

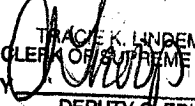
IN THE SUPREME COURT OF THE STATE OF NEVADA

LSQ FUNDING, LLC, A FLORIDA
LIMITED LIABILITY COMPANY,
Appellant,
vs.
DEBRA J. HUFFMAN, AN
INDIVIDUAL D/B/A SHOREVIEW
SEAFOOD CONCEPTS,
Respondent.

No. 47222

FILED

MAY 06 2008

TRACE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court judgment in a contract action and an order denying a new trial. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

The parties are familiar with the facts of this case; thus, we recount them only as necessary to explain our decision.

Standard of review

This court generally reviews district court rulings on new trial motions for abuse of discretion.¹

The district court abused its discretion when it denied LSQ's new trial motion based upon newly acquired evidence

Appellant LSQ Funding, LLC (LSQ) contends that the district court abused its discretion when it denied its new trial motion based upon newly acquired material evidence. We agree.

NRCP 59 governs when a new trial should be granted. More specifically, under NRCP 59(a)(4), a new trial may be granted if the

¹Krause Inc. v. Little, 117 Nev. 929, 933, 34 P.3d 566, 569 (2001); Sanborn v. State, 107 Nev. 399, 406, 812 P.2d 1279, 1284 (1991).

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petitioning party shows that it discovered material evidence that affects its substantial rights, and the party could not have discovered and produced that evidence at trial after employing reasonable diligence.

We conclude that the district court abused its discretion when it denied LSQ's new trial motion under NRCP 59(a)(4). LSQ discovered material evidence shortly after the trial that linked respondent, Debra Huffman d/b/a Shoreview Seafood Concepts (Shoreview), to fraud perpetrated by Fred W. Thomas, owner of Pristine International Seafood, Inc. LSQ could not have discovered this evidence through reasonable diligence prior to trial because it was concealed by Thomas' fraud. Accordingly, we conclude that a new trial is warranted on this basis.

The district court also abused its discretion when it denied LSQ's new trial motion based upon Shoreview's misconduct during discovery

LSQ contends that the district court abused its discretion when it denied its new trial motion based upon Shoreview's misconduct during discovery. LSQ particularly argues that if Shoreview had been forthright in its discovery responses, then LSQ could have used the evidence that it would have discovered to impeach Shoreview's only witness, Thomas. We agree.

NRCP 59(a) states that "[a] new trial may be granted to all or any of the parties and on all or part of the issues for any of the following causes or grounds materially affecting the substantial rights of an aggrieved party: . . . (2) Misconduct of the jury or prevailing party." Analogously, NRCP 60(b)(3) allows this court to set aside a judgment procured by fraud or other misconduct of an adverse party.

Based upon Shoreview's discovery abuses, we conclude that the district court abused its discretion when it denied LSQ's new trial motion for two reasons. First, NRCP 59(a) is satisfied because Shoreview,

the prevailing party, committed misconduct during discovery when it denied sending checks to LSQ and also denied receiving checks from Pristine. Shoreview only admitted its misconduct to LSQ's counsel on the eve of trial, and he was thus unable to properly investigate these transactions. Second, NRCP 60(b)(3) is also satisfied because the judgment was tainted by fraud. Shortly after trial concluded, LSQ located bank records from Thomas' office that indicated that he committed perjury when he testified that he shipped Shoreview seafood for the first 15 invoices that he submitted on its account. Accordingly, we conclude that a new trial is warranted on this basis as well.

Accordingly, we

ORDER the judgment of the district court and the order denying new trial REVERSED and REMAND for a new trial.



Maupin



Cherry



Saitta

cc: Hon. Douglas W. Herndon, District Judge
Howard Roitman, Settlement Judge
Lionel Sawyer & Collins/Las Vegas
Debra J. Huffman
Eighth District Court Clerk