NOT FOR PUBLICATION

FILED

APR 28 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: PANIOLO CABLE COMPANY, LLC Debtor _____ CLEARCOM, INC., Appellant. v. DAVID C. FARMER, Plan Agent, Successor-in-interest to Michael Katzenstein, Appellee.	Nos. 25-2899 25-2900 B.A.P. Nos. 24-1066, 24-1095 MEMORANDUM*

Argued and Submitted February 10, 2026
Honolulu, Hawaii

Before: BYBEE, R. NELSON, and FORREST, Circuit Judges.

This adversarial proceeding between Chapter 11 Trustee Michael Katzenstein (succeeded in interest by David C. Farmer) and Defendant Clearcom, Inc. arises out of the bankruptcy of the Paniolo Cable Company, which owns undersea

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

telecommunications infrastructure connecting five of the Hawaiian Islands. The bankruptcy court awarded partial summary judgment to Trustee and denied Clearcom's motion for reconsideration, and the Bankruptcy Appellate Panel (BAP) affirmed. Clearcom timely appealed. We have jurisdiction under 28 U.S.C. §§ 158(d)(1) and 1334(b). We review decisions of the BAP *de novo* under the same standard of review as the BAP. *Wolfe v. Jacobson*, 676 F.3d 1193, 1198 (9th Cir. 2012).

Thus, we review the bankruptcy court's legal conclusions *de novo* and its findings of fact for clear error. *Id.* On undecided questions of state law, "we must predict how the state's highest court would decide the question." *Orkin v. Taylor*, 487 F.3d 734, 741 (9th Cir. 2007). At summary judgment, "we view the evidence in the light most favorable to the non-moving party." *Cascade Health Solutions v. PeaceHealth*, 515 F.3d 883, 912 (9th Cir. 2008) (as amended). "If . . . a moving party carries its burden of production, the nonmoving party must produce evidence to support its claim or defense." *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1103 (9th Cir. 2000). A bankruptcy court's denial of a motion for reconsideration is reviewed for abuse of discretion. *See Zamani v. Carnes*, 491 F.3d 990, 994 (9th Cir. 2007).

1. ***Breach of Contract.*** Clearcom contends that the bankruptcy court improperly concluded that there was no dispute of material fact with respect to

whether Clearcom breached its contractual obligation to Paniolo. *See DFS Grp. L.P. v. Paiea Props.*, 131 P.3d 500, 503 & n.4 (Haw. 2006). We disagree.

As proof of breach, Trustee relies on two agreements between Clearcom and Time Warner Entertainment Co. (Charter). The first, the Master Services Agreement (MSA), does not refer to the Paniolo infrastructure directly, but Clearcom acknowledged during the litigation that the MSA was concerned with "the use of, or access to, the Paniolo [infrastructure]." Though the MSA stated that it would "terminate" after "thirty six (36) months," it also provided that its terms "shall continue thereafter unless terminated by written notice by one of the [p]arties." A reasonable factfinder could conclude that the MSA was meant to stay in effect until one of the parties filed a written notice of termination.

The second, the Emergency Service Order (ESO), also did not refer directly to the Paniolo infrastructure, but there is sufficient evidence for a factfinder to conclude that the ESO involved a lease of access to the Paniolo infrastructure. There is also sufficient evidence for a reasonable factfinder to conclude that the ESO was in effect when Clearcom made its settlement guarantee, including its reference to a "Monthly Recurring Charge" and receipts for payments in the same amount as late as February 2022.

The burden therefore shifts to Clearcom to show that there is a dispute of material fact. *Nissan Fire*, 210 F.3d at 1103. To meet that burden, Clearcom had to

introduce evidence that the MSA and ESO did not actually relate to the Paniolo infrastructure or that they were no longer in effect when Clearcom made its settlement guarantee. Clearcom has not introduced any evidence of what assets other than the Paniolo infrastructure these agreements might concern. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). And while Clearcom argues that the MSA and ESO were each written to automatically terminate, that reading does not square with their language. *See Hernandez v. Spacelabs Med. Inc.*, 343 F.3d 1107, 1112 (9th Cir. 2003).

Neither of the declarations submitted by Clearcom at summary judgment moves the needle in its favor. Wendy Hee's declaration is "a conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence." *Nilsson v. City of Mesa*, 503 F.3d 947, 952 n.2 (9th Cir. 2007) (citation modified); *see, e.g.*, *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). Albert Hee's declaration is less conclusory, but it also does not support an inference that Clearcom had no ongoing obligations to Charter. In fact, it appears to concede that the MSA was in effect when Clearcom made its guarantee. Even making reasonable inferences in Clearcom's favor, the declarations are insufficient to satisfy its burden of production. Thus, we affirm the bankruptcy court's grant of summary judgment on this claim.[1]

[1]We do not reach Clearcom's argument that the bankruptcy court's decision violated its right to a jury trial, as it has both waived that right and forfeited the

2. ***Unjust Enrichment.*** In Hawai‘i, unjust enrichment is aimed at "the prevention of injustice," which is "the underlying conception of restitution." *Small v. Badenhop*, 701 P.2d 647, 654 (Haw. 1985). Clearcom does not dispute that the retention of payments it received for leasing access to the Paniolo infrastructure constitutes unjust enrichment, nor that it kept some of those payments. *See In re Scrimgeour's Est.*, 17 Haw. 122, 123 (1905) (recognizing unjust enrichment based on a benefit conferred by a third party); *see also Durette v. Aloha Plastic Recycling, Inc.*, 100 P.3d 60, 74 (Haw. 2004) (identifying the elements of unjust enrichment where a benefit is conferred on the defendant by the plaintiff). Rather, Clearcom's only argument is that part of the payments Trustee now seeks to recover were unrelated to the Paniolo infrastructure. But that fact goes only to *how much* Clearcom was unjustly enriched, not *whether* Clearcom was unjustly enriched. On remand, Clearcom may introduce evidence challenging the amount in restitution it owes. *See Porter v. Hu*, 169 P.3d 994, 1018 (Haw. Ct. App. 2007).

3. ***Motion for Reconsideration.*** Finally, Clearcom argues that the bankruptcy court erred in declining to reconsider its summary-judgment ruling given the difficulties Clearcom faced in obtaining a declaration from Charter employee Norman Santos. Clearcom suggests that it could not have obtained this declaration

---

argument. *See* Fed. R. Bankr. P. 9015(a); Fed. R. Civ. P. 38(b); *In re The Mortg. Store, Inc.*, 773 F.3d 990, 998 (9th Cir. 2014).

before summary judgment because Charter forbade its employees from voluntarily testifying in cases such as this one. But Clearcom has not explained why it could not have used formal discovery processes, such as subpoenas, to secure Santos's testimony. Thus, we conclude that the bankruptcy court did not abuse its discretion in denying reconsideration. *See Frederick S. Wyle Pro. Corp. v. Texaco, Inc.*, 764 F.2d 604, 609 (9th Cir. 1985).

AFFIRMED.