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1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **BEHLES LAW FIRM, P.C., a New**
3 **Mexico Professional Corporation,**

4 Plaintiff-Appellant,

5 v.

NO. 33,897

6 **HUDSON ALBUQUERQUE, LLC,**
7 **an Illinois Limited Liability Company**
8 **doing business in the State of New Mexico,**

9 Defendant-Appellee.

10 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

11 **Alan M. Malott, District Judge**

12 The Behles Law Firm, P.C.

13 Jennie D. Behles

14 Albuquerque, NM

15 for Appellant

16 Ronald Taylor Law Office

17 Ronald T. Taylor

18 Albuquerque, NM

19 for Appellee

20 **MEMORANDUM OPINION**

21 **VANZI, Judge.**

1 {1} Behles Law Firm, P.C. (Plaintiff) appeals from the district court’s judgment,
2 which is supported by detailed findings and conclusions and a well-considered letter
3 ruling. [RP 597, 699, 720] This Court’s calendar notice proposed summary
4 affirmance. [CN1] Plaintiff filed a motion for an order allowing designation of
5 documentary exhibits, which this Court denied. [Ct. App. File] Despite this Court’s
6 denial of Plaintiff’s motion, Plaintiff proceeded to file voluminous exhibits in this
7 Court. [Ct. App. File] We request that Plaintiff comply with the orders of this Court
8 in all future filings and cases. Plaintiff has also filed a memorandum in opposition that
9 we have duly considered. [Ct. App. File, MIO] Unpersuaded, however, we affirm.

10 {2} Plaintiff’s amended docketing statement states the issues as follows: (1)
11 “Findings of Fact as noted are not supported by substantial evidence, i.e., can the
12 Findings of Fact of this Court be reasonably inferred from the totality of the evidence”
13 [Amended DS 26]; (2) “The decision of the [d]istrict [c]ourt to award \$9,000 to . . .
14 Defendant on its [c]ounterclaim based on unjust enrichment is not in accord with the
15 law and must be revised” [Amended DS 26]; (3) “The [c]ourt’s decision to award
16 \$32,500 in attorney’s fees is not in accord with the law” [Amended DS 27]; and (4)
17 “The [c]ourt’s decision that what happened here was not sufficient to constitute breach
18 of lease and justify the Plaintiff in terminating the lease, while remaining in
19 possession, is error as a matter of law.” [Amended DS 28]

1 {3} In the memorandum, Plaintiff persists in attempting to couch the issues as legal
2 errors, and Plaintiff would have this Court reweigh the evidence and redo the
3 credibility determinations, which, as we fully explained in the calendar notice, this
4 Court does not do. [CN 6, MIO] We remain persuaded, moreover, that the analysis in
5 the calendar notice, for the reasons set forth therein, appropriately and correctly
6 resolves the issues of this case. Thus we hold that the district court did not err in
7 holding that as a matter of law there was insufficient evidence to show that Plaintiff
8 suffered damage of the magnitude contemplated by an action for breach of an implied
9 covenant of quiet enjoyment (Issues 1, 2, and 4). As such, for example, we cannot say,
10 as Plaintiff urges us to do [MIO 2], that as a matter of law, Defendant has been
11 unjustly enriched when the district court correctly awarded Defendant the amounts
12 due under the lease. Similarly, we explained in the calendar notice why we agree with
13 the district court's decision, based on substantial evidence, that "what happened here"
14 was not sufficient to constitute breach of the lease by Defendant; thus, we cannot say
15 that the district court erred on this basis. [MIO 10] Further, while Plaintiff argues that
16 the fact finder, here the trial judge at the bench trial, misinterpreted the testimony, we
17 decline to reweigh the evidence or the credibility of the witnesses. [MIO 25-26] On
18 Issue 3, attorney fees, we hold that the district court did not abuse its discretion in
19 awarding attorney fees to Defendant as the prevailing party entitled to reasonable

1 attorney fees under the lease. Plaintiff’s assertions to the contrary in the memorandum
2 in opposition do not persuade us that the district court abused its discretion on this
3 issue. [MIO 24]

4 **Breach of Quiet Enjoyment (Issues 1, 2, and 4)**

5 {4} “[T]o state a claim for a breach of quiet enjoyment, the severity of interference
6 must be such that the premises become unfit for the purpose for which they were
7 leased.” *Winrock Inn Co. v. Prudential Ins. Co. of Am.*, 1996-NMCA-113, ¶ 33, 122
8 N.M. 562, 928 P.2d 947. As such, “[t]o sustain a claim for breach of the covenant of
9 quiet enjoyment, a tenant must show that he was actually or constructively evicted.”
10 *Id.* “Constructive eviction occurs when the landlord’s actions substantially deprive the
11 tenant of the beneficial use of the leased premises and the tenant vacates, or when the
12 landlord acts maliciously and his actions are so severe as to interfere with the tenant’s
13 peaceful enjoyment of the premises.” *Id.* “Acts which merely inconvenience the tenant
14 do not constitute constructive eviction.” *Id.*

15 {5} This case involves a dispute over a commercial lease between Plaintiff law firm,
16 as lessee, and Defendant Hudson Albuquerque, LLC (Defendant), as lessor. On March
17 6, 2012, Plaintiff filed a complaint for breach of lease and declaratory judgment
18 asserting that Defendant breached the covenant of quiet enjoyment entitling Plaintiff
19 to declaratory judgment and damages. [RP 1, 5] Defendant filed an answer denying
20 Plaintiff’s claims and counterclaimed for unpaid rent, operating expenses, and late

1 fees due and owing under the lease. [RP 39-42] The parties went to trial in January
2 2014. On March 3, 2014, the district court filed a letter decision, denying Plaintiff's
3 claims and granting Defendant's counterclaims. [RP 597-601] On May 8, 2014, and
4 May 14, 2014, the district court entered findings and conclusions and judgment for
5 Defendant, awarding \$39,381.30 in damages and \$34,775 in attorney fees with all
6 sums to bear interest at the rate 8.75% from date of judgment until paid.[RP 699, 720-
7 21]

8 {6} The district court's findings and conclusions listed the items about which
9 Plaintiff complained in asserting breach of quiet enjoyment and constructive eviction,
10 which, according to Plaintiff, justified cessation of lease payments, as well as damages
11 for loss of income and profits. [RP 700, ¶ 10; RP 598] The district court's judgment,
12 its letter decision, and its findings and conclusions indicate, however, that the district
13 court did not find Plaintiff's witnesses credible as to the extent or magnitude of the
14 items and events relating to the maintenance and plumbing incidents allegedly
15 constituting Defendant's breach of quiet enjoyment of the lease, Plaintiff's
16 constructive eviction, loss of profits, and other damages. [RP 701-702, ¶ 16, 17, 19,
17 20; RP 598-99; RP 599] The district court also did not find Plaintiff's witnesses
18 credible in stating that Plaintiff utilized an extra approximately 275 square feet of the
19 premises only as a wiring closet, when Defendant presented photographs that this

1 space was utilized for Plaintiff's law practice, containing office furniture, an operating
2 computer, and active and closed file storage. [RP 700, ¶¶ 6-8; RP 702, ¶ 21; RP 600]
3 {7} In contrast, Defendant presented witnesses the district court found credible,
4 whose testimony conflicted with Plaintiff's witnesses' testimony as to the extent and
5 magnitude of the alleged maintenance and plumbing issues. [RP 701-702, ¶¶ 16-20;
6 RP 598-99] The district court noted that Plaintiff claimed the breaches were so
7 extensive that Plaintiff had been constructively evicted and would vacate the premises
8 in 60-90 days, but did not do so, continuing its operations there until termination of
9 the lease in October 2012. [RP 701, ¶¶ 12-14] The district court's findings support the
10 conclusion that Plaintiff was not constructively evicted because Defendant's actions
11 did not substantially deprive Plaintiff of the beneficial use of the leased premises and
12 Plaintiff did not vacate, nor did Plaintiff show that Defendant acted maliciously or that
13 Defendant's actions were so severe as to interfere with Plaintiff's peaceful enjoyment
14 of the premises. *See Winrock Inn Co.*, 1996-NMCA-113, ¶ 33. As such, the district
15 court resolved the credibility of the witnesses and the conflicts in their testimony in
16 favor of Defendant, concluding that Plaintiff did not meet its burden of proof to
17 establish breach of any express or implied term of the lease. [RP 702, ¶¶ 20, 24] The
18 district court further concluded that Defendant did meet its burden of proof on the
19 counterclaims and, therefore, that Defendant was entitled to recover unpaid rent and
20 late fees, as well as the fair rental value for Plaintiff's utilization of the extra 275

1 square feet as part as office space. [RP 599-600; RP 700, ¶¶ 7-8, 702, ¶¶ 20, 26] We
2 agree.

3 {8} We conclude that, as a matter of law, there is insufficient evidence to show that
4 Plaintiff suffered damage of the magnitude contemplated by an action for breach of
5 an implied covenant of quiet enjoyment. Based on the district court’s assessment of
6 the credibility of the witnesses and the weight to be given their testimony, and the
7 district court’s resolution of the conflicts in the testimony in favor of Defendant, the
8 loss of a convenience presented by the maintenance and plumbing problems does not
9 rise to the level of a breach of quiet enjoyment in this case. *See Las Cruces Prof’l Fire*
10 *Fighters v. City of Las Cruces*, 1997-NMCA-044, ¶ 12, 123 N.M. 329, 940 P.2d 177
11 (“In accordance with the standard of review, when considering a claim of
12 insufficiency of the evidence, the appellate court resolves all disputes of facts in favor
13 of the successful party and indulges all reasonable inferences in support of the
14 prevailing party.”); *see also Buckingham v. Ryan*, 1998-NMCA-012, ¶ 10, 124 N.M.
15 498, 953 P.2d 33 (“[W]hen there is a conflict in the testimony, we defer to the trier of
16 fact.”); *Tallman v. ABF (Arkansas Best Freight)*, 1988-NMCA-091, ¶ 3, 108 N.M.
17 124, 767 P.2d 363 (observing that, given that this Court lacks any opportunity to
18 observe demeanor, we cannot weigh the credibility of live witnesses), *modified on*
19 *other grounds by Delgado v. Phelps Dodge Chino, Inc.*, 2001-NMSC-034, 131 N.M.
20 272, 34 P.3d 1148. Accordingly, we affirm the district court on Issues 1, 2, and 4.

1 **Attorney Fees (Issue 3)**

2 {9} “We review the award of attorney’s fees for abuse of discretion.” *Nava v. City*
3 *of Santa Fe*, 2004-NMSC-039, ¶ 24, 136 N.M. 647, 103 P.3d 571 (internal quotation
4 marks and citation omitted). Moreover, the amount of an award of attorney fees lies
5 within the sound discretion of the trial court. *See Corliss v. Corliss*, 1976-NMSC-023,
6 ¶ 15, 89 N.M. 235, 549 P.2d 1070.

7 {10} The district court awarded Defendant attorney fees based on Section 31 M of
8 the Lease, which allows for the prevailing party to recover reasonable attorney fees,
9 as well as costs and expenses. [RP 600] The district court’s judgment denied Plaintiff
10 any recovery on its complaint and granted Defendant recovery on its counterclaims.
11 [RP 720, ¶¶ 3-4] As the prevailing party, Defendant filed a verified petition in support
12 of its claim for attorney fees, citing the applicable legal standard for determining a
13 reasonable fee and the difficulty in the defense attributable to the type of Plaintiff’s
14 claims and extensive litigation; the voluminous exhibits filed; and Plaintiff’s claims
15 for a large amount of lost annual income and office expenses, all of which generated
16 more litigation and required a large amount of time to research and disprove. [RP 674-
17 75] Plaintiff objected to the verified petition. [RP 677]

18 {11} Upon due consideration, the district court entered an order awarding Defendant
19 attorney fees in the amount of \$32,500 plus 7% in gross receipts tax, and denying
20 Defendant its cost bill. [RP 705-06] The district court’s order contains findings,

1 indicating that the amount arrived at was based on its consideration of the experience,
2 hourly fee, and reputation of Defendant's attorney; the hotly contested nature of the
3 litigation; a two-day trial; and its assessment of a reasonable amount of attorney time
4 invested. [Id.]

5 {12} Under the circumstances, we cannot say that the district court abused its
6 discretion in its award of attorney fees. *See In re Estate of Greig*, 1988-NMCA-037,
7 ¶ 22, 107 N.M. 227, 755 P.2d 71 (observing that the appellate court only overturns an
8 attorney fee award when the trial court's decision was clearly against the logic and
9 effect of the facts and circumstances before the court). Accordingly, we affirm the
10 district court on Issue 4.

11 {13} We affirm the district court's judgment, its findings and conclusions, and its
12 letter decision.

13 {14} **IT IS SO ORDERED.**

14
15

LINDA M. VANZI, Judge

16 **WE CONCUR:**

17

1 **RODERICK T. KENNEDY, Judge**

2

3 **M. MONICA ZAMORA, Judge**