

IN THE SUPREME COURT OF THE STATE OF NEVADA

TOMMY VIG,  
Appellant,


vs.

PACIFIC INDEMNITY COMPANY, A  
WISCONSIN CORPORATION AND A  
DIVISION OF CHUBB CORPORATION  
AND/OR CHUBB & SON, INC.; HILB  
ROGEL & HOBBS OF CONNECTICUT,  
LLC, A CONNECTICUT LIMITED  
LIABILITY COMPANY, A/K/A B.  
PERKINS & COMPANY, INC., A  
CONNECTICUT CORPORATION;  
ROYKO-CHARAMUT AGENCY, LLC, A  
CONNECTICUT LIMITED LIABILITY  
COMPANY; EDWARD V. CHARAMUT,  
INDIVIDUALLY; AND CHUBB GROUP  
OF INSURANCE COMPANIES,  
Respondents.

No. 47352

FILED

APR 13 2007

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court judgment entered after a bench trial in an insurance dispute action. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

After appellant Tommy Vig's Las Vegas art gallery was purportedly burglarized, he filed an insurance claim for the loss with his insurer, respondent Pacific Indemnity Company, a member of respondent Chubb Group of Insurance Companies. During Pacific Indemnity's investigation of the alleged burglary's circumstances, Vig instituted the underlying action, seeking declaratory relief concerning his claim. Thereafter, once Pacific Indemnity ultimately denied Vig's claim, he expanded the scope of his case, culminating with his fifth amended

complaint against respondents, which included claims for breach of contract, bad faith, various statutory violations, negligence, fraud, fraudulent inducement, “joint and several liability,” intentional infliction of emotional distress, and negligent infliction of emotional distress.

Respondents’ answers to Vig’s fifth amended complaint asserted various affirmative defenses, in part contending that Vig’s misrepresentations and omissions material to his procuring and maintaining insurance coverage relieved them of any liability related to Pacific Indemnity’s denial of his insurance claim.<sup>1</sup> The district court then, ostensibly concluding that respondents’ affirmative defenses, if

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<sup>1</sup>See West Coast Life Ins. Co. v. Ward, 33 Cal. Rptr. 3d 319, 323 (Ct. App. 2005) (noting that “a material misrepresentation or concealment in an insurance application . . . entitles the insurer to rescind the insurance policy ab initio” and that the California Insurance Code mandates each party to an insurance contract to communicate information known or believed to be material to the policy); Mitchell v. United Nat. Ins. Co., 25 Cal. Rptr. 3d 627, 633 (Ct. App. 2005) (recognizing that both parties to an insurance contract bear a heavy burden of disclosure and that “any material misrepresentation or the failure . . . to provide requested information permits rescission of the policy by the injured party”) (quoting Imperial Cas. & Indem. v. Sogomonian, 243 Cal. Rptr. 639, 643 (Ct. App. 1988)); see also Violin v. Fireman’s Fund Ins. Co., 81 Nev. 456, 458, 406 P.2d 287, 288 (1965) (recognizing that, based on one’s “obligation not to speak falsely when inducing another to make a bargain, . . . an insurer is not bound by an insurance contract that [it] was induced to make” by the insured’s “fraudulent misrepresentations”); NRS 687B.110 (providing that an insured’s concealment, misrepresentation, or omission of facts material to procuring insurance coverage generally precludes recovery under the policy); see generally Villalon v. Bowen, 70 Nev. 456, 467, 273 P.2d 409, 414 (1954) (recognizing that “[t]he suppression of a material fact which a party is bound in good faith to disclose is equivalent to a false representation, since it constitutes an indirect representation that such fact does not exist”).

established, were dispositive of the case, first conducted a bench trial on respondents' affirmative defense related to any material misrepresentations or omissions by Vig, before considering any of Vig's claims.<sup>2</sup>

After a bench trial on respondents' misrepresentation-omission affirmative defense, the district court entered judgment in respondents' favor. The court concluded that, because Vig, in procuring and maintaining insurance coverage, materially misrepresented the risk of insuring him by concealing his history of prior insured losses and the nature of his art gallery, Vig's insurance policy with Pacific Indemnity was void and respondents were thus relieved of any liability from Pacific Indemnity's denial of Vig's claim based on the policy. This appeal followed.

In considering this appeal, we give deference to the court's factual findings so long as they are not clearly wrong and are supported by substantial evidence,<sup>3</sup> which has been defined as evidence that "a reasonable mind might accept as adequate to support a conclusion."<sup>4</sup> Moreover, witness credibility determinations are within the district court's fact-finding purview, and we thus will not substitute our or appellant's

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<sup>2</sup>See Young v. Nevada Title Co., 103 Nev. 436, 441, 744 P.2d 902, 904 (1987) (noting the district court's broad discretion with respect to how it wishes to conduct trial).

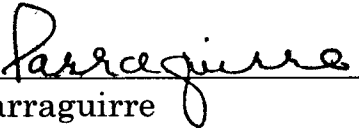
<sup>3</sup>See NOLM, LLC v. County of Clark, 120 Nev. 736, 739, 100 P.3d 658, 660-61 (2004); Gibellini v. Klindt, 110 Nev. 1201, 885 P.2d 540 (1994).

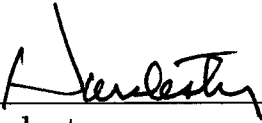
<sup>4</sup>First Interstate Bank v. Jafbros Auto Body, 106 Nev. 54, 56, 787 P.2d 765, 767 (1990) (internal quotation marks omitted).


view of witness testimony for that of the district court.<sup>5</sup> Having reviewed the record, Vig's appeal statement, respondents' responses, Vig's reply thereto,<sup>6</sup> and Vig's purported combined opposition and amendment to his reply, in light of those principles, we conclude that substantial evidence supports the district court's judgment.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>7</sup>

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

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<sup>5</sup>Fox v. First Western Sav. & Loan, 86 Nev. 469, 470 P.2d 424 (1970).

<sup>6</sup>Although Vig did not separately request leave to submit a reply brief or for permission for it to exceed NRAP 28(g)'s thirty-page limit, as we have considered his reply brief filed on March 2, 2007, we deny Pacific Indemnity and respondent Chubb & Son, Inc.'s March 20, 2007 motion to strike it. And we thus deny as moot Vig's April 6, 2007 motion to strike that motion.

<sup>7</sup>Having considered all the issues raised by Vig, we conclude that his other contentions lack merit and therefore do not warrant reversal of the district court's judgment.

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
Tommy Vig  
Jones Vargas/Las Vegas  
Olson, Cannon, Gormley & Desruisseaux  
Pyatt Silvestri & Hanlon  
Seltzer, Caplan, McMahon & Vitek  
Berger Kahn  
Eighth District Court Clerk