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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

No. A-1-CA-38668

BENJAMIN GROSSETETE,

Plaintiff-Appellant

v.

US EAGLE F.C.U.,

Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
Lisa Chavez Ortega, District Judge

Benjamin Grossetete
Albuquerque, NM

Pro Se Appellant

Justin B. Breen
Albuquerque, NM

for Appellee

MEMORANDUM OPINION

VARGAS, Judge.

{1} Plaintiff appealed following the dismissal of his claims with prejudice. We issued a notice of proposed summary disposition in which we proposed to reverse. Plaintiff has filed a memorandum in support, and Defendant has filed a memorandum in opposition. After due consideration, we reverse and remand for further proceedings.

{2} We previously set forth the relevant background information. We will not reiterate at length here. Instead, we will focus on the content of the responsive memoranda.

{3} Defendant makes no attempt to argue that the district court's dismissal of the complaint on the stated basis, failure to join an indispensable party, is affirmable. We therefore adhere to our initial assessment.

{4} Nevertheless, Defendant urges this Court to consider the merits of one or more of the alternate theories advanced in its motion to dismiss. [MIO 2-9] As we observed in the notice of proposed summary disposition, [CN 6] the district court did not render a ruling on those aspects of Defendant's motion. We are not inclined to consider such unaddressed arguments. *See, e.g., Cottonwood Enters. v. McAlpin*, 1989-NMSC-064, ¶ 15, 109 N.M. 78, 781 P.2d 1156. However, the district court may take those matters under consideration on remand. *See id.*

{5} In the memorandum in support, Plaintiff similarly requests that this Court pass upon various aspects of the underlying merits, which have not been addressed by the district court. [Unnumbered MIS 1-2] We note simply that we are in no position to do so. *See generally Morris v. Brandenburg*, 2015-NMCA-100, ¶ 53, 356 P.3d 564 ("Our Court is not in the position to make factual findings relevant to issues left unaddressed by the district court."), *aff'd*, 2016-NMSC-027, 376 P.3d 836; *Rangel v. Save-Mart, Inc.*, 2006-NMCA-120, ¶ 36, 140 N.M. 395, 142 P.3d 983 ("We do not consider matters not of record.").

{6} Accordingly, for the reasons stated in the notice of proposed summary disposition and above, we reverse and remand for further proceedings.

{7} IT IS SO ORDERED.

JULIE J. VARGAS, Judge

WE CONCUR:

J. MILES HANISEE, Chief Judge

KRISTINA BOGARDUS, Judge