# THE COURT OF APPEALS OF THE STATE OF NEW MEXICO



**BIPIN BHAKTA,**

Plaintiff-Appellee,

v. **No. A-1-CA-41795**

**BLUE HORIZON HOSPITALITY, LLC, ANANDKUMAR BHAKTA, VAISHALI BHAKTA, NISHA BHAKTA, SMRUTI BHAKTA, PRAVINCHANDRA LAL, VEENABEN LAL, and CHANDRAVADAN JAI DESAI,**

Defendants-Appellants.

**APPEAL FROM THE DISTRICT COURT OF EDDY COUNTY**
**Anne Marie C. Lewis, District Court Judge**

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for Appellee

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for Appellants

## MEMORANDUM OPINION

**HENDERSON, Judge.**

{1} Defendants Anandkumar Bhakta, Nisha Bhakta, Pravinchandra Lal, Veenaben Lal, and Chandravadan Jai Desai appeal from the district court's enforcement order, following a grant of summary judgment that ordered rescission of a "corporate divorce" agreement and restoration of Plaintiff Bipin Bhakta's 17.5 percent membership interest in Blue Horizon Hospitality, LLC (Blue Horizon).[1] After Plaintiff's failed attempts to enforce the judgment, the district court entered the enforcement order deeming Plaintiff's membership interest a "current interest" with "an effective date for valuation purposes of August 17, 2023," but denying Plaintiff his requested attorney fees. Now on appeal, Defendants claim that the district court erred in arbitrarily determining the effective date for valuation purposes when Plaintiff should have been restored to his membership interest as of November 15, 2021—the date the settlement agreement was executed. Although Plaintiff argues the district court erred in denying his attorney fees request related to the enforcement action; Plaintiff did not file a cross-appeal challenging that ruling and therefore cannot seek affirmative relief from that ruling. *See* Rule 12-201(B)(1)

[1] Although Blue Horizon, Vaishali Bhakta, and Smruti Bhakta were defendants in the district court case and are included in the case caption on appeal, we note that they are not parties to this appeal as they did not join the other Defendants in appealing the district court's enforcement order.

NMRA (providing fourteen days from when an appeal is filed for another party to file a cross-appeal). We affirm.

**BACKGROUND**

{2} This case arises from a dispute between members of Blue Horizon, following the construction of a hotel in Carlsbad, New Mexico. Following the dispute, Plaintiff executed a corporate divorce settlement agreement with the other members of Blue Horizon in November 2021. The settlement agreement was conditioned on the bank releasing Plaintiff from a personally guaranteed loan, which was used to finance construction of the company's hotel. After the bank refused to release Plaintiff from the loan, Plaintiff sued Blue Horizon and its other members, seeking rescission of the settlement agreement and a declaration that "Plaintiff is restored to a 17.5 [percent] membership interest owner in Blue Horizon; . . . as a co-managing member of Blue Horizon;" and "[s]uch other terms and provisions as the [district c]ourt deems proper to return the *status quo*."

{3} In May 2023, Plaintiff filed a motion for summary judgment arguing he was entitled to rescission of the settlement agreement and restoration of the same rights and privileges demanded in his complaint. The district court held a hearing on Plaintiff's motion on August 1, 2023, determining that summary judgment was appropriate as there were no issues of material fact in dispute. Before entering final judgment on August 17, 2023, the district court held another hearing to allow parties

a final argument as to its proposed findings and conclusions. At this hearing, Defendants argued that they were concerned with Plaintiff's proposed order because Defendants did not want it to appear the district court was finding that Plaintiff had a current 17.5 percent membership interest, which could "collaterally affect" changes to the company's ownership interests in the two years that had lapsed since the settlement agreement was executed. To that end, Defendants argued that "[t]he reason why it's important is, collaterally, since that agreement was executed, there were additional capital calls that were made by the company, there were also members that are no longer members and new members added to the company to complete the project." Defendants then cautioned that the summary judgment order would "prejudice those individuals and those capital calls that took place between the time the contract was executed—the agreement with [Plaintiff] was executed, and the time the summary judgment was heard." The district court reiterated that "in the actual settlement agreement" Plaintiff had a 17.5 percent membership interest in Blue Horizon, which the district court was restoring. The district court issued its final written judgment later that day ordering that, as relevant here, "Plaintiff is restored to his 17.5 [percent] membership interest in Blue Horizon." The district court also awarded Plaintiff attorney fees and costs as the prevailing party. Defendants then filed a motion for reconsideration, which the district court denied.

{4} On December 14, 2023, after Plaintiff's attempts to have his membership interest and rights restored pursuant to final judgment order were unsuccessful, Plaintiff filed an amended motion to enforce the judgment. At the associated hearing, Defendants' counsel again raised concerns with the district court's order reinstating Plaintiff to his 17.5 percent membership interest, pointing to the same concerns about the collateral effect of restoring Plaintiff's membership interest on the other members' ownership interests that Defendants had raised at the August hearing. Following the hearing, the district court granted Plaintiff's motion to enforce in part and denied it in part, and included the following orders:

> 2. Notwithstanding any events that occurred between November 15, 2021 and August 17, 2023, events on which the [district c]ourt has not entertained nor received evidence, the [district c]ourt nevertheless hereby orders that pursuant to paragraph 14(c) of this [district c]ourt's [f]inal [j]udgment, [Plaintiff] is restored to a 17.5 [percent] membership interest in Blue Horizon . . . , with an effective date for valuation purposes of August 17, 2023. [Plaintiff]'s membership interest of 17.5 [percent] is deemed a "current interest" as of August 17, 2023.
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> . . . .
>
> 4. The parties shall bear their own costs and attorney[] fees incurred in this [m]otion proceeding. Plaintiff's requests to the contrary, either under the [s]ettlement [a]greement or as a sanction, are hereby denied.

It is from this order that Defendants now appeal.

## DISCUSSION

{5} We first address Defendants' contention related to the restoration of Plaintiff's membership interest before turning to Plaintiff's attorney fees claim.

{6} On appeal, Defendants argue that the district court erred "by arbitrarily selecting August 17, 2023" as the "effective date for valuation purposes" instead of restoring the parties to their "precontractual positions," which "were their respective [membership] interests when they executed the settlement agreement—November 15, 2021." In doing so, Defendants argue, "the district court effectively nullified nearly two years of potential corporate events . . . violat[ing] fundamental principles of rescission, which require careful accounting to ensure that the underlying transaction is properly unwound and all parties are restored as nearly as possible to" their precontractual positions. Defendants contend that this issue was preserved "through their January 5, 2024, written opposition to Plaintiff's motion to enforce and through oral argument at the hearing." Plaintiff's claim that Defendants' appeal—purporting to be an appeal of the district court's order on Plaintiff's amended motion to enforce judgment—is actually an untimely and "forbidden collateral attack" on the district court's underlying final judgment.

{7} Pursuant to NMSA 1978, Section 39-1-1 (1917), a district court is divested of jurisdiction thirty days after entry of a final judgment, while Rule 12-201(A)(1)(b) requires that a notice of appeal be filed "within thirty days after the judgment or

order appealed from is filed in the district court clerk's office." However, a district court continues to have "jurisdiction after the judgment to enforce that judgment, [although] it lacks jurisdiction to modify the judgment except under limited circumstances," such as a motion under Rule 1-060(B) NMRA. *Hall v. Hall*, 1992-NMCA-097, ¶ 38, 114 N.M. 378, 838 P.2d 995; *see* Rule 1-060(B) (permitting relief from a final judgment or order based on such reasons as mistake, excusable neglect, and newly discovered evidence within one year of the judgment). As it relates to enforcement of a judgment, enforce "means to compel obedience to, or to cause the provisions to be executed," whereas modify "means to alter, change, or vary." *Hall*, 1992-NMCA-097, ¶ 41. Additionally, "[a] collateral attack is an attempt to avoid, defeat, or evade a judgment, or deny its force and effect, in some incidental proceeding not provided by law for the express purpose of attacking the judgment." *Lewis v. City of Santa Fe*, 2005-NMCA-032, ¶ 10, 137 N.M. 152, 108 P.3d 558 (alteration, internal quotation marks, and citation omitted).

{8} In this case, while the district court did not specify the date which Defendants were to use for valuing Plaintiff's membership interest, it did specifically conclude in its final judgment on August 17, 2023, that "Plaintiff is restored to his 17.5 [percent] membership interest in Blue Horizon." Further, the district court ordered "Defendants shall execute such documents and undertake such actions as necessary to return [Plaintiff] his 17.5 [percent] membership interest in Blue

Horizon." Defendants did not appeal the final judgment, which is now binding on appeal. *See* Rule 12-201(A)(1)(b); *Stueber v. Pickard*, 1991-NMSC-082, ¶ 9, 112 N.M. 489, 816 P.2d 1111 (stating that unchallenged findings are binding on appeal). However, while Defendants contend that they are not challenging the district court's final judgment, they nevertheless failed to return Plaintiff's 17.5 percent membership interest in Blue Horizon as required by the judgment. In the proceedings below Defendants claimed that they had prepared documents to restore Plaintiff's membership interest "to what it had [been] before the [s]ettlement [a]greement was executed on November 15, 2021," but that Plaintiff refused to execute the documents. Plaintiff responded that Defendants undertook actions in the intervening period between November 2021 and August 2023—when the district court entered final judgment—that diminished Plaintiff's membership interest to something less than 17.5 percent. Based upon this dispute and Defendants' refusal to restore Plaintiff to a 17.5 percent membership interest, Plaintiff filed his amended motion to enforce the judgment in March 2023.

{9} Defendants contend that the district court's enforcement order "impose[d] an arbitrary effective date on the parties' membership interests," which "overrode nearly two years of corporate dealings, about which the district court had heard no evidence and made no findings." We are unpersuaded by Defendants' argument that the issue is properly before this Court since, as we explain, the district court's

enforcement order does not modify or change any provision as to Plaintiff's membership interest in a manner contrary to the final judgment order. *See Hall*, 1992-NMCA-097, ¶ 38. Rather, the district court's enforcement order seeks to cause the provisions of the final judgment to be executed by reiterating its final judgment, *see id.* ¶ 41, finding that "Plaintiff is to be restored to a 17.5 [percent] membership interest in Blue Horizon."

{10} First, Plaintiff sought the return of his 17.5 percent membership interest as pled in his complaint. The district court's final judgment, entered August 17, 2023, found that "Plaintiff *is* restored" to his 17.5 percent membership interest—restoring Plaintiff his membership interest in the present tense. The district court's later ruling in the enforcement order, similarly maintained that Plaintiff is owed a 17.5 percent "current [membership] interest" effective as of August 17, 2023. The district court's enforcement order merely seeks execution of the underlying final judgment order—ensuring that Plaintiff's 17.5 percent membership interest is restored as of the date the district court entered its final judgment order.

{11} Second, Defendants argument that the district court assigned an arbitrary effective date for valuing Plaintiff's membership interest essentially asks this Court to ignore the district court's final determination, now unappealable, and return him something less based on corporate dealings that occurred in the two years subsequent to execution of the settlement agreement—dealings, which Plaintiff had no say in or

control over. However, as the district court had previously determined that "Plaintiff is restored" at the time it issued the final judgment, the enforcement order simply reiterated that the effective date for restoration of Plaintiff's membership interest was the date the district court issued its final judgment—August 17, 2023. The district court's enforcement order enforces the terms of the final judgment and guarantees that Plaintiff's membership interest is restored in a timely fashion, as of the date of the final judgment order, by preventing Defendants from attempting to dilute Plaintiff's membership interest or delaying its restoration further. *See Prudential Ins. Co. of Am. v. Anaya*, 1967-NMSC-132, ¶ 34, 78 N.M. 101, 428 P.2d 640 ("The restoration of the status quo means the return, or offer to return, of that which has been received."). Thus, we are unpersuaded by Defendants' argument that the issue is properly before this Court on appeal as the enforcement action did not constitute a modification of the district court's final judgment order. *See Hall*, 1992-NMCA-097, ¶ 38; *Farmers, Inc. v. Dal Mach. & Fabricating, Inc.*, 1990-NMSC-100, ¶ 8, 111 N.M. 6, 800 P.2d 1063 ("The presumption upon review favors the correctness of the [district] court's actions. Appellant must affirmatively demonstrate its assertion of error.").

{12} Furthermore, at the hearing on the district court's proposed final judgment order, Defendants raised the very argument now asserted under the guise of an appeal from the enforcement order. Defendants raised concern with the proposed

order prepared by Plaintiff, challenging the proposed findings because they "don't want it to be referred to as the [district] court made a finding that [Plaintiff] had a 17.5 percent membership interest beforehand" and Defendants "don't want this order to collaterally affect anything that has happened to the company since" the settlement agreement was executed. The district court immediately clarified that "[Plaintiff] had 17.5 percent in the actual settlement agreement, so he's restored back to the status quo, he's restored back to what he originally had as if this never existed"—a clarification which Defendants agreed with at that time. *See Jeantete v. Jeantete*, 1990-NMCA-138, ¶ 11, 111 N.M. 417, 806 P.2d 66 ("On appeal, the reviewing court may consider the [district] court's verbal comments in order to clarify or discern the basis for the order or action of the court below."). Yet, despite their not having then timely appealed an argument they were aware of and preserved, Defendants assert that their present challenge is to the district court's enforcement order.

{13} Under Defendants' view, an aggrieved party could ignore an adverse district court order, decline to timely appeal from it, and hope that the prevailing party did not seek to enforce the order. Then, if the prevailing party does seek enforcement, the aggrieved party could have a second bite at the apple and assert the error that it previously perceived. But Rule 12-201(A)(1)(b) does not suggest that an aggrieved party is entitled to an appeal by simply waiting for an enforcement action. To

interpret Defendants' action otherwise would undermine the district court's final judgment and our appellate rules. On the contrary, Rule 12-201(A)(1)(b) provides that appeals must be taken within thirty days of the district court rendering the judgment or order appealed from. Defendants had that opportunity. Defendants were entitled to directly appeal the district court's final judgment if they felt restoring Plaintiff to a 17.5 percent membership interest required an accounting or that it was an erroneous determination—a concern Defendants seemingly raised at the proposed final judgment hearing but failed to appeal. *See* Rule 12-201(A)(1)(b); *Robison v. Katz*, 1980-NMCA-045, ¶ 15, 94 N.M. 314, 610 P.2d 201 (stating that "[w]hen restitution is complex, the court granting rescission *may* order an accounting between the parties" (emphasis added)); *Royal Int'l Optical v. Tex. State Optical Co.*, 1978-NMCA-094, ¶¶ 17-29, 92 N.M. 237, 586 P.2d 318 (explaining that attacks on the validity of an underlying judgment in subsequent collateral proceedings are barred). The Restatement (Second) of Judgments § 18 cmt. c (1982), further emphasizes this point: "When the plaintiff brings an action upon the judgment, the defendant cannot avail [themselves] of defenses which [they] might have interposed in the original action. . . . Nor does the fact that the judgment was erroneous preclude the plaintiff from maintaining an action upon it."

{14} Defendants failed to timely appeal the final judgment despite having the opportunity to do so. Defendants have now waived their right to appeal such that

their current action is an impermissible collateral attack on the district court's final judgment. *See Lewis*, 2005-NMCA-032, ¶ 10. The district court's enforcement order simply compels Defendants' compliance with its final judgment. *See* NMSA 1978, § 39-1-5 (1850-1851) (stating that the district court has a duty to ensure its judgment is "carried into effect"). Having determined that Defendants' appeal is an impermissible collateral attack on the district court's final judgment, we conclude that this Court is without jurisdiction to hear this issue.

**{15}** Next, Plaintiff contends that the district court erred in denying his attorney fees claim related to the enforcement proceedings. Defendants argue that rescission of the settlement agreement precludes the awarding of attorney fees and that Plaintiff has not properly cross-appealed such that we should decline to review this issue anyway. We agree that this issue was not properly cross-appealed and explain.

**{16}** As discussed above, Defendants raised a single issue challenging the district court's enforcement action on appeal. Plaintiff never filed a cross-appeal in accordance with Rule 12-201(B)(1) regarding the attorney fees issue raised in his answer brief. *See id.* (providing fourteen days from when an appeal is filed for another party to file a cross-appeal). As such, Plaintiff is before this Court in a strictly defensive posture, defending the district court's enforcement order, and he cannot attack the district court's ruling from his answer brief. While Rule 12-201(C) permits this Court to review issues raised by an appellee where a cross-appeal has not been

taken, such review can be taken only where the appellee raised the issue "for the purpose of enabling the appellate court to affirm, or raise issues for determination only if the appellate court should reverse, in whole or in part, the judgment or order appealed from." Plaintiff's challenge to the district court's attorney fee ruling in the enforcement order satisfies neither of these criteria. We therefore decline to review this issue.

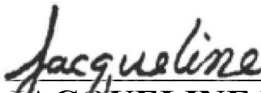
**CONCLUSION**

{17} Based on the foregoing, we affirm.

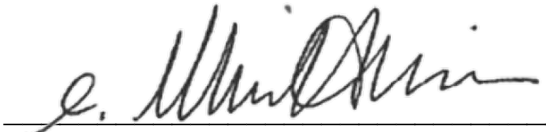
{18} **IT IS SO ORDERED.**

**SHAMMARA H. HENDERSON, Judge**

**WE CONCUR:**



**JACQUELINE R. MEDINA, Chief Judge**



**J. MILES HANISEE, Judge**