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

7 **ADAM MARTINEZ and**  
8 **ERIN MARTINEZ,**

9 Plaintiffs-Appellees,

10 v.

**NO. 31,055**

11 **HAROLD A. NOACK and**  
12 **LYNN NOACK,**

13 Defendants-Appellants.

14 **APPEAL FROM THE DISTRICT COURT OF CURRY COUNTY**

15 **Charles C. Currier, District Judge**

16 John L. Collins  
17 Clovis, NM

18 for Appellees

19 Eric D. Dixon  
20 Portales, NM

21 for Appellants

22 **MEMORANDUM OPINION**

23 **VIGIL, Judge.**

24 Defendants appeal from the district court judgment on the merits of Plaintiffs'  
25 claims and Defendants' counterclaims, the order awarding Plaintiffs attorney fees, and

1 the order awarding Plaintiffs pre-judgment interest. We issued a notice of proposed  
2 summary disposition, proposing to affirm. Defendants have filed a memorandum in  
3 opposition to our notice and Plaintiffs have filed a memorandum in support. We have  
4 considered the arguments of parties. We remain unpersuaded that the district court  
5 erred. Therefore, we affirm.

6 Defendants raise three issues on appeal. First, they argue that the district court  
7 erred by ruling that the \$3000 paid by Plaintiffs into escrow should be returned under  
8 an unjust enrichment theory. [DS 11; MIO 1-7] Second, they argue that the district  
9 court erred by awarding pre-judgment interest. [DS 11-12; MIO 8-9] Third, they  
10 argue that the district court erred by awarding attorney fees to Plaintiffs. [DS 12; 9-  
11 15]

## 12 **Escrow Money**

13 In response to our notice, Defendants argue that our analysis omits important  
14 sections of the parties' agreement that establish Plaintiffs' default and Defendants'  
15 right to retain the money deposited in escrow. [MIO 1-7] In particular, Defendants  
16 argue that Plaintiffs did not diligently seek financing for the subject property, did not  
17 apply for a loan by the July 10th cut off, and did not want to purchase the home.  
18 [MIO 2-5] The district court found that Plaintiffs had to establish a credit history for  
19 five months to obtain financing to purchase the subject property and that they applied

1 for a mortgage with Sun Chase Mortgage Company and were denied in writing by  
2 July 17, 2006. [RP 178] The district court found that Plaintiffs applied for a  
3 mortgage with Aztec Mortgage Company and the Bank of Clovis. [Id.] The record  
4 suggests that Plaintiffs received written denials from these financial institutions and  
5 admitted them into evidence. [RP 88] Thus, sufficient evidence supports the district  
6 court’s findings that directly and implicitly reject Defendants’ factual assertions about  
7 Plaintiffs’ refusal to diligently apply for financing and Plaintiffs’ alleged breach of the  
8 agreement. *See Landavazo v. Sanchez*, 111 N.M. 137, 138, 802 P.2d 1283, 1284  
9 (1990) (“Substantial evidence is such relevant evidence that a reasonable mind would  
10 find adequate to support a conclusion.”). On appeal, we defer to findings that are  
11 supported by the evidence. *See Las Cruces Prof’l Fire Fighters v. City of Las Cruces*,  
12 1997-NMCA-044, ¶ 12, 123 N.M. 329, 940 P.2d 177 (stating that when reviewing the  
13 sufficiency of the evidence, “[t]he question is not whether substantial evidence exists  
14 to support the opposite result, but rather whether such evidence supports the result  
15 reached”); *Buckingham v. Ryan*, 1998-NMCA-012, ¶ 10, 124 N.M. 498, 953 P.2d 33  
16 (“[W]hen there is a conflict in the testimony, we defer to the trier of fact.”). We also  
17 note that Defendants did not seek to terminate the agreement upon the alleged breach.  
18 Additionally, Defendants do not state what evidence they presented to support their

1 theory that Plaintiffs had no intention to purchase Defendants' property and instead  
2 wanted to finance another home.

3       Next, Defendants argue that Plaintiffs breached the agreement by failing to  
4 make payments for the months of June and August of 2006. [MIO 4] The district  
5 court found otherwise, stating that Plaintiffs made seven timely monthly payments  
6 into escrow. [RP 178] The record suggests that Plaintiffs introduced evidence to this  
7 effect. [RP 88] Defendants do not state what evidence of Plaintiffs' failure to make  
8 the payments Defendants presented. Also, they did not pursue the alleged breach in  
9 either June or August for nonpayment of Plaintiffs' monthly obligation. We hold that  
10 substantial evidence supports the district court's finding.

11       Defendants also argue that Plaintiffs breached the agreement because they did  
12 not close by August 15, 2006, as required by the terms of the agreement. [MIO 4]  
13 Defendants elaborate no further on this argument and the substance of it is not clear  
14 to us. It seems to beg the larger question in this case about Plaintiffs' inability to  
15 purchase the home and the parties' forbearances and obligations under the agreement.  
16 For the reasons set forth in the notice, we are not persuaded that Plaintiffs breached  
17 the agreement by their inability to purchase the home. *See Headley v. Morgan Mgmt*  
18 *Corp.*, 2005-NMCA-045, ¶ 15, 137 N.M. 339, 110 P.3d 1076 (stating that we will not

1 speculate about undeveloped and unclear arguments on appeal and, therefore, will not  
2 reach their merits).

3         In their final argument about Defendants' retention of the \$3000, Defendants  
4 contend that the \$3000 was intended to serve as damages for the lost opportunity to  
5 sell the property to another party while it was off the market. [MIO 6-7] Defendants  
6 argue that Plaintiffs breached the agreement, justifying Defendants' retention of the  
7 \$3000 by leading Defendants to believe that Plaintiffs were going to purchase the  
8 property. [Id.] Defendants do not refer us to any portion of the agreement that would  
9 support these contentions. As the district court found, the parties understood that  
10 Plaintiffs could not purchase the home outright and would attempt to obtain financing  
11 while occupying the home and paying monthly for that rental right. [RP 177-80]  
12 Furthermore, for the reasons we stated in our notice, the most reasonable  
13 interpretation of the agreement and the parties' conduct results in the conclusion that  
14 the \$3000 is best considered earnest money to ensure that Plaintiffs would seek  
15 financing to purchase the property. As a result, we are not persuaded that Defendants  
16 have established error.

17 **Pre-Judgment Interest**

18         Defendants argue that the district court erred by awarding pre-judgment interest  
19 because Plaintiffs caused an unreasonable delay in bringing their claims to trial for

1 three and a half years after filing their complaint. [MIO 8-9] *See* NMSA 1978, § 56-  
2 8-4(B)(1) (2004) (permitting the court to impose pre-judgment interest from the date  
3 of the complaint unless the court finds that “the plaintiff was the cause of  
4 unreasonable delay in the adjudication of the plaintiff’s claims”). Defendants argue  
5 that Plaintiffs knew or should have known that the local district court judges could not  
6 hear the case because Plaintiffs are the daughter and son-in-law of a local district court  
7 judge, which created clear conflicts of interests. [Id.] Defendants present no new  
8 factual or legal arguments that persuades us that the analysis in our notice was  
9 incorrect. For the reasons set forth in our notice, we hold that Defendants have not  
10 established error in the district court’s award of pre-judgment interest.

### 11 **Attorney Fees**

12       Lastly, Defendants argue that the district court erred by awarding attorney fees  
13 to Plaintiffs. [MIO 9-15] In their docketing statement, Defendants argued that the  
14 award of attorney fees was not appropriate because Plaintiffs were not the prevailing  
15 party and because Plaintiffs made no distinction between charges for the groundless  
16 claims brought under the Unfair Trade Practices Act. [DS 12] In their memorandum  
17 in opposition, however, Defendants argue that the district court should be reversed  
18 because it failed to assess the five factors relevant to attorney fee awards under  
19 *Thompson Drilling, Inc. v. Romig*, 105 N.M. 701, 705-06, 736 P.2d 979, 983-84

1 (1987), and specifically because Plaintiffs’ recovery under the contract was less than  
2 their attorney fee award. [MIO 9-15]

3 Defendants give us no indication that they raised this matter of the five factors  
4 below and Plaintiffs indicate in their memorandum in support that Defendants never  
5 argued that the recovery should have been greater than the attorney fees. [MIS 8-9]  
6 Even assuming Defendants did raise these matters, we are not persuaded that the  
7 district court’s order on attorney fees reflects a failure to consider all relevant factors,  
8 particularly given the contractual language and broad discretion the district court has  
9 in assessing attorney fees. *See Fort Knox Self Storage, Inc. v. W. Tech., Inc.*, 2006-  
10 NMCA-096, ¶ 29, 140 N.M. 233, 142 P.3d 1 (“While a trial court has broad discretion  
11 when awarding attorney fees, that discretion is limited by any applicable contract  
12 provision.”). The district court’s ruling is justifiable as having considered which  
13 arguments under the contract prevailed, the contentiousness of the litigation,  
14 Plaintiffs’ settlement offers, the amount of time spent on litigating successful claims,  
15 and Plaintiffs’ attorney’s hourly rate of \$150 per hour, which cannot be viewed as per  
16 se unreasonable.

17 Defendants seem to mostly complain that this case was not particularly complex  
18 and that Plaintiffs recovered more in attorney fees than they did under the contract.  
19 [MIO 12-15] We note that the contract providing for attorney fees does not limit the

1 court's discretion in assessing attorney fees based on the complexity of the issue or  
2 the amount of recovery. Also, this case has been ongoing since March 2007 and  
3 Defendants have strongly contested all matters and even continued to advocate for  
4 sanctions when they filed an appeal with this Court. [RP 1, 428-34] We are not  
5 persuaded that the reasonableness of attorney fees, particularly in this case, depends  
6 solely upon complexity of the legal issues and the recovery.

7 Also, as we stated in our notice, the parties' agreement permitted an award of  
8 attorney fees for the prevailing party; and Plaintiffs prevailed on their theory of the  
9 parties' contractual relationship, their interpretation of the contract, and money due.  
10 [RP 31] These were the contractual matters most litigated by the parties. The district  
11 court awarded Defendants attorney fees for their defense of the Plaintiffs' failed cause  
12 of action and awarded Plaintiffs attorney fees for their successful prosecution of the  
13 remaining matters. [RP 443-44] We see no clear abuse of discretion.

14 For the reasons stated above and in our notice, we affirm.

15 **IT IS SO ORDERED.**

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**MICHAEL E. VIGIL, Judge**

18 **WE CONCUR:**

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**CELIA FOY CASTILLO, Chief Judge**



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2 **TIMOTHY L. GARCIA, Judge**