

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1298**

Cornerstone Management Services, LLC,
Respondent,

vs.

BAHEYA, LLC,
Appellant.

**Filed April 14, 2025
Affirmed
Bjorkman, Judge**

Olmsted County District Court
File No. 55-CV-22-2066

Perry Berg, Joseph R. Heinrichs, Patton, Hoversten & Berg, P.A., Waseca, Minnesota (for respondent)

Nahid Abuelhassan, Abuelhassan Law, P.L.L.C., St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Reyes, Judge; and Bond, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges the award of attorney fees to respondent and dismissal of its fraud counterclaims following a court trial in this contract dispute. We affirm.

FACTS

Appellant Baheya LLC owns three commercial properties in Rochester known as Oddfellows, First Avenue, and Brackenridge Skyway Plaza. The Oddfellows building, which Baheya acquired in 2011, houses multiple commercial tenants, including a drug store and an architectural firm. The First Avenue property, acquired in 2012, comprises several short-term-rental suites and a food court. Brackenridge, purchased in 2014, is wholly occupied by a healthcare entity.

Baheya is owned by an individual who is a citizen and resident of the United Arab Emirates but has consistently maintained a local representative to safeguard its interests. Between 2011 and April 2019, Baheya was represented by Ahmed Elkhalfataha. From May 2019 through June 2021, Baheya was represented by Shahker Najib. Thereafter, Elkhalfataha returned as representative.

Respondent Cornerstone Management Services LLC is a Rochester-based commercial-property management company formed in 2019 by owner Mark Dickson and a partner. Dickson serves as Cornerstone's president and manages its operations. Prior to establishing Cornerstone, Dickson was president and part-owner of Oxford Property Management LLC for 11 years. Oxford offered commercial-property management services in the Rochester area until 2019.

The Parties' Business Relationship

Since obtaining property in Rochester, Baheya has continually contracted with a local commercial-property management company to oversee its buildings. From November 2011 until May 1, 2019, Oxford provided these management services. Oxford

and Baheya signed separate management agreements for each of Baheya's three properties. The three agreements are identical, excepting the management fees, which varied by building because of their differing needs. Oxford received monthly management fees in the amount of \$2,083 for Oddfellows, \$3,000 for First Avenue, and \$4,650 for Brackenridge.

In addition to setting Oxford's fees, the three management agreements all include terms that (1) provide for automatic renewal, (2) outline the pass-through of common-area-maintenance (CAM) expenses to tenants and assign responsibility to Baheya for any uncovered expenses, and (3) entitle the prevailing party in any related legal action to recover reasonable attorney fees and costs.

On May 1, 2019—following its shift away from commercial-property management—Oxford assigned the three management agreements to Cornerstone in three written “Assignment of Management Contract[s].” Oxford made the assignments at Najib's behest based on Baheya's desire to continue working with Dickson, who had just formed Cornerstone. The terms of the management agreements did not change.¹

The Events Leading to Litigation

For approximately one year, Cornerstone managed Baheya's properties without incident. Then, in May 2020—as the COVID-19 pandemic was unfolding—Baheya, through Najib, asked Cornerstone to defer its management fees for an unspecified amount of time. Baheya further requested that Cornerstone reduce the amount of pass-through

¹ The only exception is, after the assignment, the parties orally agreed to reduce the monthly management fee for Oddfellows from \$2,083 to \$2,060 to allow for easier accounting.

CAM expenses. Cornerstone agreed to defer management fees beginning in June and cut CAM costs by furloughing employees and reducing services.

Also in May, Baheya hired a Minneapolis-based accounting firm to begin overseeing its finances. As a result, Cornerstone lost access to Baheya's bank account, to which it had previously been an authorized signer. The accounting firm implemented a billing system through a service called "bill.com," which required Cornerstone to submit an invoice for approval by both the accounting firm and Baheya's representative before it could receive a payment. This new system resulted in significant delays in Cornerstone's receipt of funds from Baheya, leading to overdue and unpaid expenses.

In June 2021, Elkhalfataha returned to Baheya; he promptly ended the company's relationship with the accounting firm and began personally managing its bills. He then commenced an audit of Baheya's accounts, which led him to believe that Cornerstone was committing fraud against Baheya. As a result, Baheya cancelled its monthly CAM pass-through payment for August.

Because of Baheya's failure to pay, Cornerstone ceased providing management services to Baheya in August 2021. Subsequently, Cornerstone requested payment in full for its deferred management fees. Baheya did not respond.

The Legal Proceedings

In January 2022, Cornerstone commenced this action, alleging Baheya breached its contractual obligations by failing to pay management fees from June 1, 2020, through December 1, 2021, when the parties' contractual relationship ended. Cornerstone sought

a judgment in the amount of the unpaid management fees and reasonable attorney fees and costs, as provided by the management agreements.

Baheya answered, admitting its contractual relationship with Cornerstone, but denying the allegations of breach. The answer asserted counterclaims, alleging that Cornerstone committed (1) “fraud by embezzlement,” and (2) “accounting fraud.”

In July 2023, the district court held a three-day court trial during which it heard testimony from four witnesses—including Dickson and Elkhalfataha—and admitted 41 exhibits comprising hundreds of pages of financial records and other documents. In a detailed written order, the district court found that Baheya breached its contractual obligations. The court awarded Cornerstone \$174,780 in damages for unpaid management fees, along with reasonable attorney fees and costs. The district court found that Cornerstone did not commit fraud and accordingly dismissed Baheya’s counterclaims.

Baheya appeals.

DECISION

Following a court trial, we review a district court’s legal conclusions de novo and its findings of fact for clear error. *Zephier v. Agate*, 957 N.W.2d 866, 875 (Minn. 2021). Under the clear-error standard, we defer to the district court’s credibility determinations and do not “reweigh the evidence.” *Landmark Cmty. Bank, N.A. v. Klingelhutz*, 927 N.W.2d 748, 755 (Minn. App. 2019). A finding of fact is clearly erroneous when it is “manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *Tonka Tours, Inc. v. Chadima*, 372 N.W.2d 723, 726 (Minn. 1985).

Baheya argues the district court clearly erred by finding that (1) there were written contracts between the parties allowing the recovery of attorney fees, (2) there was an oral agreement to defer payment of management fees owed to Cornerstone, and (3) Cornerstone did not commit fraud. Baheya does not challenge the district court's finding that it failed to pay Cornerstone management fees or the \$174,780 damages award.

I. Baheya waived its challenge to the district court's finding that the parties entered into a written contract that permits the recovery of attorney fees.

On appeal, we do not address arguments that a party affirmatively relinquished in district court. *See Leiendecker v. Asian Women United of Minn.*, 895 N.W.2d 623, 631-32 (Minn. 2017); *N. States Power Co. v. Gas Servs., Inc.*, 690 N.W.2d 362, 366 (Minn. App. 2004) (“A party may not consent to a legal proceeding by participating in it and later challenge the validity of the procedure, or take a position and later take a contradictory position on appeal.”). That is the situation here.

It is undisputed that, between 2011 and 2014, Baheya and Oxford entered auto-renewing agreements for the management of each of Baheya's three properties. All of the agreements contain the following provision:

If any legal action is brought for the enforcement of this Agreement, or because of alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover its reasonable attorney's fees and costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

In its answer to Cornerstone's complaint, Baheya admitted that (1) these management agreements existed, (2) they were “assigned . . . to Cornerstone,” and (3) they

entitled the “prevailing party in any legal action [to] receive from the other party its reasonable attorney’s fees, costs and disbursements.” Indeed, Baheya sought to recover attorney fees with respect to its counterclaims. On this record, we conclude that Baheya waived its argument that there was no contractual basis for Cornerstone to recover attorney fees. *See Leiendecker*, 895 N.W.2d at 631 (defining “waiver” as an “intentional relinquishment of a known right” (quotation omitted)). We therefore decline to address the merits of the argument.

II. The district court did not clearly err by finding that the parties entered into an oral agreement to defer management fees.

Baheya asserts that it is entitled to relief because the record evidence does not support the district court’s finding that the parties entered into an oral agreement to defer the payment of Cornerstone’s management fees. This argument is unavailing for two reasons.

First, review of the record supports the district court’s finding. Dickson testified that he and Najib—on behalf of the parties—orally agreed to “defer[] [Cornerstone’s] management fees” for an unspecified amount of time.² And Cornerstone provided corroborating bank records showing that Baheya ceased paying management fees in June 2020. Accordingly, we discern no clear error by the district court.

² Baheya argues that Dickson’s testimony regarding Najib’s statements constitutes inadmissible hearsay. We are not persuaded. Najib was employed as Baheya’s agent, making his statements those of a party-opponent under Minn. R. Evid. 801(d)(2)(D). The statements of a party-opponent are not hearsay. Minn. R. Evid. 801(d)(2).

Second, and more importantly, Baheya’s argument is irrelevant to the issues before us. Cornerstone commenced this action to recover *all* unpaid management fees. As the district court found, Baheya’s obligation to pay management fees to Cornerstone is based on the assigned management agreements. The subsequent oral agreement only modified *when* Baheya was required to pay Cornerstone its management fees—it did not relieve Baheya of the obligation to pay them. In short, the oral agreement to defer payment did not function as an agreement to cancel or reduce Baheya’s contractual obligations. Any claimed error by the district court in finding that the parties agreed to defer management payments in June 2020 does not warrant relief on appeal. *See* Minn. R. Civ. P. 61 (stating harmless error should be ignored); *Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 98 (Minn. 1987) (“Although error may exist, unless the error is prejudicial, no grounds exist for reversal.”).

III. The district court did not clearly err by finding that Cornerstone did not commit fraud.

Baheya argues that the evidence in the record does not support the district court’s findings that Cornerstone did not commit (1) “fraud by embezzlement” by misappropriating funds from Baheya’s accounts, and (2) “accounting fraud” by altering its financial records. We address each argument in turn.

Fraud by Embezzlement

In considering Baheya’s first fraud claim, the district court defined embezzlement to require: (1) a fiduciary relationship between the parties in which one party is authorized to handle the other party’s money or property, and (2) a showing that the authorized party

intentionally took and retained the other party's money or property as its own without a lawful right to do so.³ The court then found that, although Baheya and Cornerstone have a fiduciary relationship, Baheya failed to establish that Cornerstone was authorized to handle Baheya's money at the time of the alleged fraud or that it took or retained Baheya's money or property as its own. The record supports these findings.

Baheya alleges that Cornerstone embezzled money between June 1, 2020, and August 31, 2021. But the record reflects that, during that entire time frame, Baheya employed an outside accounting firm to manage its finances, which required Cornerstone to submit invoices for approval before funds were disbursed. Between June 2021 and August 2021, Elkhalfataha personally managed Baheya's accounts. In other words, the evidence defeats a finding that Cornerstone had access to Baheya's accounts during the relevant time frame. And review of the financial documents in the record defeats a finding that Cornerstone was overpaid for its management services at any relevant time.

Accounting Fraud

To prevail on a claim of fraud, a party must establish that

(1) there was a false representation by a party of a past or existing material fact susceptible of knowledge; (2) made with knowledge of the falsity of the representation or made as of the party's own knowledge without knowing whether it was true or false; (3) with the intention to induce another to act in reliance thereon; (4) that the representation caused the other party to act in reliance thereon; and (5) that the party suffered pecuniary damage as a result of the reliance.

³ Baheya offers no legal authority supporting a cause of action for "fraud by embezzlement." But because it was not contested, we need not decide whether such a cause of action exists under Minnesota law.

Hoyt Props., Inc. v. Prod. Res. Grp., LLC, 736 N.W.2d 313, 318 (Minn. 2007) (quotation omitted).

The district court determined that Baheya failed to provide evidence that Cornerstone falsely represented an existing material fact through the financial records it submitted to Baheya or that Baheya suffered resulting pecuniary damage. Instead, the court found that the evidence demonstrates Baheya's misunderstanding of Cornerstone's accrual-accounting system. Again, the record supports these findings.

Baheya's fraud claim is grounded in the conclusions drawn by Elkhalfataha following his audit of Baheya's finances. Elkhalfataha testified that he believed that Cornerstone was requesting overpayment based on his review of accrual "income statements" provided by Cornerstone. But the district court also heard testimony from Cornerstone's accountant explaining that the "income statements" reflect the "actual expense[s]" that Baheya incurred during the covered period, not payments it made during that time. Furthermore, Elkhalfataha admitted that he was unfamiliar with the accrual-accounting system used by Cornerstone. Based on this testimony, the district court found Elkhalfataha was not credible. We defer to the district court's credibility determination. *See Landmark*, 927 N.W.2d at 755. And, as stated above, our review of the financial-record evidence does not reveal the inconsistencies that Baheya suggests it contains.

On this record, we discern no clear error in the district court’s finding that Cornerstone did not commit fraud against Baheya.⁴

Affirmed.

⁴ Baheya also contends that the district court erred by denying it the opportunity to argue that Dickson is personally liable for fraud. But Baheya cites no supporting authority and fails to develop any argument regarding this claim. An “assignment of error on mere assertion, unsupported by argument or authority, is forfeited.” *Scheffler v. City of Anoka*, 890 N.W.2d 437, 451 (Minn. App. 2017), *rev. denied* (Minn. Apr. 26, 2017). Therefore, Baheya’s personal-liability argument is forfeited for inadequate briefing.