

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS P. DOBRON,  
Appellant,

vs.

DEL BUNCH, JR. AND ERNESTINE L.  
BUNCH,  
Respondents.

No. 45045

**FILED**

**JUL 12 2006**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER VACATING JUDGMENT AND REMANDING

This is an appeal from a district court judgment awarding attorney fees in a contract action. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

Del and Ernestine Bunch loaned money to various companies owned by Thomas Dobron (the Companies). On each of these loans, Dobron signed a personal guarantee. The Companies sued the Bunches in California state court in 1996 for charging usurious interest rates. After several motions and a transfer of venue, the U.S. District Court in Las Vegas, applying Nevada law, determined that the loans were not usurious. However, the Bunches never sought attorney fees. Instead, the Bunches filed the present lawsuit in March 2003 seeking attorney fees incurred in the prior lawsuit based on Dobron's guarantees of the loans.

The district court determined that Dobron was liable under his personal guarantees for the Bunches' attorney fees incurred in the prior lawsuit. Dobron appeals, claiming that the district court erred because (1) there was no underlying debt of attorney fees owed, (2) a guarantor cannot owe a debt when the creditor has extinguished the underlying debt, (3) the Bunches were precluded from seeking attorney fees in the lawsuit because they neglected to seek attorney fees in the

prior lawsuit, and (4) a creditor cannot prejudice the rights of the debtor or guarantor. While we conclude that the Bunches may request attorney fees as damages in a separate lawsuit, we vacate the district court's judgment and remand this matter for the district court to consider the legal basis for damages consisting of attorney fees the Bunches incurred in the underlying usury litigation.

As we discussed in Shuette v. Beazer Homes Holdings Corp.<sup>1</sup> and Sandy Valley Associates v. Sky Ranch Estate,<sup>2</sup> attorney fees are usually awarded pursuant to statute in the same litigation where incurred. In such cases, the court has had the opportunity to observe the quality of the advocate, the character of the work, the work actually performed, and the result obtained and make a judgment in its discretion to award attorney fees.<sup>3</sup>

However, in this case, the court awarding attorney fees is not the court that heard the underlying case. Whether through inadvertence or plan, the Bunches did not to seek attorney fees from the Companies in federal court. Instead, the Bunches are seeking the attorney fees from the prior usury case as damages based on Dobron's contractual liability in his personal guarantees. As a result, the Bunches must show that Dobron's contract provides for his liability for attorney fees from the usury action

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<sup>1</sup>121 Nev. \_\_\_, \_\_\_, 124 P.3d 530, 547-49 (2005).

<sup>2</sup>117 Nev. 948, 955-60, 35 P.3d 964, 968-71 (2001).

<sup>3</sup>Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

and then must prove the attorney fees “by competent evidence just as any other element of damages.”<sup>4</sup>

Thus, as a starting point, the district court must determine whether Dobron’s guarantees provide for his liability for attorney fees from a usury suit. The district court’s order that Dobron appealed did not explicitly find that paragraph eight<sup>5</sup> of the guarantee provided for such liability. Next, the district court must determine, based on evidence submitted by the Bunches and Dobron, whether specific attorney fees were actually spent<sup>6</sup> and were reasonable. This different approach to awarding attorney fees is necessitated by the Bunches seeking attorney fees as damages under the contract and not as incidental “costs” of the usury litigation.<sup>7</sup>

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<sup>4</sup>Sandy Valley Assocs., 117 Nev. at 956, 35 P.3d at 969.

<sup>5</sup>Paragraph eight provides in relevant part:

Interest and Costs. . . . [Dobron] shall also pay [the Bunches’] reasonable attorneys’ fees and all costs and other expenses which [the Bunches] expend[] or incur[] in collecting or compromising any such indebtedness or in enforcing this Guarantee against [Dobron], whether or not suit is filed, including, without limitation, all such fees, costs and expenses incurred in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceedings involving [Dobron] which in any way affect the exercise by [the Bunches] of [their] rights and remedies hereunder.

<sup>6</sup>See Sandy Valley Assocs., 117 Nev. at 956-58, 35 P.3d at 969-70.

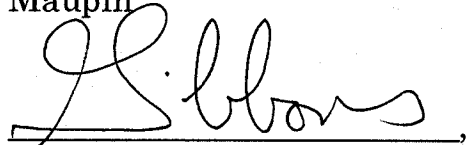
<sup>7</sup>See id. We do not detail the procedure the district court must follow in this order, but direct the district court and the parties to our  
*continued on next page . . .*

Accordingly, we


ORDER the judgment of the district court VACATED AND REMAND this matter to the district court for proceedings consistent with this order.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Stewart L. Bell, District Judge  
William F. Buchanan, Settlement Judge  
Wingert Grebing Brubaker & Goodwin, LLP  
Ellsworth Moody & Bennion Chtd  
Clark County Clerk

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*... continued*

prior opinions in Beazer, 121 Nev. at \_\_\_, 124 P.3d at 547-49, and Sandy Valley Assocs., 117 Nev. at 955-60, 35 P.3d at 968-71.