

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0704**

Morex Properties, LLC,
Appellant,

vs.

Sauro & Bergstrom, PLLC,
Respondent,
Warner Law Office,
Defendant,
AllenMax Construction, LLC,
Defendant.

**Filed February 13, 2023
Affirmed
Larson, Judge**

St. Louis County District Court
File No. 69DU-CV-21-791

William D. Paul, William Paul Law Office, Duluth, Minnesota (for appellant)

Mark R. Bradford, Beth L. LaCanne, Bassford Remele, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Gaïtas, Presiding Judge; Bratvold, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

Appellant Morex Properties, LLC (Morex) sued defendant AllenMax Construction, LLC's (AllenMax) former counsel, respondent Sauro & Bergstrom, PLLC (S&B), for

restitution. The district court denied Morex's repeated attempts to remove the district court judge, dismissed the action on the pleadings, and awarded sanctions to S&B.¹ On appeal, Morex challenges the district court's decisions related to Morex's attempts to remove the district court judge and the district court's decision to grant S&B's motion for judgment on the pleadings. We affirm.

FACTS

This appeal relates to an ongoing commercial-construction dispute that has been in litigation since 2016 (the first action). *See AllenMax Constr., LLC v. Wright Grp., LLC*, No. A18-1602, 2019 WL 4594031, at *1 (Minn. App. Sept. 23, 2019). We briefly recite the facts of the first action to provide context for this action (the second action).

Morex hired the Wright Group, LLC (Wright) as a general contractor to build a hotel in Duluth, Minnesota. *Id.* Wright then hired AllenMax to provide framing services. *Id.* AllenMax retained S&B as counsel and, in 2016, AllenMax initiated the first action against Wright and Morex. *Id.* at *2. Following a jury trial, the district court entered judgment in favor of AllenMax on its unjust-enrichment claim against Morex. *Id.* at *3. Morex appealed. During the pendency of the appeal, Morex did not post a bond or otherwise seek

¹ Morex failed to respond to the motion for sanctions in the district court and, while attempting to raise the issue here, failed to (1) submit the pages containing its argument in its principal brief and (2) respond to respondent's arguments regarding sanctions on reply. We therefore conclude that Morex forfeits its arguments related to sanctions. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) ("A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it.") (quotation omitted); *Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (reciting the principle that appellate courts decline to address inadequately briefed issues).

to prevent AllenMax from collecting on its judgment against Morex. As a result, AllenMax successfully collected its judgment against Morex.

After AllenMax collected its judgment against Morex, we affirmed in part and reversed in part, concluding the district court erred when it denied Morex's motion for judgment as a matter of law on AllenMax's unjust-enrichment claim. *Id.* at *12. We remanded to the district court with instructions to enter judgment in Morex's favor on that claim. *Id.* at *11.

On remand, the district court indicated that it would vacate the judgment against Morex but held a hearing to allow the parties to direct the district court on how it should handle Morex's potential restitution rights—given that AllenMax had collected on a reversed judgment. Following the hearing, the district court issued an order that vacated the judgment against Morex but did not award restitution because Morex had not filed a restitution claim.

Rather than file a restitution claim, Morex pursued restitution-related discovery against AllenMax. The requested discovery included information related to S&B's receipt of money associated with the reversed judgment. In one email delivering a restitution-related discovery request, Morex also threatened to sue S&B if AllenMax did not answer the request to Morex's satisfaction.

In response to the restitution-related discovery requests, AllenMax filed a motion for a protective order prohibiting Morex from requesting information "related to monies collected by AllenMax . . . in satisfaction of AllenMax's judgment against Morex." The motion also requested attorney fees. The district court: (1) granted AllenMax's motion for

a protective order; (2) prohibited Morex from requesting information from AllenMax “related to monies collected by AllenMax in satisfaction of AllenMax’s judgments against Morex”; (3) prohibited Morex from serving post-judgment discovery upon AllenMax “until it first docket[s] with [the] [c]ourt any purported judgments in favor of Morex against AllenMax”; and (4) granted AllenMax’s request for attorney fees.

Two days after the district court issued the protective order, Morex filed the second action. There, Morex sued S&B.² Morex alleged that S&B “obtained and received money from Morex . . . relating to the judgment that AllenMax . . . had obtained”; our court reversed the judgment and ordered that “judgment be entered in favor of Morex”; and, therefore, Morex was entitled to reimbursement. Morex asserted that it was legally entitled to recover \$21,067.79 directly from S&B under theories of unjust enrichment and restitution.

Court administration assigned a scheduling judge to handle the second action. The scheduling judge assigned the case for inclusion in the Duluth Expedited Litigation Track Pilot Project (DELTPP) and scheduled a case-management conference. Morex’s attorney emailed the scheduling judge admitting that the action related to an existing case. Morex’s attorney further admitted that he filed the second action because he “did not like [his] client’s chances” if the district court judge from the first action (trial judge) “were to make the decision regarding [his] client’s claim for restitution. Consequently, [Morex’s attorney] elected to commence a completely separate lawsuit.” S&B subsequently filed three

² The complaint also named AllenMax and Warner Law, LLC as defendants, but the record does not show Morex properly served those parties.

separate motions: (1) to consolidate the two cases; (2) for judgment on the pleadings; and (3) for sanctions under Minn. R. Civ. P. 11.³ Morex never responded to S&B's motions. The scheduling judge determined that the trial judge was best situated to decide the motions and directed court administration to assign the trial judge to the second action.

Morex then filed a notice to peremptorily remove the trial judge pursuant to Minn. R. Civ. P. 63.03.⁴ S&B filed a motion to quash the rule 63.03 notice, which the trial judge granted. The trial judge reasoned that the second action was merely an extension of the first action, and the trial judge had already presided over substantive matters in the first action. Morex filed a petition for writ of mandamus in our court, arguing the trial judge improperly quashed the rule 63.03 notice. We denied the writ, concluding that “despite

³ Rule 11.03 provides that if the district court finds a violation of Rule 11.02, “the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties.”

⁴ Rule 63.03 provides in relevant part:

Any party or attorney may make and serve on the opposing party and file with the administrator a notice to remove. The notice shall be served and filed within ten days after the party receives notice of which judge or judicial officer is to preside at the trial or hearing, but not later than the commencement of the trial or hearing.

No such notice may be filed by a party or party's attorney against a judge or judicial officer who has presided at a motion or any other proceeding of which the party had notice, or who is assigned by the Chief Justice of the Minnesota Supreme Court. A judge or judicial officer who has presided at a motion or other proceeding or who is assigned by the Chief Justice of the Minnesota Supreme Court may not be removed except upon an affirmative showing that the judge or judicial officer is disqualified under the Code of Judicial Conduct.

the filing of a [second] action, [Morex] ha[d] failed to show that the assigned district court judge ha[d] not presided over a ‘proceeding involving a substantive issue in the matter.’”

The second action was set to proceed in front of the trial judge. Before the next scheduled hearing, Morex filed a motion to remove the trial judge for cause, arguing the trial judge was biased and prejudiced against Morex. The trial judge held a hearing on the pending motions. The trial judge then denied Morex’s motion to remove on the basis that Morex failed to present any evidence the trial judge could not fairly preside over the proceedings. The trial judge also decided S&B’s motions as follows: (1) granted the motion for judgment on the pleadings; (2) denied the motion to consolidate as moot; and (3) granted the motion for sanctions in the amount of \$18,230.81.

This appeal follows.

DECISION

I.

Morex first challenges the district court’s decisions that led to the trial judge presiding over the merits of the second action. For the reasons set forth in detail below, we conclude the trial judge properly presided over the second action.

A. Assignment of the Trial Judge

Morex challenges the scheduling judge’s decision to assign the second action to the trial judge. Morex first argues the scheduling judge erred because Morex was entitled to random judicial assignment. We decline to address this issue because Morex failed to cite any relevant authority. *See Wintz*, 558 N.W.2d at 480 (declining to address inadequately briefed arguments); *Horodenski v. Lyndale Green Townhome Ass’n*, 804 N.W.2d 366, 372

(Minn. App. 2011) (“[E]rror is not presumed on appeal, and the burden of showing error rests on the party asserting it.”). Further, we observe that Morex’s argument conflicts with the supreme court’s order Authorizing Expedited Civil Litigation Track Pilot Project and Adopting Amendments to the Rules of Civil Procedure and the General Rules of Practice. *Order Relating to Civil Justice Reform Task Force*, Nos. ADM10-8051, ADM09-8009, ADM04-8001 (Minn. Feb. 12, 2013). Because the district court included the second action in the DELTPP, the supreme court has recognized that the district court “may need flexibility” in judicial assignments, including using a pool of judges or adjunct judicial officials. *Id.* A bright-line rule that random assignment must occur does not comport with the needed flexibility to implement DELTPP.

Morex also argues the scheduling judge erred when he assigned the second action to the trial judge because Minn. R. Gen. Prac. 113.02⁵ allows only the chief judge to decide a motion to consolidate. We need not decide this issue because neither the scheduling judge nor the trial judge consolidated the two actions.

B. Peremptory Removal

Morex next challenges the trial judge’s decision to grant the motion to quash the peremptory Minn. R. Civ. P. 63.03 notice to remove. Generally, rule 63.03 “allows a party to serve and file a notice to remove a judge assigned to a case in district court, without proof of bias or prejudice,” resulting in “automatic” removal. *In re Hughes*, 934 N.W.2d

⁵ Rule 113.02 provides that “[a] motion for assignment of two or more cases pending within a single judicial district to a single judge shall be made to the chief judge of the district in which the cases are pending, or the chief judge’s designee.”

99, 100 (Minn. 2019). But the peremptory-removal right is not absolute and is limited by rule 63.03's plain language. *See id.* Rule 63.03 unambiguously provides that there will be no peremptory removal after a judge "has presided at a motion or any other proceeding," at which point a party must make "an affirmative showing that the judge . . . is disqualified under the Code of Judicial Conduct." *See also Omaha Fin. Life Ins. Co. v. Cont'l Life Underwriters, Ins. Co.*, 427 N.W.2d 290, 292 (Minn. App. 1988) (observing that "the right to remove the original judge is not revived" for "proceedings which are a mere continuation of the original proceeding").

For the second time in our court, Morex challenges the trial judge's decision to quash Morex's peremptory removal notice on the basis that the second action "is not a new independent action" and is, instead, "an extension of the previous case." Morex seeks a second bite at the apple, but the law-of-the-case doctrine bars Morex's argument. When an appellate court decides a legal issue and remands the case for further proceedings, that issue becomes the law of the case and will not be reexamined in a later appeal. *Loo v. Loo*, 520 N.W.2d 740, 744 n.1 (Minn. 1994). We have applied the law-of-the-case doctrine to extraordinary writs.⁶ *See Liedtke v. Ferguson*, 370 N.W.2d 477, 478 (Minn. App. 1985) (concluding an issue raised in a petition for a writ for mandamus may not be raised in subsequent appeal), *rev. denied* (Minn. Sept. 13, 1985); *cf. State v. Dahlin*, 753 N.W.2d 300, 303-04 (Minn. 2008) (a party waives the right to challenge a decision on a peremptory-

⁶ We observe that the doctrine is discretionary and there has been at least one example in which our court reexamined "an issue that was brought before the special term panel." *Banque Internationale Luxembourg v. Dacotah Cos.*, 413 N.W.2d 850, 852 (Minn. App. 1987).

removal notice in the supreme court where the party fails to appeal this court's decision on the extraordinary writ).

We directly addressed Morex's argument in response to its petition for writ of mandamus. In so doing, we denied the writ on the basis that, "despite the filing of a new action, [Morex] ha[d] failed to show that the assigned district court judge ha[d] not presided over a 'proceeding involving a substantive issue in the matter.'" Because we resolved Morex's claim regarding peremptory removal, Morex may not again raise that issue for review.

C. For-Cause Removal

Finally, Morex argues the trial judge abused her discretion when she denied Morex's motion to remove for cause. "No judge shall sit in any case if disqualified under the Code of Judicial Conduct." Minn. R. Civ. P. 63.02. And the Code of Judicial Conduct provides that "[a] judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned," including proceedings where "[t]he judge has a personal bias or prejudice concerning a party or a party's lawyer." Minn. R. Jud. Conduct 2.11(A)(1).

To succeed on a for-cause removal motion, a party must make "a showing of affirmative [bias or] prejudice." *Haefele v. Haefele*, 621 N.W.2d 758, 766 (Minn. App. 2001), *rev. denied* (Minn. Feb. 21, 2001). To do so, a party cannot merely rely on the district court's prior adverse rulings. *State v. Sailee*, 792 N.W.2d 90, 96 (Minn. App. 2010) (stating adverse rulings by a judge, alone, do not constitute judicial bias), *rev. denied* (Minn. Mar. 15, 2011); *Olson v. Olson*, 392 N.W.2d 338, 341 (Minn. App. 1986) ("[p]rior

adverse rulings . . . clearly cannot constitute bias”). “We will not reverse a district court’s decision to deny a removal motion absent an abuse of discretion.” *Haefele*, 621 N.W.2d at 766.

Morex argues the trial judge showed bias and prejudice against Morex in the second action. But Morex points only to the trial judge’s adverse rulings and fails to identify any evidence in the record that would demonstrate judicial bias. *See State v. Burrell*, 743 N.W.2d 596, 601-02 (Minn. 2008) (“The mere fact that a party declares a judge partial does not in itself generate a reasonable question as to the judge’s impartiality.”). Because prior adverse rulings do not show bias, Morex failed to meet its burden to show the trial judge has personal bias or prejudice against Morex. Minn. R. Civ. P. 63.03; *Matson v. Matson*, 638 N.W.2d 462, 469 (Minn. App. 2002). Therefore, the trial judge did not abuse her discretion when she denied Morex’s for-cause motion to remove.

II.

Morex next challenges the district court’s decision to grant S&B’s motion for judgment on the pleadings. We review a district court’s decision to grant a motion for judgment on the pleadings under Minn. R. Civ. P. 12.03 de novo to determine whether the complaint sets forth legally sufficient claims. *Burt v. Rackner, Inc.*, 902 N.W.2d 448, 451 (Minn. 2017). “A claim is legally sufficient if it is possible on any evidence which might be produced . . . to grant the relief demanded.” *Abel v. Abbott Nw. Hosp.*, 947 N.W.2d 58, 68 (Minn. 2020) (quotation omitted). In determining whether a claim is legally sufficient, we consider “only the facts alleged in the complaint, accepting those facts as true and

drawing all reasonable inferences in favor of the nonmoving party.” *Zutz v. Nelson*, 788 N.W.2d 58, 61 (Minn. 2010).

Here, Morex challenges the district court’s decision that Morex failed to state a legally sufficient restitution claim. In particular, Morex argues the district court erroneously concluded that there is no support for the legal theory that a third-party law firm (here, S&B) is responsible to pay restitution for money their judgment-creditor client (here, AllexMax) collected while executing a valid judgment against a judgment debtor (here, Morex). We disagree.

In the absence of a Minnesota precedent, the district court evaluated Morex’s restitution claim by analyzing legal authority from around the United States. The district court started with the Restatement (First) of Restitution (1937), which Minnesota appellate courts use as persuasive authority in the absence of precedential caselaw.⁷ In particular, the district court noted that section 74, comment h⁸ directly contemplates the situation alleged in Morex’s complaint:

⁷ See, e.g., *Allstate Ins. Co. v. Eagle-Picher Indus., Inc.*, 410 N.W.2d 324, 328 (Minn. 1987) (citing Restatement (First) of Restitution § 76); *Zontelli & Sons, Inc. v. City of Nashwauk*, 373 N.W.2d 744, 755 n.6 (Minn. 1985) (citing Restatement (First) of Restitution § 85); *Borsgard v. Elverum*, 80 N.W.2d 604, 610 (Minn. 1957) (citing Restatement (First) of Restitution § 161); *Mathison v. Clearwater Cnty. Welfare Dep’t*, 412 N.W.2d 812, 813 (Minn. App. 1987) (citing Restatement (First) of Restitution § 74).

⁸ Minnesota appellate courts have also relied on the comments to the Restatement (First) of Restitution. See, e.g., *Est. of Jones by Blume v. Kvamme*, 449 N.W.2d 428, 432 (Minn. 1989) (citing Restatement (First) of Restitution § 204 cmt. b); *Koenig v. Wachholz*, 309 N.W.2d 803, 804 (Minn. 1981) (citing Restatement (First) of Restitution § 21 cmt. a); *Borsgard*, 80 N.W.2d at 610 (citing Restatement (First) of Restitution § 161 cmt. b); *MCC Invs. v. Crystal Props.*, 451 N.W.2d 243, 248 (Minn. App. 1990) (citing Restatement (First) of Restitution § 42(3) cmt. e), *rev. denied* (Minn. Mar. 27, 1990); *Est. of Frantz v. Page*,

A[] [third party] attorney . . . of the judgment creditor . . . is under no duty to repay money which he received on account of the judgment creditor and which he retains as payment for services or for a debt owed by the judgment creditor to him (see Illustration 20)⁹ since he received the money as a bona fide purchaser.

The district court then surveyed cases from around the country, concluding that courts rarely order an attorney to pay restitution under similar circumstances. *See, e.g., Mohamed v. Kerr*, 91 F.3d 1124, 1126 (8th Cir. 1996); *Ehsani v. McCullough Fam. P'ship*, 159 P.3d 407, 413 (Wash. 2007); *Herkert v. Stauber*, 378 N.W.2d 704, 706-07 (Wis. Ct. App. 1985).¹⁰ And in those cases in which restitution is ordered, special circumstances require restitution. *See, e.g., Mohamed*, 91 F.3d at 1126 (distinguishing the “relevant fact[s]” before the court from circumstances calling for “the protection normally afforded payments to attorneys”); *Berger v. Dixon & Snow, P.C.*, 868 P.2d 1149, 1154 (Colo. App. 1993) (finding that a claim for restitution may lie against an attorney who had distributed bond proceeds, including their contingent fee, despite opposition, and with the knowledge that the other party was seeking to enforce a settlement agreement that the attorney

426 N.W.2d 894, 902 (Minn. App. 1988) (citing Restatement of Restitution § 85 cmt. e), *rev. denied* (Minn. Sept. 16, 1988); *Lundeen v. Lappi*, 361 N.W.2d 913, 916 (Minn. App. 1985) (citing Restatement (First) of Restitution § 21 cmt. a, b), *rev. denied* (Minn. April 18, 1985).

⁹ Illustration 20 considers the following circumstances: “[Judgment creditor] obtains a valid judgment against [judgment debtor] for \$3000. [Judgment debtor] pays the amount of the judgment to [a third party], [judgment creditor]’s attorney. At [judgment creditor]’s direction [third-party attorney] expends \$1000 to satisfy [judgment creditor]’s creditors and retains \$2000 as compensation for his services in this suit and in previous ones. Upon reversal of the judgment, [judgment debtor] is not entitled to restitution from [third-party attorney].” Restatement (First) of Restitution § 74 cmt. h, illus. 20.

¹⁰ We note that authority from other jurisdictions is merely persuasive and not binding on this court. *See Randall v. Paul*, 897 N.W.2d 842, 847 (Minn. App. 2017).

attempted to revoke); *Minott v. Lee Alan Bryant Health Care Facilities, Inc.*, 998 N.E.2d 273, 278 (Ind. Ct. App. 2013) (ordering restitution from law firms where the law firms had an attorney’s lien against the judgment which took priority over the judgment creditor). Based on its caselaw review, the district court determined no legal authority supported Morex’s claim that it was entitled to seek restitution against S&B.

We discern no legal error in the district court’s analysis. Generally, a judgment debtor “who has conferred a benefit upon [a judgment creditor] in compliance with a judgment . . . is entitled to restitution if the judgment is reversed or set aside, unless restitution would be inequitable.” *Mathison*, 412 N.W.2d at 813 (quoting Restatement (First) of Restitution § 74).¹¹ But we do not treat a judgment creditor as a “wrong-doer” for executing a valid judgment—the judgment protects the judgment creditor “while it remains in force.” *Peck v. McLean*, 30 N.W. 759, 761 (Minn. 1886).¹² It follows logically that a judgment debtor “is not entitled to recover [its] money” from a third party—like a law firm—who receives money from the judgment creditor while the judgment is valid. *Cf. Blumberg v. Taggart*, 5 N.W.2d 388, 392 (Minn. 1942) (“Where the claimant’s money is wrongfully used in discharging a debt of the wrongdoer, the claimant is not entitled to

¹¹ Morex argues that *Mathison* is analogous to Morex’s restitution claim. But *Mathison* related to a judgment debtor seeking the return of money *from the judgment creditor*, not from a third-party law firm.

¹² The supreme court has recognized that this rule may cause hardship to the judgment debtor. *Peck*, 30 N.W.2d at 761. But there are consequences when a judgment debtor fails “to appeal, or to obtain a *supersedeas* on an appeal” because the judgment debtor “permits the judgment to remain in force and enforceable.” *Id.* The record shows Morex faces the hardships at issue in this case, in part, because of its actions during appeal in the first action. See *AllenMax*, 2019 WL 4594031, at *2-3.

recover his money from the creditor if the creditor had no notice of the wrong, since he is then in the position of a bona fide purchaser.” (quotation omitted)). At the time of a valid judgment, the third party has no notice of any wrongdoing—because the judgment creditor is acting appropriately—and, therefore, the third party is in the position of a bona fide purchaser. *See* Restatement (First) of Restitution § 74 cmt. h; *cf. Blumberg*, 5 N.W.2d at 392. For this reason, section 74, comment h, is consistent with Minnesota law and was appropriately applied by the district court.

Accordingly, Morex failed to allege a legally sufficient claim for relief.¹³ Morex alleged that AllenMax (the judgment creditor) levied over \$21,000 from Morex (the judgment debtor) while executing a valid judgment. S&B (the third-party law firm) received the collected judgment and applied the money toward the attorney fees AllenMax owed S&B. The judgment AllenMax relied on to collect over \$21,000 was later vacated. Drawing all reasonable inferences in favor of Morex, Morex failed to state a restitution claim. The complaint concedes that S&B appropriately collected the judgment. And the complaint alleges that S&B retained the money as payment for services rendered. As such, viewing the facts in the light most favorable to Morex, S&B sits in the position of a bona fide purchaser and is under no duty to repay the money. *See* Restatement (First) of

¹³ Morex also summarily argues the district court erred when it dismissed Morex’s unjust-enrichment claim because “[t]here is nothing inequitable about requiring [S&B] to pay [the] money back.” We do not reach this issue because it was inadequately briefed. *See Wintz*, 558 N.W.2d at 480; *Horodenski*, 804 N.W.2d at 372.

Restitution § 74 cmt. h. Therefore, we affirm the district court's decision to grant S&B's motion for judgment on the pleadings.

Affirmed.