would reasonably change the outcome of the trial. If the Court

finds any error, was that error harmless because it would not have affected the trial's outcome?

III. STATEMENT OF FACTS

A. FACTUAL BACKGROUND

Jack's Bar is a business located in Boulder City, Nevada, and Gaal and Ms. Gaal are managing members of Jack's Bar.[1] The Premises in which Jack's Bar conducts business was owned by the Trust.[2] In or around October 2017, Gaal sought to sell the Business and the Premises.[3] Subsequently, Gaal was introduced to Philip Van Neuenswander ("Philip") by Gene Northup ("Northup," Gaal's advisor),[4] who worked for FCBB.[5] Philip had extensive experience in Nevada real estate and business sales, having closed over 100 deals over a 16 year period.[6]

Gaal and Ms. Gaal were both present at the first meeting between Philip and Northup,[7] where Gaal explicitly told Philip that he wanted to sell both Jack's Place

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[1] Appellant's Opening Brief ("AOB") at p. 2; AA 1-0116. Appellants' Appendix is referred throughout this brief as "AA." For this Court's ease of reference, only the bates number is identified in these citations. Thus, AA Vol. 1 at Gaal000040 would be referred to as AA Vol. 1 at 40. Respondent's Appendix is referred to as "RA".
[2] AA Vol. 3 at 410. Appellants failed to introduce any evidence at trial as to the Trustees' authority to buy or sell property. AA Vol. 1 at 33-34 ¶ 15.
[3] AA Vol. 2 at 188.
[4] AA Vol. 1 at 188; AA Vol. 2 at 246.
[5] AA Vol. 2 at 187-88.
[6] Id. at 187.
[7] Id. at 188.

and the Premises.[8] Gaal represented to Philip—both orally at this meeting and subsequently in writing—that Gaal had the authority to sell the Premises and the business operations of the sports bar and grill.[9] Gaal did not disclose to Philip until after Gaal agreed to sell the Business including the Premises to the Buyer that the Trust owned the Premises—which was after Gaal and Jack's Place were in breach of the Listing Agreement.[10]

1. **Gaal agrees to sell the Business which expressly included the Premises, and retains FCBB to be the broker and real estate agent.**

On October 9, 2017, FCBB, Jack's Place (through Gaal as its managing member), and Gaal, individually, executed an "Exclusive Right to Sell Listing Agreement" (the "Listing Agreement"). [11] Pursuant to the Listing Agreement, the parties agreed that FCBB would list the Business including the Premises for sale at the price of $1,200,000.00.[12] The Listing Agreement provided that the "[t]erms of this Agreement regarding the sale of the Business will also apply to the sale of Real Property. The following Real Property is included in this Agreement: "ADDRESS:

[8] Id. at 189.
[9] Id. at 190; see AA Vol. 1 at 78-83.
[10] AA Vol. 2 at 258.
[11] See AA Vol. 1 at 78-83.
[12] Id. at 78.

544 Nevada Way Boulder City Nevada 89005."[13] Gaal specifically told Philip that the Premises were valued at $700,000.00.[14]

The Listing Agreement further provides critical details about the amount of the commission that FCBB was to receive and when the commission was due. Specifically, the Listing Agreement provides that FCBB was entitled to "$15,000.00 or 12% of the Transacted Value, whichever is greater. . . ," upon a "Disposition of the Business",[15] or when: (1) Gaal and Jack's Place enters into a Purchase Agreement with the Seller; or (2) Gaal and/or Jack's Place breaches the Listing Agreement.[16]

Finally, and perhaps most importantly, both Gaal and Jack's Place represented that they had the authority to sell the sports bar and grill operations and inventory, and the Premises as part of the contractual definition of "Business".[17] The Listing Agreement explicitly states:

> AUTHORITY TO ENTER AGREEMENT AND PERSONAL GUARANTEES: Seller warrants that Seller or the natural person who has signed on behalf of the entity has the legal right, power and authority to enter into and perform this Agreement . . . . The natural person or persons who sign this Agreement personally guarantee performance of this Agreement and the payment to [FCBB] of all Commissions due. If Seller is a corporate entity, Seller (evidenced by a corporate resolution that he/she has the authority to act on behalf of the

[13] Id. at 80 at ¶ 29.
[14] Id.; AA Vol. 2 at 249.
[15] AA Vol. 1 at 78 at ¶ 6.
[16] Id. at 79 at ¶ 13.
[17] Id. at 80 at ¶ 26.

> corporation and its officers and directors) agrees that all officers, directors and/or members of the corporate entity, concurrently or in the future, personally guarantee performance of this Agreement.[18]

Further evidencing that Gaal intended to sell both Jack's Place's business operations and the Premises, he provided information relating to the Premises' boundaries, which would be necessary only if the Premises were to be sold.[19] Additionally, a "Limited Liability Company with Multiple Managing Members Resolution to Sell," (the "Corporate Resolution,") was executed by both Gaal and Ms. Gaal on or about October 9, 2017.[20] The Corporation Resolution stated that "the Managing Members of [Jack's Place] are hereby authorized to list and sell the business and/or property" upon which Jack's Place and the Premises were located.[21]

Finally, Gaal executed a "Consent to Act" on or about October 9, 2017, which explicitly stated that there may be a conflict of interest for a licensee in a real estate transaction to act on behalf of two or more parties.[22] The Consent to Act clearly required that Gaal and Jack's Place waive any conflict regarding FCBB's brokerage to sell the Business including the Premises.[23]

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[18] Id. at 80 at ¶ 26.
[19] Id. at 94-96.
[20] Id. at 84.
[21] Id.
[22] Id. at 87.
[23] Id.

The point is this: Gaal, Ms. Gaal, and Jack's Place (through Gaal and Ms. Gaal as managing members) knew and understood that they were selling the business operations and the Premises. Furthermore, each of them represented—both orally and in numerous writings—that they had the authority to sell the Business including the Premises. At no time prior to signing the Listing Agreement did Gaal, Ms. Gaal, or Northup tell Philip or anyone at FCBB that either Gaal or Jack's Place was not authorized to sell the Premises or that some other consent or permission was required by any other party.[24] Everything Gaal and Ms. Gaal and Jack's Place signed stated and represented over and over again the exact opposite: that they had the authority and they wanted to sell it all—operations, assts, inventory, building and land.

2. FCBB locates a buyer for the Business and Premises. Then, Gaal and Jack's Place breach the contract.

FCBB set about finding a buyer for the Business.[25] After four and a half months and extensive nationwide marketing, FCBB found a potential buyer and presented the Purchase Agreement to Gaal, Jack's Place, and the Buyer for consideration and execution.[26] On or about February 2, 2018, Gaal executed the "Asset Purchase Agreement-NV" (the "Purchase Agreement") with the Buyer.[27] The

[24] AA Vol. 2 at 203-205; 259-260.
[25] Id. at 201.
[26] Id. at 201.
[27] AA Vol. 1 at 74.

Trust was not listed on the Purchase Agreement nor did Gaal request that the Trust be listed on the Purchase Agreement at the time he executed it.[28]

The Purchase Agreement was a result of negotiations between the Buyer and Gaal with Philip facilitating discussions.[29] Pursuant to the Purchase Agreement and Counteroffer,[30] the Buyer and Gaal agreed that the Buyer would purchase the Business including the Premises for $1,000,000.00, which consisted of $30,000 in an earnest money deposit, a $700,000 bank loan on the Premises, and $270,000 cash at closing.[31] Similar to the Listing Agreement, Gaal—both in his personal capacity and in his capacity as Jack's Place's managing member—represented in the Purchase Agreement that he and Jack's Place had the authority to sell the Business and the Premises.[32]

After the Purchase Agreement was executed and the Counteroffer was accepted on February 2, 2018,[33] Gaal had ten days to provide due diligence documents to the Buyer pursuant to the Listing Agreement.[34] Importantly, the

[28] See id. at 66-74.
[29] AA Vol. 2 at 234-236, 238-239; see AA Vol. 1 at 64, 66-74.
[30] The Counteroffer is found at AA Vol. 1 at 64.
[31] AA Vol. at 1 at 66.
[32] Id. Indeed, the Counteroffer explicitly states that the Premises are included in the sale of Jack's Place. Id. at 64.
[33] Id. at 66; id. at 64.
[34] Id. at 79 at ¶ 11; AA Vol. 2 at 201-202.

Listing Agreement provides that FCBB's "Fee" (as defined therein) becomes due and owing if Gaal or Jack's Place failed to provide the due diligence documents.[35]

But Gaal—for reasons still unclear to FCBB—suddenly stopped communicating with FCBB and the Buyer.[36] Despite FCBB's and Buyer's efforts, Gaal refused to provide the due diligence documents that he was required to pursuant to the terms of the Listing Agreement.[37] As Philip testified in trial:

> At this time, when I went to the seller to let him know, and the emails are in here, hey, we need to produce these documents, he 100 percent completely avoided my phone calls, avoided meeting with me, and completely stonewalled me. He absolutely disappeared when I was trying to complete a deal for him. . . . [Gaal] didn't produce one single document.[38]

Despite both the Buyer's and FCBB's best efforts, Gaal was content to materially breach the Listing Agreement, the Purchase Agreement, and kill the deal.[39] Philip was able to reach Northup, who also tried to get Gaal to turn over the due diligence documents but was told by Gaal to "go talk to my attorney."[40] This refusal to perform or even communicate occurring shortly after Gaal represented—yet again—that he and Jack's Place had the authority to sell the Business including the Premises,

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[35] AA Vol. 1 at 79 at ¶ 11; AA Vol. 2 at 202.
[36] Id. at 253, 255, 259.
[37] Id. at 253, 259.
[38] Id. at 253.
[39] See AA Vol. 2 at 253-270.
[40] Id. at 255-256.

demonstrates that Gaal wanted out of the deal for some inexplicable reason and was willing to breach his contractual obligations to do so.

Philip went and talked to Gaal's attorney, Mr. Winterton (Appellants' counsel at trial and in this appeal), in an attempt to salvage the transaction and to get Gaal and Jack's Place to comply with their contractual obligations under the Listing Agreement.[41] On February 22, 2018, Mr. Winterton sent correspondence that—*for the first time*—asserted that the Trust owned the Premises and that Gaal did not have the authority to bind the Trust to sell the Premises.[42]

But the very next day, on February 23, 2018, Mr. Winterton reversed course in writing and agreed with FCBB, Philip, the Buyer, and Northup, that Gaal was obligated to provide the due diligence documents and move forward with the Purchase Agreement.[43] Specifically, Mr. Winterton wrote to Philip and FCBB:

> Thank you for meeting with me on Friday. I have spoken to Jack and explained the situation. I believe he understand (sic) and he will be getting you the documents so that the buyer can complete his due diligence and close the sale of the business as soon as possible.[44]

This was a clear and unambiguous concession by Appellants' own counsel that Appellants were bound by a valid and enforceable contract, and furthermore were

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[41] Id. at 257.
[42] AA Vol. 1 at 122; AA Vol. 2 at 258-259.
[43] AA Vol. 1 at 121.
[44] Id. at 121.

required to perform their obligations under that contract.[45] At a meeting between Mr. Winterton and Philip, Mr. Winterton explicitly agreed that if Appellants failed to disclose the due diligence documents, then both Gaal and Jack's Place would owe FCBB its fees under the Listing Agreement:

> He did mention . . . that there was a trust or something to that effect, but that didn't change the equation that we had an existing signed contract by an authorized seller that refused to turn over any documents. *In fact, Mr. Winterton agreed that if he [Gaal] didn't turn over those documents, he was going to owe us our fee.*[46]

Despite Mr. Winterton's—Appellants' own counsel—acknowledgments in writing and representations of agreement to Phillip, Appellants continued to refuse

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[45] Appellants' counsel's conduct evidenced an intention to waive any alleged right to assert Gaal did not have the authority to bind the Trust to sell the Premises, or, at the very least, that conduct was inconsistent with any other intention than to waive the right. Mahban v. MGM Grand Hotels, 100 Nev. 593, 596, 691 P.2d 421, 423 (1984).

[46] AA Vol. 2 at 262 (emphasis added). Appellants may contend that they objected to this statement and thus the statement should not be considered by this Court. However, Appellants' objection did not occur until three pages later in the trial transcript (not immediately after the statement by Phillip was made at trial) and only after extensive questioning by FCBB's counsel at trial. See id. at 262-265. Thus, any objection was not timely and is waived. Ringle v. Bruton, 120 Nev. 82, 95, 86 P.3d 1032, 1040 (2004) (for counsel to preserve an issue for appeal in a civil case, counsel must timely object); Lioce v. Cohen, 124 Nev. 1, 17, 174 P.3d 970, 980 (2008) (restating the requirement that the parties' attorneys must "timely state their objections"); Nevada State Bank v. Snowden, 85 Nev. 19, 21, 449 P.2d 254, 255 (1969) ("[U]nless specifically objected to at trial, objections to a substantive error in the absence of constitutional considerations are waived and no issue remains for this court's consideration."). Indeed, by the transcript, it appears that Mr. Winterton was simply objecting to Exhibit 26, which was not admitted and is not in the record.

to provide the due diligence documents that were contractually required.[47] While the ultimate reason behind Gaal's conduct remains unknown to FCBB, Philip testified that he believed Gaal was using this issue as "back door;"[48] a belief with which Judge Allf indicated at trial she agreed.[49] In any event, not listing the Trust on either the Listing Agreement or the Purchase Agreement could have been rectified during the close of escrow; there was no reason the deal could not go forward.[50]

Ultimately, due to Appellants' refusal to disclose the due diligence documents or otherwise communicate to perform contractual obligations in good faith, the Buyer demanded the return of his due diligence money.[51] As a direct and proximate result of Appellants' breach, the deal died depriving FCBB of its earned Fee. FCBB then filed suit.

B. PROCEDURAL BACKGROUND

FCBB filed its complaint on June 29, 2018, alleging breach of contract and breach of the implied covenant of good faith and fair dealing.[52] Discovery proceeded, and after the Appellants' Motion for Summary Judgment was denied by

[47] AA Vol. 3 at 359-360.
[48] AA Vol. 2 at 261.
[49] AA Vol. 3 at 438, 461.
[50] AA Vol. 2 at 261, 263; AA Vol. 3 at 388-390, 438.
[51] AA Vol. 1 at 124-127; AA Vol. 2 at 267.
[52] AA Vol. 1 at 1-6.

the District Court,[53] this matter came on for bench trial before the Honorable Judge Allf.[54]

After a four-day bench trial, the District Court determined that the Listing Agreement and Purchasing Agreement were valid and enforceable contracts.[55] In addition, the District Court found that Appellants made continual representations that they had the authority to sell both the business operations of a sports bar and grill and the Premises by way of their multiple oral and written representations.[56] Because there was a valid and enforceable contract, the District Court further found that Appellants breached the Listing Agreement when they failed to provide due diligence documentation to the Buyer.[57] Furthermore, the District Court determined that under the terms of the Listing Agreement, FCBB was due its fee of $100,000 plus its attorneys' fees, costs, and pre-judgment interest.[58] Thus, the District Court found that Appellants were both in breach of contract and breach of the implied covenant of good faith and fair dealing.[59] Judgment was entered for FCBB and against Gaal and Jack's Place, jointly and severally, in the amount of $212,725.70.[60]

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[53] RA at 3. No written order was entered regarding Appellants' Motion for Summary Judgment. See RA at 3-5.
[54] AA Vol. 1 at 23.
[55] Id. at 24 at ¶¶ 3-5.
[56] Id. at 24 at ¶¶ 3-4.
[57] Id. at 24 at ¶¶ 3-4.
[58] Id. at 34-35 at ¶¶ 4-5.
[59] Id. at 34 at ¶ 4.
[60] Id. at 34-35 at ¶¶ 4-5.

This appeal followed.[61]

IV. ARGUMENT

A. The District Court did not err in determining that the Listing Agreement is a valid and enforceable contract under NRS 645.320, and that FCBB's fee was due and owing due to Appellants' Breach of Contract.

NRS 645.320 requires that four criteria be satisfied for a brokerage agreement to be effective. Those criteria are that the agreement:

> 1. Be in writing.
>
> 2. Have set forth in its terms a definite, specified and complete termination.
>
> 3. Contain no provision which requires the client who signs the brokerage agreement to notify the real estate broker of the client's intention to cancel the exclusive features of the brokerage agreement after the termination of the brokerage agreement. [and]
>
> 4. Be signed by both **the client or his or her authorized representative** and the broker or his or her authorized representative in order to be enforceable.

(Emphasis added). NRS 645.320 defines a "client" as "a person who has entered into a brokerage agreement with a broker or a property management agreement with a broker." NRS 645.009. Thus, Nevada law does not require that the actual title owner of the property to be a party to the contract. See NRS 645.009 and 645.320(4).

[61] Id. at 37. Notably, Appellants have not filed a Notice of Appeal regarding the award of attorneys' fees and costs awarded in this matter. See Docket, Gaal v. Las Vegas 101, Inc., Case No. 83133 (Nev.). Thus, there is no pending appeal before this Court regarding the award of attorneys' fees and costs.

Nevada law does expressly permit an "authorized representative" sign on behalf of a "client." NRS 645.320(4).

Had the Nevada Legislature intended that the titled owner be required to sign a brokerage agreement for it to be effective, it would have specified that the owner—and not the client or their authorized agent—be a mandatory party to the contract. See generally Mineral Cty. v. State, Bd. Equalization, 121 Nev. 533, 539, 119 P.3d 706, 710 (2005) (recognizing that "[w]hen the Legislature is silent, this court should not fill in alleged legislative omissions based on conjecture as to what the [L]egislature would or should have done. . . . The Legislature's silence on [a] right . . . cannot be viewed as an expression of its intention to grant such a right." (internal quotations omitted); Providence Washington Ins. Co. v. Grant, 693 P.2d 872, 878 (Alaska 1985) (declining "to attribute significance to the legislature's mere inaction," since "[t]o explain the cause of nonaction by Congress when Congress itself sheds no light is to venture into speculative unrealities" (quoting Helvering v. Hallock, 309 U.S. 106, 119-20, (1940)), Dep't of Social Serv. v. Saunders, 724 A.2d 1093, 1103 (Conn. 1999) ("It is a basic tenet of statutory construction that [courts] rely on the intent of the legislature as that intent has been expressed." (internal quotation omitted)).

Appellants assert that the actual real property owner must be a party to the contract for it to be a valid and enforceable contract under NRS 645.320.[62] But NRS 645.320 does not have such a requirement, and to adopt Appellants' argument would be to insert language into Nevada law that the Nevada Legislature did not intend.

Statutory interpretations are reviewed by this Court *de novo*. Pankopf v. Peterson, 124 Nev. 43, 46, 175 P.3d 910, 912 (2008); City of Las Vegas v. Eighth Judicial Dist. Court, 124 Nev. 540, 544, 188 P.3d 55, 58 (2008). "When the language of a statute is clear on its face, this court will not go beyond the statute's plain language." J.E. Dunn Nw., Inc. v. Corus Constr. Venture, LLC, 127 Nev. 72, 79, 249 P.3d 501, 505 (2011) (internal quotations and alterations omitted). However, if the statutory language is subject to two or more reasonable interpretations, the statute is ambiguous, the Court looks beyond the statute to the legislative history and interpret the statute in a reasonable manner "in light of the policy and the spirit of the law." Id. (internal quotations omitted); see Pankopf, 124 Nev. at 46, 175 P.3d at 912. When interpreting a statute, the Court will avoid an interpretation that renders the statutory language meaningless or superfluous, or in such a way that conflicts with other rules and statutes. George J. v. State (In re George J.), 128 Nev. 345, 349, 279 P.3d 187, 190 (2012).

[62] AOB at pp. 6-21.

1. NRS 645.320 is clear: a property's owner is not required to be a party to the contract. Rather, the party purporting to have authority to sell the property must be a clearly named party to the contract for it to be valid.

NRS 645.320's language is clear on its face: a property owner is not required to be a party to the contract in order for the contract to be a valid and enforceable contract.[63] See NRS 645.320; NRS 645.009. What NRS 645.320 requires is that the Listing Agreement:

1. Be in writing (it was).[64]
2. Have a definite termination date (clearly defined in the Listing Agreement as terminating on October 10, 2018).[65]
3. Not contain a provision that a client (as defined by NRS 645.009) "notify the real estate broker of the client's intention to cancel the exclusive features of the brokerage agreement after the termination of the brokerage agreement," which the Listing Agreement did not;[66] and

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[63] FCBB preserved this issue for appeal. See AA Vol. 3 at 446.
[64] AA Vol. 1 at 78-83.
[65] Id. at 78 at ¶ 4. It is unclear why Appellants argue that the Listing Agreement was somehow vague or indefinite because it did not describe the sale of the Premises when NRS 645.320(2) applies only to the Listing Agreement's termination. AOB at p. 11. Nevertheless, by identifying, "Jack's Place including Real Estate," Id. at 78, the identification of the Premises' local address and assessors parcel number, id. at 80, and the provision that states that the Premises is included in the Listing Agreement, id., it is clear that the Listing Agreement's terms are sufficient. And, in any event, Appellants failed to argue that NRS 645.320 was vague or ambiguous in the District Court, thus waiving this argument.
[66] See id. at 78-83.

4. "Be signed by both the client or his or her authorized representative and the broker or his or her authorized representative in order to be enforceable."

The client and/or his/its representative (Gaal and Jack's Place), and the broker and/or its representative (Philip) signed the Listing Agreement.[67]

Appellants argue that sections 1, 2, and 3 were not satisfied,[68] but their arguments solely pertain to the fact that the Trust was not a party to the Listing Agreement.[69] Nowhere in NRS 645.320 or 645.009 does it require that the actual owner of the property to be sold be a party to the contract for a valid and enforceable contract to arise.[70] Instead, Appellants attempt to insert words into Nevada law that do not exist and are not there, as evidenced by the statute's plain and clear language.[71]

Specifically, Appellants are attempting to confuse the Court as to the actual, legally required parties of the Listing Agreement under Nevada law and insert

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[67] Id. at 78, 83.

[68] Appellants' Opening Brief headings state that the Listing Agreement did not comply with NRS 645.320(1), (2), and (4), but they substantively argue that the Listing Agreement did not comply with NRS 645.320(1), (2), and (3). Regardless, the Listing Agreement fully complied with NS 645.320 and is enforceable.

[69] AOB at pp. 9-13.

[70] It is notable that NRS 645.009 defines "Client," and "Owner" is used in NRS 645.0445(1)(a) regarding the applicability of NRS Chapter 645. This further evidences that "Owner" and "Client" have separate definitions under NRS Chapter 645.

[71] AOB at pp. 6-13.

statutory requirements that were never enacted by the Nevada Legislature. The parties required to be listed in the Listing Agreement were the client or its authorized representative, and that is who signed the Listing Agreement. Thus, Appellants are deliberately confusing and falsely equating the necessary parties and legal requirements of an enforceable Listing Agreement with who is on title to real property.

Nor are the Trustees of the Trust required to be a party to either the Listing Agreement, the Purchase Agreement, and/or this action. NRS 645.320(3) and (4) do not require the property owner to be a party to any brokerage contract. Instead, NRS 645.320(3) and (4) require a "client" to be a party to a brokerage contract, and the client here is Gaal and Jack's Place.

Appellants are taking exception to FCBB's causes of action and remedies sought in the proceedings below. Stated differently, under Nevada law, if a party fraudulently induces another party to form a contract, then the defrauded party has several courses of action. First, the defrauded party may seek the contract's recission to put it back in the same place as when the contract was formed. Restat. 2d of Contracts, § 7; Havas v. Alger, 85 Nev. 627, 631, 461 P.2d 857, 859 (1969); Awada v. Shuffle Master, Inc., 123 Nev. 613, 622, 173 P.3d 707, 713 (2007). Or, the defrauded party may assert a cause of action for fraud. Topaz Mut. Co. v. Marsh, 108 Nev. 845, 852, 839 P.2d 606, 610 (1992). Or, the defrauded party may seek to

enforce the contract as written to give the defrauded party the benefit of the bargain. BDO Seidman, L.L.P. v. Mindis Acquisition Corp., 578 S.E.2d 400, 402 (Ga. 2003). A party is not required to assert every possible cause of action and remedy that is available to them.

FCBB decided to pursue this action to enforce the Listing Agreement as written to ensure that it had the benefit of the bargain, *i.e.* that FCBB would recover its Fees under contractual theories. There is nothing in Nevada law that prevents FCBB from doing so. FCBB is not required to bring a separate cause of action for fraud. Indeed, FCBB was entitled to enforce its Listing Agreement that met all requirements of NRS 645.320 and rely upon Appellants' numerous oral and written representations—which it did—and that Appellants neglected to inform FCBB of critical information. The remedy is simple: FCBB is due its Fees and other damages pursuant to the Listing Agreement's express terms.

Appellants additionally cite several cases for the proposition that the Premises' owner must be a party to the Listing Agreement for it to be a valid and enforceable contract.[72] The cases cited, however, do not stand for that proposition. Bangle v. Holland Realty Investment Company, 80 Nev. 331, 335-36, 393 P.2d 138, 140 (1964), pertained to an invalid brokerage agreement due to a failure to provide a specific termination date, *not* the failure to have the property owner as a party to

[72] AOB at pp. 14-16, 18-19.

the contract. Id., 80 Nev. at 335-36, 393 P.2d at 140. Gifford v. Straub, 172 Wis. 396, 179 N.W. 600 (Wisc. 1920), similarly pertains to the failure to provide a specific termination date and *not* whether the property owner needs to be listed as a party to the contract. Id., 172 Wis. at 399, 179 N.W. at 601. Led--Mil of Nevada v. Skyland Realty & Insurance, 90 Nev. 72, 74, 518 P.2d 606, 607 (1974), stands for the proposition that a trial court may dismiss commissions claims on an unwritten brokerage agreement. Id., 90 Nev. at 74, 518 P.2d at 607. Finally, Morrow v. Barger, 103 Nev. 247, 737 P.2d 1153 (1987), only dealt with the limited issue of whether there was an implied listing agreement in that case (which is not an issue presented in this case). Id., 103 Nev. at 252, 737 P.2d at 1156.

Thus, none of the cases cited by Appellants stand for the proposition that the actual real property owner be listed as a party to a brokerage agreement under NRS 645.320 (as Appellants imply). The cases cited by Appellants are unpersuasive, not analogous, and cannot be read to create requirements in NRS 645.320 which do not exist in the plain language of the statute.

The plain (and clear) statutory language of NRS 645.009 and 645.320 was satisfied in this case. There was a valid and enforceable contract between FCBB, and Gaal and Jack's Place: the Listing Agreement. Gaal and Jack's Place then materially breached the Listing Agreement for reasons which remain unknown but suspected. Gaal and Jack's Place's own attorney represented and acknowledge the Appellants'

contractual obligations yet still the breach remained uncured to the detriment of Respondents. FCBB was entitled to the benefit of the bargain of the Listing Agreement (its fees), which the District Court so recognized when it entered judgment against Appellants.[73]

2. Alternatively, the District Court did not err when it determined that Gaal had the apparent authority to sell the Premises as Trustee of the Trust.

Before and during trial, FCBB argued and presented substantial evidence that Gaal had apparent authority to sign on behalf of the Trust.[74] The District Court agreed, finding that Appellants had indicated numerous times that "they had the power and authority to list for sale the Premises."[75] Moreover, the District Court noted that there was no credible evidence that "Gaal did not have authority to list and to sell the real estate, the building, and the business operations."[76] Thus, the District Court explicitly found that FCBB's "belief in and reliance on Defendants' authority and power was reasonable."[77]

The District Court's decision is consistent with Nevada law. In Nevada, "an agent must have actual authority, express or implied, or apparent authority" to bind a principal. Dixon v. Thatcher, 103 Nev. 414, 417, 742 P.2d 1029, 1031 (1987). For

[73] AA Vol. 1 at 48-49.
[74] AA Vol. 3 at 444.
[75] AA Vol. 1 at 32 at ¶ 3, 33 at ¶¶ 7-10.
[76] Id. at 33-34 at ¶ 15.
[77] Id. at 33 at ¶ 10.

apparent authority to exists, FCBB was required to prove: (1) FCBB subjectively believed that Gaal had authority to act for the Trust, and (2) that FCBB's subjective belief in Gaal's authority was "objectively reasonable." Great Am. Ins. Co. v. Gen. Builders, Inc., 113 Nev. 346, 352, 934 P.2d 257, 261 (1997). Moreover, a party may adopt a written contract, and once adopted that party is bound by its terms. U.S. Fidelity & Guranty Co. v. Reno Electrical Works, 43 Nev. 191, 183 P. 386, 387 (1919); Bloom v. Hazzard, 37 P. 1037, 1038 (Cal. 1894); Memory v. Niepert, 23 N.E. 431, 433 (Ill. 1890).

Whether apparent authority exists is a question of fact, Great Am. Ins. Co., 113 Nev. at 352, 934 P.2d at 261, and thus this Court reviews a District Court's finding of apparent authority "on substantial evidence." Myers v. Jones, 99 Nev. 91, 93, 657 P.2d 1163, 1164 (1983). "Substantial evidence is that which 'a reasonable mind might accept as adequate to support a conclusion.'" Hall v. SSF, Inc., 112 Nev. 1384, 1389, 930 P.2d 94, 97 (1996) (quoting State Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986)). Thus, this Court will not overturn a finding of apparent authority unless it is "'clearly erroneous.'" See id. (quoting Hermann Trust v. Varco-Pruden Buildings, 106 Nev. 564, 566, 796 P.2d 590, 592 (1990)).

Here, substantial evidence exists that Gaal was authorized to bind the Trust into the sale of the Premises when signing the Listing Agreement and the Purchase

Agreement. Gaal represented—in writing—that he was authorized to sell the Business, including the Premises, in the Listing Agreement,[78] the Purchase Agreement,[79] the Counteroffer,[80] the "Buyer Confidentiality and Non-Disclosure Agreement,"[81] and two separate resolutions to sell.[82] Moreover, Gaal orally represented and gave the impression to FCBB that he had the authority to sell the Business including Premises.[83] Prior to Mr. Winterton's February 21, 2021 correspondence, Appellants never told or communicated to FCBB that Gaal was allegedly not authorized to sell the Premises.[84] Nor did Appellants ever request that FCBB include the Trust in either the Listing Agreement or Purchase Agreement,[85] or to request that someone other than Gaal be allowed to sign either agreement on behalf of the Trust.[86]

Northup, Gaal's advisor, never discussed with FCBB Appellants' supposed lack of authority to sell the Premises.[87] Finally, Ms. Gaal, who was present during some of Philip's meetings with Gaal, never raised any concern or voiced any

[78] AA Vol. 1 at 80 at ¶ 26.
[79] Id. at 72 at ¶ 51.
[80] Id. at 64.
[81] Id. at 53 at ¶ 5.
[82] Id. at 84, 86.
[83] AA Vol. 2 at 189-190, 203-204.
[84] Id. at 331-332.
[85] Id. at 203-205, 0213, 245, 250-251; AA Vol. 3 at 352-353.
[86] AA Vol. 2 at 250-251; AA Vol. 3 at 352-353.
[87] AA Vol. 2 at 246, 213.

objection to selling the Business or the Premises nor informed FCBB that Gaal's statements about being authorized to sell the Premises was false or inaccurate.[88] Philip testified that, based upon Gaal's conduct, FCBB believed that Gaal had the authority to sell both the Business and the Premises.[89] Thus, the District Court's determination that Gaal had the implied and apparent authority to sell the Premises, or otherwise adopt the Listing Agreement on behalf of the Trust, is supported by substantial evidence. See Dixon, 103 Nev. at 417, 742 P.2d at 1031 (the Court found a "sufficient indicia of agency" existed between a lender and respondent creditor where the lender was authorized to collect monthly payments for respondent); Myers, 99 Nev. at 93, 657 P.2d at 1164 (the Court defined apparent authority as "that authority which a principal holds his agent out as possessing or permits him to exercise or to represent himself as possessing, under such circumstances as to estop the principal from denying its existence." citing 2A C.J.S. Agency § 157(a) (1972)); Segura v. Molycorp, Inc., 636 P.2d 284, 290-91 (NM 1981) (agency existed because Defendant's manager acted as Defendant's agent during negotiations, Plaintiff reasonably relied on his representations and Defendant ratified Defendant's manager's acts by written confirmation of the agreement between Plaintiff and Defendant's manager).

[88] Id. at 189-191, 196, 220, 258-259.
[89] Id. at 205, 245.

Furthermore, under Nevada law, a court may reform a contract—irrespective of the Statute of Frauds (or in this case, NRS 645.320)— in order to have that contract reflect the parties' true intention. Wainwright v. Dunseath, 46 Nev. 361, 366-67, 211 P. 1104, 1106 (1923). Because there is no doubt that Gaal intended to sell the Premises as part of the contractually defined "Business," the District Court did not err when it found that Gaal was acting with the apparent authority of the Trust and Trustees and therefore, implicitly reformed the Listing Agreement so that it was enforceable.

In sum, there is substantial evidence that Gaal was acting on behalf of the Trust through his continual written and oral statements that he was authorized to sell the Premises. The District Court's finding that Gaal had apparent authority to execute the Listing Agreement and Purchase Agreement on behalf of the Trust was not clearly erroneous. As a result, the judgment should be affirmed.

3. Permitting a party that purports to have authority to sell a property to be held liable for breach of contract does not circumvent the public policy behind NRS 645.320.

Appellants also claim that the District Court's decision may circumvent NRS 645.320's intent.[90] But Appellants' policy argument also falls flat. The public policy behind both NRS 645.320 and the statute of frauds is simple: to prevent fraud. See e.g., Morrow, 103 Nev. at 250 n.1, 737 P.2d at 1155 ("NRS 645.320 is a statute of

[90] AOB at pp. 16-19.

frauds limited to exclusive listing agreements for the sale of real property."); Bangle, 80 Nev. at 334, 393 P.2d at 139 ("The statute was doubtless enacted for reasons similar to those which led to the enactment of the statute of frauds. It was to prevent frauds and perjuries.")

In Nevada, partial performance will overcome the statute of frauds if "'proved by some extraordinary measure or quantum of evidence[.]'" Bonnell v. Lawrence, 128 Nev. 394, 404, 282 P.3d 712, 718 (2012) (quoting Zunino v. Paramore, 83 Nev. 506, 509, 435 P.2d 196, 197 (1967)); Capital Mortg. Holding v. Hahn, 101 Nev. 314, 316, 705 P.2d 126, 127 (1985) (recognizing that both exceptions to the statute of frauds must be established "by an extraordinary measure or quantum of evidence"); Jones v. Barnhart, 89 Nev. 74, 76, 506 P.2d 430, 431 (1973) (requiring appellant to prove estoppel or part performance by showing "extraordinary measure or quantum of evidence."); Edwards Indus. v. Dte/Bte, Inc., 112 Nev. 1025, 1033, 923 P.2d 569, 574 (1996) (affirming the elements of equitable estoppel and the requirement it be proven by showing extraordinary measure or quantum of evidence); see also Beverly Glen, Ltd. Liab. Co. v. Wykoff Newberg Corp., 334 F. App'x 62, 64 (9th Cir. 2009) (recognizing that, in Nevada, the doctrines of estoppel or partial performance apply if there "is proof by some extraordinary measure or quantum of evidence." (internal quotations omitted)); Axis Spine NV, LLC v. Xtant Med. Holdings, Inc., No. 2:17-cv-02147-APG-VCF, 2018 U.S. Dist. LEXIS 63397, at *9 (D. Nev. Apr. 16, 2018);

Nieto v. Litton Loan Servicing, LP, No. 2:10-cv-00223-GMN-GWF, 2011 U.S. Dist. LEXIS 18885, at *12 (D. Nev. Feb. 23, 2011) (holding that "a declaration in a verified complaint that a promise was made" did not constitute "extraordinary measure or quantum of evidence."); Land Am. Lawyers Title v. Metro. Land Dev. LLC & Rushton Dev. Grp., No. 05-01388 DAE-RJJ, 2007 U.S. Dist. LEXIS 115669, at *19 (D. Nev. July 26, 2007).

At trial, it was undisputed that FCBB performed the Listing Agreement. FCBB's only obligation under the Listing Agreement was to find a buyer for the Business.[91] FCBB performed by finding the Buyer. In fact, Gaal accepted the Buyer's offer, took the Buyer's $30,000 in earnest money,[92] and executed the Purchase Agreement. Gaal's own actions confirm that FCBB performed under the Listing Agreement. Appellants cannot hide behind NRS 645.320 by inventing requirements and contradictory legislative intent as that would promote the very fraud that the Nevada Legislature intended NRS 645.320 to prohibit. Gaal provided the information upon which FCBB reasonably relied, and FCBB performed its obligations under the Listing Agreement. If this Court determines that NRS 645.320 renders the Listing Agreement unenforceable (which it should not), then the Court should still affirm the District Court's ruling on the basis that FCBB's performance

[91] See AA Vol. 1 at 78-83.
[92] See id. at 66-74, 76.

of the Listing Agreement is sufficient to satisfy NRS 645.320's requirements given the undisputed facts of this action.

4. Appellants' argument that FCBB breached its duty is unsupported by Nevada law and overlooks the fact that Gaal misrepresented his authority to sell the Premises.

Appellants also argue that FCBB breached its duty to Appellants under NRS 645.252(1)(a) when FCBB did not check who owned the Premises at the time the Listing Agreement, and later, the Purchase Agreement, were executed.[93] "NRS 645.251 expressly limits a real estate licensee's duty of care and disclosure to those specifically set forth in NRS 645.252-645.254." See Davis v. Beling, 128 Nev. 301, 314, 278 P.3d 501, 511 (2012). "The duties of disclosure of real estate licensees are covered by NRS 645.252(1) . . . ." Id. at 315, 278 P.3d at 511.

NRS 645.252(1)(a) provides that a licensee shall disclose to each party:

> (a) Any material and relevant facts, data or information which the licensee knows, or which by the exercise of reasonable care and diligence should have known, relating to the property which is the subject of the transaction.

Whether a duty exists is a question of law to be decided by the court and is reviewed *de novo*. Turner v. Mandalay Sports Entm't, LLC, 124 Nev. 213, 220, 180 P.3d 1172, 1177 (2008); see also Lee v. GNLV Corp., 117 Nev. 291, 295, 22 P.3d 209, 212 (2001) (same). Whether the duty was breached is typically a question of

[93] AOB at pp. 19-20.

fact reserved for the fact finder and will be affirmed if it is supported by substantial evidence. See Beling, 128 Nev. at 315, 278 P.3d at 511 (affirming a jury verdict regarding a breach of duty under the substantial evidence standard).

Appellants fail to cite any caselaw that stands for the proposition that a real estate agent owes a duty to independently confirm the Premises' owner rather than rely upon the client's repeated representations to FCBB and the Buyer.[94] Instead, Appellants merely assume that such a duty exists under NRS 645.252(1)(a)'s "reasonable care and diligence" language.[95] Appellants' argument is not cogently argued, lacks legal authority, and thus, this Court may disregard it. See Edwards v. Emperor's Garden Rest., 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006).

Nor was Appellants' argument properly presented to the District Court. A text search of the Appellants' Appendix shows only two references to a duty in the Second Volume, and two references in the Third Volume. None of the references cite to NRS 645.252, and the only reference in the trial transcripts to that statute was in a question that Mr. Winterton posted to Mr. Nyman.[96] There was no expert testimony offered during trial, and no argument and no citation to caselaw regarding

[94] AOB at pp. 19-20.
[95] Id.
[96] AA Vol. 3 at 384.

any potential duty owed or breached to Gaal or Jack's Place in Mr. Winterton's closing arguments.[97]

Instead, it appears that Appellants relied upon the District Court to search for truffles in the record and the law to create arguments to be made on Appellants' behalf—a practice that is shunned in the trial courts. Freteluco v. Smith's Food & Drug Ctrs., No. 2:19-cv-00759-JCM-EJY, 2021 U.S. Dist. LEXIS 3731, at *14 (D. Nev. Jan. 8, 2021) (a court should not have to rout around in the record "like a pig searching for truffles" to support a party's argument); see also Helping Hands Home

[97] See id. at 450-457. The closest Appellants came to arguing a duty owned and breached is this passage:

> If they would have changed the deal or corrected their mistake, Phil says, I'm afraid they would back out. He doesn't know that. That's what he's guessing, but it still doesn't matter. He has a duty to do his job, to do things right, otherwise he's not entitled to a commission." AA Vol. 3 at 456.

There was no citation to legal authority and no cogent argument about how a duty was owed or breached. Instead, Appellants invite this Court to create a duty out of thin air.

Appellants' citation that they preserved this issue for appeal is misplaced. AOB at p. 20; AA Vol. 2 at 323. This portion of the transcript pertains to whether or not the Premises could have been sold if the Trust was not listed in the Purchase Agreement. AA Vol. 2 at 323. As trial testimony clearly shows, to the extent this was even an issue (and the testimony of Mr. Nyman reflects it was not nor would have been), it was easily and customarily handled as part of escrow had Appellants fulfilled their contractual obligations. AA Vol. 2 at 261, 263, 285-287, 312, 315, 323, 334; AA Vol. 3 at 378-379, 381-382, 388, 438, 488. And, Appellants never argued this point in summation. See id. at 450-457.

Improvement, LLC v. Owners Ins. Co., No. 1:20-cv-01258-JDB-jay, 2022 U.S. Dist. LEXIS 27837, at *7 (W.D. Tenn. Feb. 16, 2022); Kokinda v. Elkins Police Dep't, No. 3:21-cv-00154, 2022 U.S. Dist. LEXIS 28172, at *7 (N.D.W. Va. Feb. 16, 2022); Citizens for Quality Educ. San Diego v. Barrera, 333 F. Supp. 3d 1003, 1028 n.17 (S.D. Cal. 2018); Krause v. Nevada Mutual Ins. Co., Case No. 2:12-cv-00342-JCM-CWH, 2014 U.S. Dist. LEXIS 435, 2014 WL 99178, at * 2 (D. Nev. Jan. 3, 2014); Penn-Daniels, LLC v. Daniels, No. 07-1282, 2010 U.S. Dist. LEXIS 6940, at *8 (C.D. Ill. Jan. 28, 2010); Fitzpatrick v. City of Hobart, No. 2:03-CV-359 PS, 2007 U.S. Dist. LEXIS 39235, at *16 (N.D. Ind. May 25, 2007). On that basis, this Court may find that the issue was not cogently argued and ignore it.

But should the Court reach the merits of this issue (which it should not), Respondent is unable to locate any controlling precedent in Nevada law which states that FCBB had an affirmative duty to verify the actual owner of the Premises rather than relying upon Gaal's affirmative representations. No such requirement is found in NRS Chapter 645.[98] It is Respondent's position, that given the lack of any statutory requirement, FCBB could (and did) reasonably rely on Gaal's numerous written and oral representations and that reliance satisfies the "reasonable care and diligence" standard set forth in NRS 645.252(1)(a). To hold otherwise would be to

[98] See NRS Chapter 645.

hold FCBB responsible for failing to perform due diligence which it was not (and could not have been) aware it was required to undertake.

Finally, it is not clear how a breach of duty in NRS 645.252(1)(a) would excuse performance under either the Listing Agreement or the Purchase Agreement. Assuming *arguendo* that there was a breach of duty (there was not), at most, that would create a claim against FCBB—a claim Appellants did not assert against FCBB in the action below. But that does not excuse performance under the two agreements nor do Appellants cite any authority whatsoever to suggest otherwise.

5. The Personal Guarantee is valid and enforceable.

Appellants argue that the guarantee[99] is unenforceable because the Listing Agreement is invalid under NRS 645.320.[100] Importantly, Appellants do not argue that the guarantee is unenforceable because they do not comport with Nevada law. Rather, Appellants only argue that the guarantee must be found unenforceable because it was part of the Listing Agreement, and because Appellants contend the Listing Agreement is unenforceable, then the guarantee must also be unenforceable.[101]

Guarantees are enforceable contracts under Nevada law. See e.g., Pink v. Busch, 100 Nev. 684, 691, 691 P.2d 456, 461 (1984) (reversing a district court and

[99] AOB at pp. 16-19.
[100] Id.
[101] Id.

ordering that the personal guarantees on two promissory notes be enforced). A guarantee "is a binding contract which is neither revocable by the guarantor or terminable by his death." Sawyer's Estate v. Ygnacio Med. Ctr., 92 Nev. 171, 173, 547 P.2d 317, 318 (1976). Because a guarantee is a creature of contract, the court determines whether the language of the personal guarantee is clear and unambiguous and, if it is, the guarantee will be enforced as written. See Mendenhall v. Tassinari, 133 Nev. 614, 624, 403 P.3d 364, 373 (2017). If one personally guarantees the obligations of a contractual party, and that contractual party defaults, then the personal guarantor is jointly and severally liable for the party's obligations. See 38A C.J.S. Guaranty § 146.

"Whether two agreements constitute a single, inseverable contract or two separate contracts is a question of law[,]" Sprouse v. Wentz, 105 Nev. 597, 605, 781 P.2d 1136, 1140 (1989), and is reviewed *de novo*. Similarly, "contracts made in contravention of the law do not create a right of action[,]" but, "where a contract consists of several agreements, one of which is illegal, the illegal portion can be severed if it does not destroy the symmetry of the contract." Id.

The Listing Agreement contains a severability provision that provides: "If, for any reason, any portion of this Agreement is deemed invalid, it shall be deemed

severed from the Agreement and the rest shall be enforceable."[102] The guarantee clause of the Listing Agreement provides:

> Seller warrants that Seller or the actual person who has signed on behalf of the entity has the legal right, power and authority to enter into and perform this Agreement . . . The natural person or persons who signs this Agreement personally guarantee performance of this Agreement and payment to FCBB-101 of all Commissions due.[103]

Here, there are two separate contracts in the Listing Agreement, and they are severable if necessary. The first contract requires FCBB to find a suitable buyer for the Business including the Premises—which FCBB did and Appellants accepted. The second contract is the guarantee, which requires that Gaal guarantee that he would guarantee the performance of the Listing Agreement should FCBB find a suitable buyer.[104]

To put it a different way, it is absurd that Appellants are arguing that they should not be held liable for the information that they provided and repeatedly affirmed orally and in writing before FCBB performed its obligations. It is similarly absurd that Appellants can repeatedly and knowingly ignore acknowledged obligations to produce due diligence documents and communicate materially breaching obligations and yet deny liability. That is why the guarantee clause is in the Listing Agreement: to ensure that Appellants guarantee that the Listing

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[102] AA Vol. 1 at 80 ¶ 19.
[103] Id. at 80 ¶ 26.
[104] Id.

Agreement will be performed in the event that FCBB finds a suitable buyer. There is no credible argument that FCBB failed to perform by failing to find a suitable buyer. This is because FCBB performed and Appellants know it because they executed the Purchase Agreement.[105] Therefore, not only did FCBB perform but Gaal guaranteed the performance of the Listing Agreement.

Because the Listing Agreement and the guarantee are severable, the guarantee binds Gaal—both individually and as a managing member of Jack's Place—to Jack's Place's performance of the Listing Agreement.[106] Therefore, even if this Court were to determine that NRS 645.320 determines that the Listing Agreement is unenforceable, the Court should determine that the guarantee is severable and enforceable, and affirm the judgment on the basis that that the guarantee requires Gaal and Jack's Place to pay FCBB its fees.

B. FCBB's fees were due and owning once Appellants breached the Listing Agreement.

Appellants also argue that no Fees are due to be paid to FCBB.[107] Appellants' argument is specious at best and a misrepresentation of the Listing Agreement at worst. The Listing Agreement contains several provisions stating when FCBB is due its Fees. Namely, FCBB is entitled to its fee under the Listing Agreement when:

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[105] Id. at 64-74.
[106] Id. at 80 ¶ 26.
[107] AOB at pp. 13-16.

> Seller agrees that if during the Listing Period . . . a Disposition of the Business or a completion of a Transaction occurs . . . then FCBB-101 will immediately have earned and become entitled to a Commission of . . . 12 ½% of the Transacted Value.[108]

A "Disposition of the Business" is defined as:

> The sale of other change of ownership of the Business . . . where some for of a Purchase Agreement is entered into by the Seller . . . .[109]

The Listing Agreement further provides that FCBB has earned its Fee when:

> Seller fails to abide by the terms of this Agreement and/or fails to co-operate with the Buyer's due diligence under the terms of any Purchase Agreement, and/or fails or refuses to deliver Buyer's requested documents withing the requested time period to facilitate a Disposition of the Business, thereby causing a default under the terms of the Purchase Agreement and/or this Agreement preventing the buyer to complete the purchase of the Business. . . .[110]

It is undisputed that FCBB spent months looking for and locating a buyer for the Business and the Premises.[111] It is undisputed that FCBB found the Buyer.[112] It is undisputed that Gaal reviewed the Buyer's terms and conditions, negotiated with the Buyer, then signed a mutually acceptable agreement for the sale of the Business including Premises.[113] And, it is undisputed that once the Purchase Agreement was executed between Gaal, Jack's Place, and the Buyer, Gaal suddenly became

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[108] AA Vol. 1 at 78 ¶ 6.
[109] Id. at 82 ¶ 6.
[110] Id. at 079 ¶ 13(C).
[111] Id. at 201.
[112] AA Vol. 2 at 227-229; AA Vol. 1 at 66-74.
[113] Id. at 66-74; AA Vol. 2 at 237-243.

"secretive," ceased to communicate, and refused to produce any due diligence documents that he was required to produce,[114] even at the insistence of his own attorney.[115]

The simple fact is that FCBB's Fee was earned once Gaal and Jack's Place executed the Purchase Agreement, and was further earned when Gaal and Jack's Place breached the Listing Agreement.[116] When the Purchase Agreement was executed between Appellants and the Buyer, Appellants had obligations to disclose documents to the Buyer so that the Buyer could perform his due diligence.[117] But Appellants failed to disclose those documents in contravention of the Listing Agreement and the Purchase Agreement, which means that FCBB had earned its fees.[118] Therefore, this Court should reject Appellants' argument and affirm the judgment of the District Court that the fees were due and owing to FCBB under the terms of the Listing Agreement once a "Disposition of the Business" occurred with the execution of the Purchase Agreement and again were due and owing when Appellants failed to provide the due diligence documents and committed other material breaches of the Listing Agreement's and Purchase Agreement's terms.

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[114] AA Vol. 1 at 259.
[115] Id. at 121; AA Vol. 2 at 261-265.
[116] AA Vol. 1 at 080 ¶ 26.
[117] See id. at 78-83.
[118] Id. at 079 ¶ 13(C).

C. The District Court did not abuse its discretion in determining that certain evidence was inadmissible at trial; alternatively, the exclusion of this evidence is harmless.

Appellants next assert that the District Court abused its discretion by: (1) not taking judicial notice of the ownership of the Premises; and (2) excluding Northup's testimony at trial. This Court reviews the District Court's admission or exclusion of evidence for an abuse of discretion. Petrocelli v. State, 101 Nev. 46, 52, 692 P.2d 503, 508 (1985). Thus, this Court will not substitute its judgment for that of the District Court unless the District Court's determination was manifestly wrong. Young v. Johnny Riberiro Bldg., Inc., 106 Nev. 88, 92, 787 P.2d 777, 779 (1990); Petrocelli, 101 Nev. at 52, 692 P.2d at 508. A District Court properly exercises its discretion where it gives appropriate, careful, correct, and express consideration of the factual and legal circumstances before it. Young, 106 Nev. at 93-94, 787 P.2d at 780. In other words, "[a]n abuse of discretion occurs when no reasonable judge could reach a similar conclusion under the same circumstances." Leavitt v. Siems, 130 Nev. 503, 509, 330 P.3d 1, 5 (2014).

But even if the District Court abused its discretion, if that decision to exclude evidence is harmless, then "reversal is not warranted." Wyeth v. Rowatt, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010). An error is not harmless if—and only if—the improperly excluded evidence would have reasonably resulted in a different outcome at trial. Id. The entire record is reviewed to determine if the error is

harmless. Id. Indeed, this Court will affirm the District Court's decision on any grounds supported by the record. See Rosenstein v. Steele, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987) On appeal, it is Appellants' burden to demonstrate that improperly excluded evidence would have reasonably resulted in a different outcome at trial. See Dugan v. Gotsopoulos, 117 Nev. 285, 22 P.3d 205 (2001); Grosjean v. Imperial Palace, Inc., 125 Nev. 349, 361, 212 P.3d 1068, 1077 (2009).

1. It was not an abuse of discretion to exclude Northup's testimony; alternatively, such exclusion was harmless.

Appellants argue that the District Court erred when it excluded Northup's testimony from trial.[119] During trial, FCBB objected to Northup's testimony on the basis that Appellants failed to list Northup as a witness in their NRCP 16.1 disclosures until the day of discovery cutoff, thus depriving FCBB of any opportunity to conduct discovery regarding this witness.[120] Indeed, based on Appellants' arguments now, Appellants knew for the pendency of the action that Northup possessed relevant and admissible information in support of their alleged defenses, yet failed to disclose him as a witness on their initial or supplemental disclosures until the discovery cutoff deadline.[121] FCBB was deprived of any opportunity to depose Northup or prepare through discovery for his anticipated

[119] AOB at pp. 25-26.
[120] AA Vol. 3 at 399-400.
[121] Id. at 400.

testimony at trial. FCBB requested the District Court to exclude his testimony from trial, which the District Court granted on the basis of Northup's late disclosure.[122]

NRCP 16.1 requires that a party must, without awaiting a discovery request, disclose to the other parties, "the name and, if known, the address and telephone number of each individual likely to have information discoverable under Rule 26(b), including for impeachment or rebuttal, identifying the subjects of the information" within 14 days after the parties' Rule 16.1(b) conference (unless a different time is set by stipulation or court order). NRCP 16.1(a)(1)(A)(i); NRCP 16.1(a)(1)(C). "'A party is under a duty to supplement at appropriate intervals its disclosures under Rule 16.1(a) . . . if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known . . . .'" NRCP 26(e)(1). "If a party fails to comply with the disclosure requirements of NRCP 16.1 or NRCP 26(e)(1), the party cannot use any witness or information not so disclosed unless the party shows a substantial justification for the failure to disclose or unless the failure is harmless. NRCP 37(c)(1); *see also* NRCP 16.1(e)(3)(B)." Capanna v. Orth, 134 Nev. 888, 894, 432 P.3d 726, 733 (2018) (citations in original).

Despite the fact that Appellants knew that Northup was likely to have discoverable information, Appellants failed to disclose him until January 18, 2020—

[122] Id. at 399-402.

the discovery cutoff deadline.[123] But this action was filed on June 29, 2018, approximately 18 months earlier.[124] The Rule 16 Conference was held on June 5, 2019, a year after FCBB filed its complaint.[125] Appellants had approximately eighteen months to disclose Northup but failed to do so until the very last day of discovery. It was not an abuse of discretion for the Court to exclude Northup's testimony based on Appellants' untimely disclosure. *See* NRCP 37(c)(1) ("If a party fails to . . . identify a witness as required by Rule 16(a)(1) . . . the party is not allowed to use that information or witness to supply evidence . . . at trial . . . .).

While Appellants contend that Capanna stands for the proposition that the District Court abused its discretion when it excluded Northup's testimony,[126] it does not. In Capanna, the question presented was limited to whether an expert witness offering new information should have been allowed to testify when that information was not disclosed. Capanna, 134 Nev. at 894, 432 P.3d at 734. The Nevada Supreme Court determined that it could not determine if the trial court abused its discretion based upon the record before it, id., 134 Nev. at 895, 432 P.3d at 734, *not that the district court actually abused its discretion*. Id. Thus, Capanna does not stand for the

[123] Id. at 400.
[124] See RA at 1.
[125] Id. at 2.
[126] AOB at p. 26.

proposition that the District Court, in this circumstance, abused its discretion in excluding Northup.

Appellants' decision to not disclose Northup until the eleventh hour and without any required subject or information he would give testimony on was neither substantially justified nor harmless. FCBB did not know Northup would testify at trial since Appellants also failed to make any pre-trial disclosures of witnesses pursuant to NRCP 16.1(a)(3).[127] There is no reason to not disclose a potential witness for over eighteen months. In fact, Appellants do not even contend in their Opening Brief that there was a justifiable reason for their untimely disclosure of Northrup.[128] They simply gloss over when he was disclosed and merely stated "[h]e was listed as a witness prior to the close of discovery."[129] But when pressed by the District Court, Appellants had to concede Northup was not timely named.[130] When he was disclosed and how he was disclosed (or not) is relevant as it formed the basis for the District Court's decision. Importantly, because Appellants failed to disclose Northrup until the very last day of discovery, FCBB could not depose Northup.[131] In sum, the District Court did not abuse its discretion in excluding Northup's testimony at trial.

[127] AA Vol. 3 at 399-400; see RA at 12-13.
[128] AOB at pp. 25-26.
[129] Id. at p. 25.
[130] AA Vol. 3 at 402.
[131] Id. at 400.

Moreover, the exclusion of Northup was harmless. When the District Court indicated its intent to exclude Northup as a witness at trial, the District Court offered Appellants' counsel the opportunity to make an offer of proof about his anticipated testimony. Appellants' counsel stated the following in response:

> THE COURT: I'll let you make an offer of proof of what his testimony would have been.
>
> MR. WINTERTON: Sure. Your Honor, basically what Mr. Northup would have testified is that he and Jack Gaal had a partnership and have done a work together. That Jack Gaal called him up and said, hey, could you sell the property, and he said, let me bring Phil Neuenswander in. He sells businesses. We will work together. We had a 40 percent contingency agreement that he would get 40 percent and Phil would get 60 percent. And he would also testify that when he looked at the contract, he will say he didn't see the initial -- he didn't read over the exclusive listing agreement. He says, when I looked over the original contract, I said -- he will testify it did not cover the real property. And that's basically what he would testify to.
>
> ***So, for us it just reemphasize, but we'll be using Jack Gaal to cover all that information***.[132]

Appellants' offer of proof only confirms that that purpose of calling Northup to testify was to reemphasize and duplicate testimony to come from Gaal, not to adduce new evidence for the Court's consideration. In light of the fact that Appellants provided the very same testimony from Gaal, the decision to exclude Northup's (duplicative) testimony was harmless. Appellants consciously fail to argue how Northup's testimony would have introduced evidence that would change

[132] Id. at 402 (emphasis added).

the outcome of this action in District Court and that is likely because Appellants know that Northup's testimony would not have changed the outcome of this action.[133] His testimony would have been merely duplicative and for repetitive emphasis as Appellants' counsel has conceded on the record.[134] Thus, any error the District Court committed in excluding Northup (there was none) here was harmless.

2. The District Court accepted that the Trust owned the Premises, so failure to take judicial notice of the Premises' owner is harmless.

Appellants next argue that the District Court committed reversable error by failing to take judicial notice of the Premises' owner, the Trust.[135] During trial, Appellants requested that the District Court take judicial notice of a tax record dated February 13, 2018, which was purportedly offered to show the true owner of the Premises.[136] FCBB objected to the particular proposed exhibit on a number of evidentiary grounds and the District Court declined to take judicial notice of the tax return.[137]

NRS 47.150 provides that a "court shall take judicial notice if requested by a party and supplied with the necessary information." NRS 47.150(2). But, the District Court was not provided with the necessary information required to take judicial

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[133] AOB at pp. 25-26.
[134] AA Vol. 3 at 402.
[135] AOB at pp. 24-25.
[136] AA Vol. 3 at 423-424.
[137] Id. at 424.

notice. First, there was no way to confirm whether the document was a complete document or that it came from the Assessor.[138] Without that necessary information, the Court was entitled to use its discretion and decline taking judicial notice of the tax return.

Even if the District Court did abuse its discretion, however, such an error was harmless. The District Court heard undisputed evidence from all parties that the Premises were owned by the Trust.[139] In fact, it was freely admitted to at trial that the Trust was the owner of the Premises:

> [Mr. Winterton] Q: Did you make any effort to change the documents now that there was no question you knew that the trust owned the property?
>
> [Philip] A: I had no reason to. Jack represented himself as the authorized seller over, and over, and over again.[140]

Title ownership to the Premises was not a fact in dispute at trial. Further to this point, the District Court's FFCL are not based upon a finding of fact that the Trust was not the owner of the Premises.[141] Rather, the District Court found that FCBB was entitled to rely upon Appellants' numerous representations that they had the authority to sell the Premises regardless of who was the title owner of the Premises.[142] The District

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[138] Id. at 423-424.
[139] AA Vol. 2 at 258-260, 262-263, 279, 282-283, 322-323, 332-334; AA Vol. 3 at 433, 438.
[140] Id. at 438.
[141] See AA Vol. 1 at 23-27.
[142] Id. at 25 at ¶¶ 9-10.

Court almost directly addresses Appellants' implied argument in its FFCL when it found: "Defendants attempting to raise arguments regarding potential improper vesting of a title deed is not sufficient to avoid performance or liability under either of the written contracts."[143]

Even if the District Court would have taken judicial notice of the exhibit purporting to be a tax document, it would not have changed the outcome at trial because the District Court was apprised of and considered the fact that the Trust owned the Premises. Therefore, any error in declining to take judicial notice is harmless, and the Court should affirm the judgment.

3. To the extent that the District Court applied the Purchase Agreement to the Listing Agreement, those documents were interlinked by contractual terms, and any such error is harmless.

Appellants next argue that the District Court erred by not limiting its decision to only the Listing Agreement.[144] Similar to the previous issues in this section, Appellants fail to state how, exactly, the consideration of the Purchase Agreement by the District Court is not harmless and would mandate reversal.[145] Nor did Appellants provide any legal authority as to why the District Court should not have considered the Purchase Agreement.[146] Finally, the FFCL bases its determination of

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[143] Id. at 25 at ¶ 13.
[144] AOB at pp. 20-21.
[145] Id.
[146] Id.

contractual obligations, breaches thereof, and damages resulting on the Listing Agreement.[147] While the Purchase Agreement is referenced in the FFCL, the District Court's breach of contract determination and the damages resulting thereof is based upon the Listing Agreement.[148] Thus, the issue is not cogently argued and/or any error is harmless.

Regardless, the District Court was correct in referencing both the Listing Agreement and the Purchasing Agreement because they are interlinked by contractual terms and incorporated by reference. For example, the Listing Agreement's paragraph 6 provides, in part:

> All Fees owed to FCBB-101 . . . will be fully earned at the time of acceptance by Seller of any type of Purchase Agreement.[149]

Thus, FCBB's Fees were earned once Appellants executed the Purchase Agreement as that constituted a "Disposition of the Business". This Court should affirm the District Court's finding that the Fees were earned by FCBB when Appellants executed the Purchase Agreement.

The Listing Agreement and the Purchase Agreement are thus interlinked. That makes sense given how these brokerage contracts and sell contracts are structured. First, the parties engage a broker to sell the property. Then, if a potential buyer is

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[147] See AA Vol. 1 at 31-35 at Findings of Fact ¶¶ 2-5, 9, 11-12, 21, and Conclusions of Law at ¶¶ 1-3.
[148] See id. at 31-35.
[149] Id. at 32-33 ¶ 6.

found, then the buyer engages in direct negotiations with the seller. Once the buyer and the seller reach mutually agreeable terms, then a purchase agreement is executed, and additional obligations arise both in the Purchase Agreement and the Listing Agreement. For example, under the Listing Agreement, the obligation that the sellers will pay FCBB its fees arises when the Purchase Agreement is executed.[150] And under the Purchase Agreement, the sellers have 10 days to get due diligence documents to the buyer for his examination.[151] The two agreements are interlinked, which the District Court implicitly acknowledged in its FFCL.[152] And—importantly—the District Court based its damages upon the Listing Agreement, not the Purchase Agreement. The District Court merely made findings of how the Listing Agreement and the Asset Agreement interlink, which is necessary to determine damages. That is not error.

D. Appellants' remaining arguments are waived on appeal or are harmless error because those arguments were not properly raised in the District Court or at trial.

Appellants then make several arguments that, they claim, warrant reversal. Those arguments are: (1) the Listing Agreement and/or the Purchase Agreement

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[150] Id. at 32-33 ¶ 6.
[151] Id. at 79 ¶ 11.
[152] Id. at 31-35. As an example, the District Court made several references to the Purchasing Agreement in its FFCL. Id. But, the District Court never based its overall determination of breach or of damages upon its FFCL. See id. Absent sole reliance upon any supposed breach of the Purchase Agreement, the judgment must be affirmed.

were vague or ambiguous; (2) FCBB failed to obtain a qualified buyer; and (3) the District Court failed to find that there was a breach of the implied covenant of good faith and fair dealing.[153]

It is well established that "[a] point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal." Old Aztec Mine v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). Indeed, it is Appellants' burden to make an adequate record sufficient for appellate review in the District Court. Cuzze v. Univ. & Cmty. Coll. Sys., 123 Nev 598, 603, 172 P.3d 131, 135 (2007). Nor may Appellants assert a new theory on appeal; Appellants were required to raise that theory in the District Court in the first instance. Peke Res., Inc. v. Fifth Judicial Dist. Court, 113 Nev. 1062, 1068 n.5, 944 P.2d 843, 848 n.5 (1997). Furthermore, this Court may ignore any point that is unsupported by cogent argument or relevant authority in Appellant's Opening Brief. See Emperor's Garden Rest., 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

1. The Listing Agreement or the Purchase Agreement were not vague or ambiguous, Appellants did not cogently argue this issue below or on Appeal, and thus it is waived.

Appellants now assert for that the Listing Agreement and/or the Purchase Agreement were vague and/or ambiguous,[154] and further argue that the District Court

[153] AOB at pp. 23-24.
[154] Id. at p. 2.

erred in applying the terms of the Purchase Agreement to determine if a commission should be paid.[155]

In their Issues on Appeal *only*, Appellants boldly declared that the Listing Agreement and the Purchase Agreement were ambiguous and that the District Court's interpretation was incorrect.[156] Beyond Appellants' conclusory statement, however, they reference no facts for this Court to consider, provide no legal authority supporting Appellants' position,[157] and fail to provide legal authority or meaningful argument in their Opening Brief as to how the Listing Agreement and/or Purchase Agreement are vague or ambiguous. Moreover, Appellants failed to raise this issue before the District Court in the first instance. Therefore, this issue is waived, and the Court need not consider it. Old Aztec Mine, 97 Nev. at 52, 623 P.2d at 983; Edwards, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

2. Appellants now argue—for the first time—that FCBB failed to obtain a qualified buyer.

Appellants raise the issue for the first time that FCBB failed to obtain a qualified buyer.[158] However, Appellants never raised this issue before the District

[155] Id. at pp. 20-21.
[156] Id. at p. 2.
[157] See gen. id.
[158] Id. at pp. 23-24.

Court and thus the issue is waived.[159] Old Aztec Mine, 97 Nev. at 52, 623 P.2d at 983.

Should the Court decide to consider the merits of this issue, there was substantial evidence that FCBB did obtain a qualified buyer. The Buyer was a sophisticated business person who had owned several businesses and who had purchased at least one other business.[160] He had over a half million dollars in liquid assets.[161] The Buyer had approximately $1,500,000 in stocks and bonds.[162] And, critically, Appellants did not present any contrary evidence in trial that the Buyer was somehow not a qualified buyer.[163] Given that the Buyer and Appellants entered into a contract to sell both the Business and Premises for $1,000,000,[164] there is substantial evidence to support the District Court's finding that the Buyer was a suitable Buyer and could have performed his obligations had Appellants disclosed the due diligence documents.

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[159] See AA Vol. 3 at 450-457.
[160] Id. at 342-343.
[161] Id. at 346.
[162] Id. at 347.
[163] See id. at 364-374. The only "evidence" offered was Gaal's opinion that the Buyer was unqualified. See id. at 425-427.
[164] AA Vol. 1 at 64, 66-74.

3. Appellants do not cogently argue how the District Court's findings constituted a reversable error for the determination that Appellants breached the implied covenant of good faith and fair dealing.

The entirety of Appellants' argument that the District Court erred when it found that Appellants breached the implied covenant of good faith and fair dealing is thus:

> There is no finding by the court of bad faith nor a breach of the covenant of good faith and fair dealing.[165]

That's all, folks.[166] There are no legal citations, there was no closing argument at trial that addressed this point,[167] there is no argument in the AOB why this claim was incorrect. Appellants merely offer a singular declaratory statement and encourage this Court to find the supporting facts, find the relevant law, and for the Court to draw its own legal conclusions.[168] Respectfully, that is not a cogent argument upon which this Court may reverse the District Court's finding. The Court may disregard it in its entirety. See NRAP 28(a)(10)(A); Edwards, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

V. CONCLUSION

In 2017, Appellants claimed they wanted to sell their sports bar and grill business and the Premises where it operated. They made numerous oral and written

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[165] AOB at p. 24.
[166] *Looney Tunes: Rover's Rival* (Warner Brothers, originally broadcasted in 1937).
[167] AOB at p. 24.
[168] See gen. id. at p. 24.

representations to FCBB that they were authorized to sell the Business including the Premises, and based upon Appellants' representations, the parties entered into the Listing Agreement whereby FCBB would find a suitable buyer. Once FCBB found a suitable buyer and a "Disposition of the Business" occurred with the mutual execution of the Purchase Agreement, its Fees became due and owing pursuant to the Listing Agreement. FCBB found that buyer and a Purchase Agreement was executed. But instead of seeing the deal through, Appellants materially breached the Listing Agreement and the Purchase Agreement.

The District Court reached the correct conclusion given the facts and evidence presented at trial. First, Nevada law does not require—nor did the Nevada Legislature ever intend—that the actual property owner be a party to a brokerage agreement under NRS 645.320 or NRS 645.009. Second, even if the Court determines that the Nevada Legislature intended the actual property owner to be a party to the brokerage agreement, under the specific facts of this case, the District Court's findings that Gaal had the apparent authority to execute the Listing Agreement and the Purchase Agreement are supported by substantial evidence. Third, it is clear that the plain and unambiguous language of the Purchase Agreement and the Listing Agreement are unequivocable: FCBB is owed its Fees once there is a "Disposition of the Business" upon the execution of the Purchase Agreement

and/or when Appellants repeatedly breached the Listing Agreement. These three points warrant a rejection of Appellants' numerous unmeritorious arguments.

Respectfully, this Court should affirm the District Court's judgment in all respects.

Dated: March 9, 2022.

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VI. CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 365 in 14-point Times New Roman Font.

2. I further certify that this brief complies with the page- or type- volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points or more and contains 13,629 words.

3. Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix were the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules

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of Appellate Procedure.

Dated: March 9, 2022.

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CERTIFICATE OF SERVICE

This is to certify that on March 9, 2022, a true and correct copy of the foregoing **RESPONDENT LAS VEGAS 101, INC.'S ANSWERING BRIEF**, was served on the following by the Supreme Court Electronic Filing System. I further certify that counsel of record for all other parties to this appeal are either registered with the Court's electronic filing system or have consented to electronic service, and that electronic service shall be made upon and in accordance with the Court's Master Service List.

By: /s/ *Lorrine Rillera*
An employee of Jones Lovelock