

Corrections to this opinion/decision not affecting the outcome, at the Court's discretion, can occur up to the time of publication with NM Compilation Commission. The Court will ensure that the electronic version of this opinion/decision is updated accordingly in Odyssey.

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

2 **BOARD OF TRUSTEES SHEET**
3 **METAL WORKERS' NATIONAL**
4 **PENSION FUND,**

5 Plaintiff-Appellee,

6 v.

No. A-1-CA-42175

7 **ENGINEERED ENVIRONMENTS, LLC,**

8 Defendant-Appellant.

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

10 **Nancy J. Franchini, District Court Judge**

11 Youtz & Valdez, P.C.

12 James A. Montalbano

13 Albuquerque, NM

14 for Appellee

15 Law Office of Roger Moore

16 Roger Moore

17 Albuquerque, NM

18 for Appellant

19 **MEMORANDUM OPINION**

20 **HANISEE, Judge.**

21 {1} Defendant appeals from the district court's entry of final judgment, after a
22 bench trial, for Plaintiff on Plaintiff's domestication of a foreign, Virginia judgment
23 against Defendant under the theory that Defendant is a successor corporation to
24 Camelot Construction, Inc. This Court issued a calendar notice proposing to affirm.

Court of Appeals of New Mexico

Filed 3/27/2025 9:25 AM



Stephanie Latimer Davis
Acting Chief Clerk

1 Defendant filed a memorandum in opposition, which we have duly considered.

2 Unpersuaded, we affirm.

3 {2} Defendant maintains that the district court erred in finding that it was a
4 successor corporation to Camelot, and therefore assumed liability for the Virginia
5 judgment. [MIO 13-29] Defendant argues that “[t]he facts show insubstantial
6 evidence for continuation of [Camelot] into [Defendant].” [MIO 15] Defendant
7 repeatedly emphasizes that the evidence presented included “gaps of time,” which
8 disconnect Defendant from Camelot. [MIO 17-20; 27-28] Defendant additionally
9 argues that it cannot be a successor corporation because “there was no sale or transfer
10 of assets or anything of value from [Camelot] as it ended to [Defendant].” [MIO 15-
11 16; 23; 25; 27] Finally, relying in part on federal case law, Defendant argues that the
12 district court improperly “lumped together” New Mexico’s test for “continuation of
13 transferor” with “continuation of enterprise.” [MIO 19-24]

14 {3} “[A] corporation which purchases the assets of another corporation does not
15 automatically acquire the liabilities or obligations of the transferor corporation
16 except (1) where there is an agreement to assume those obligations; (2) where the
17 transfer results in a consolidation or merger; (3) where there is a continuation of the
18 transferor corporation; or (4) where the transfer is for the purpose of fraudulently
19 avoiding liability.” *Sw. Distrib. Co. v. Olympia Brewing Co.*, 1977-NMSC-050,
20 ¶ 13, 90 N.M. 502, 565 P.2d 1019. “Generally, a continuation of the transferor

1 corporation occurs where there is (1) a continuity of directors, officers, and
2 shareholders; (2) continued existence of only one corporation after sale of the assets;
3 and (3) inadequate consideration for the sale of the assets.” *Garcia v. Coe Mfg. Co.*,
4 1997-NMSC-013, ¶ 13, 123 N.M. 34, 933 P.2d 243. “The key element of a
5 continuation is a common identity of officers, directors and stockholders in the
6 selling and purchasing corporations.” *Id.* (internal quotation marks and citation
7 omitted).

8 {4} This Court proposed to affirm under the three-factor test outlined in *Garcia*.
9 [CN 5] First,

10 in 2010, Anthony Pipito purchased Camelot from Steve Alschuler and
11 was the sole owner of Camelot until it closed in 2014. Steve Alschuler
12 formed Defendant in 2014, and Anthony Pipito purchased a fifty
13 percent stock share in Defendant in 2017. Anthony Pipito then
14 purchased the remaining fifty percent of Defendant in 2021.

15 [CN 5-6] Second, “Camelot ceased operation in the fall of 2014, during the pendency
16 of the Virginia case. At approximately the same time in 2014, Defendant was formed
17 and incorporated.” [CN 6] Finally,

18 (1) Defendant admitted to previously working with Plaintiff as
19 Camelot; (2) Defendant and Camelot performed the same services; (3)
20 Defendant and Camelot used the same office space at the same address;
21 (4) Defendant and Camelot used the same sheet metal equipment when
22 providing services; (5) Anthony Pipito and Steve Alschuler performed
23 the same duties at Defendant as they did for Camelot; and (6) Defendant
24 and Camelot hired the same employee to be a field supervisor for their
25 business.

26
27 [CN 6-7]

1 {5} Although Defendant asserts that the district court’s findings were not
2 supported by substantial evidence, Defendant does not specifically challenge the
3 findings of fact that the district court and this Court relied on when proposing
4 summary affirmance. Rather, Defendant reiterates facts that it believes support that
5 Defendant is not a successor corporation to Camelot. This misapplies our standard
6 of review. “The question is not whether substantial evidence exists to support the
7 opposite result, but rather whether such evidence supports the result reached.” *N.M.*
8 *Tax’n & Revenue Dep’t v. Casias Trucking*, 2014-NMCA-099, ¶ 20, 336 P.3d 436
9 (internal quotation marks and citation omitted). “We will not reweigh the evidence
10 nor substitute our judgment for that of the fact[-]finder.” *Id.* (internal quotation
11 marks and citation omitted).

12 {6} Further, Defendant fails to demonstrate how the district court’s findings here
13 were unsupported by substantial evidence. “A contention that a . . . finding of fact is
14 not supported by substantial evidence shall be deemed waived unless the argument
15 identifies with particularity the fact or facts that are not supported by substantial
16 evidence.” *Wachocki v. Bernalillo Cnty. Sheriff’s Dep’t*, 2010-NMCA-021, ¶ 17,
17 147 N.M. 720, 228 P.3d 504 (quoting Rule 12-318(A)(4) NMRA). “Where the
18 appellant fails to include the substance of all the evidence bearing upon a
19 proposition, the Court of Appeals will not consider a challenge to the sufficiency of
20 the evidence.” *Id.* (internal quotation marks and citations omitted). As such,

1 Defendant is bound by the district court’s findings on review. *See Martinez v. Sw.*
2 *Landfills, Inc.*, 1993-NMCA-020, ¶ 18, 115 N.M. 181, 848 P.2d 1108 (stating that
3 an appellant is bound by the findings of fact on review unless the appellant properly
4 attacks the findings).

5 {7} Turning to Defendant’s arguments, we disagree that the time between Pipito’s
6 involvement with Camelot and Defendant prevents finding the first *Garcia* factor
7 regarding continuity of directors, officers, and shareholders. The district court found
8 that Pipito and Alschuler were the only “directors, officers, and shareholders” of
9 both Camelot and Defendant. [CN 5; MIO 3-6, 26-27] *Garcia*, 1997-NMSC-013,
10 ¶ 13. Therefore, the district court’s findings satisfy the first and key *Garcia* factor.

11 {8} Similarly, we are not persuaded by Defendant’s argument that it cannot be a
12 successor corporation because there was not a sale of the assets. A sale of the assets
13 is not necessary to find the third *Garcia* factor when there is continued use of the
14 same assets by both corporations. [CN 6-7; MIO 10, 27] *See High Desert Recovery,*
15 *LLC v. N.M. Tax’n & Revenue Dep’t*, 2022-NMCA-048, ¶ 25, 517 P.3d 258 (finding
16 the third *Garcia* factor where the defendant “assumed possession of the equipment
17 and materials” used by the predecessor corporation). Although Defendant attempts
18 to distinguish this case from *High Desert Recovery*, Defendant’s citations involve
19 the similar, but inapplicable, test under the New Mexico Administrative Code. [MIO

1 28-29] *Compare id.* ¶¶ 13, 20, 22 (discussing 3.1.10.16 NMAC), *with id.* ¶¶ 23-25
2 (discussing the three *Garcia* factors).

3 {9} Finally, despite Defendant’s citation to federal law, *Garcia* controls our
4 analysis. *See State ex rel. Martinez v. City of Las Vegas*, 2004-NMSC-009, ¶ 20, 135
5 N.M. 375, 89 P.3d 47 (stating that we are bound by New Mexico Supreme Court
6 precedent). Similar to its citations to *High Desert Recovery*, Defendant’s citations to
7 *Garcia* discuss exceptions to corporation nonliability that are not at issue in this case.

8 [MIO 21-23]

9 {10} As such, Defendant does not direct this Court to any new fact, law, or
10 argument that persuades us that our notice of proposed disposition was incorrect.
11 Rather, Defendant’s arguments reassert the same contentions and do not direct this
12 Court to error in our proposed resolution of this issue. *See Hennessy v. Duryea*, 1998-
13 NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our courts have repeatedly held
14 that, in summary calendar cases, the burden is on the party opposing the proposed
15 disposition to clearly point out errors in fact or law.”); *State v. Mondragon*, 1988-
16 NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that a “party responding to
17 a summary calendar notice must come forward and specifically point out errors of
18 law and fact[,]” and the repetition of earlier arguments does not fulfill this
19 requirement), *superseded by statute on other grounds as stated in State v. Harris*,

1 2013-NMCA-031, ¶ 3, 297 P.3d 374. We therefore refer Defendant to our previous
2 analysis in our proposed summary disposition.

3 {11} Finally, Defendant has abandoned its claims that the district court erred by:
4 (1) finding it had personal jurisdiction over Defendant under the Foreign Judgments
5 Act, NMSA 1978, Section 39-4A-1 to -6 (1989, as amended through 1994); (2)
6 finding it had personal jurisdiction over Defendant because the statute of limitations
7 for breach of contract had expired; (3) finding Plaintiff was not barred by judicial
8 estoppel from bringing a claim to domesticate a foreign judgment against Defendant;
9 and (4) denying Defendant's proposed findings of fact and conclusions of law when
10 it entered judgment in favor of Plaintiff. [MIO 13-29] As such, we need not address
11 these claims of error further. *See Taylor v. Van Winkle's IGA Farmer's Mkt.*, 1996-
12 NMCA-111, ¶ 5, 122 N.M. 486, 927 P.2d 41 (recognizing that issues raised in a
13 docketing statement, but not contested in a memorandum in opposition are
14 abandoned).

15 {12} For the reasons stated in our notice of proposed disposition and herein, we
16 affirm.

17 {13} **IT IS SO ORDERED.**

18 
19 _____
J. MILES HANISEE, Judge

1 **WE CONCUR:**

2 

3 **SHAMMARA H. HENDERSON, Judge**

4 

5 **KATHERINE A. WRAY, Judge**