

IN THE SUPREME COURT OF THE STATE OF NEVADA

PHILIP NEUMAN,
Appellant,
vs.
FAIRWAY CHEVROLET COMPANY,
Respondent.

No. 47746

FILED

DEC 10 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

Appellant purchased a Chevrolet Corvette from respondent. Appellant's down payment for the purchase was \$10,000, which he paid with his credit card. According to appellant, shortly after acquiring the car, mechanical problems arose. Consequently, appellant contacted respondent. Based on appellant's dissatisfaction with the car, the parties ultimately entered into an agreement for respondent to reacquire the car and to satisfy appellant's outstanding loan obligation. Appellant agreed to pay the difference between his loan obligation and the car's declined value. When respondent entered this agreement, it was unaware that appellant already had contacted his credit card issuer to cancel his \$10,000 down payment to respondent.

Thereafter, on discovering that appellant had cancelled his down payment, respondent instituted this case against him, asserting causes of action for breach of contract, breach of the implied covenant of

good faith and fair dealing, fraudulent misrepresentation, and unjust enrichment. Respondent also sought punitive damages based on the allegations underlying its fraudulent misrepresentation claim. Respondent subsequently moved for summary judgment. Appellant neither opposed the motion nor appeared at the related hearing. Accordingly, the district court awarded respondent compensatory and punitive damages and attorney fees and costs. This appeal followed.

On appeal, appellant challenges the district court's summary judgment and award of punitive damages to respondent.¹ This court reviews the order granting summary judgment to respondent de novo.² Summary judgment is appropriate if the pleadings and other evidence on file, viewed in a light most favorable to appellant, demonstrate that no genuine issue of material fact remains in dispute and that respondent is entitled to judgment as a matter of law.³ Further, we generally will not overturn a punitive damages award "if it is supported by substantial evidence of oppression, fraud, or malice."⁴ In reviewing a punitive damages award, we will assume that the district court "believed all the

¹Appellant also attempts to challenge a district court order addressing his motion, filed after this appeal was docketed, for relief from the court's judgment, under NRCP 60(b). But appellant's challenge is not appropriately raised in the context of this appeal from the final judgment; thus, we need not address it.

²See Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

³Id. at 731, 121 P.3d at 1031.

⁴Bongiovi v. Sullivan, 122 Nev. 556, 581, 138 P.3d 433, 451 (2006).

evidence favorable to the prevailing party and drew all reasonable inferences in that party's favor."⁵

After reviewing the parties' briefs and their respective appendices, we conclude that the district court did not err when it granted summary judgment to respondent on its claims for breach of contract,⁶ breach of the implied covenant of good faith and fair dealing,⁷ and fraudulent misrepresentation.⁸ We further conclude that substantial

⁵Id. (internal quotation marks and emphasis omitted) (citing Paullin v. Sutton, 102 Nev. 421, 423, 724 P.2d 749, 750 (1986)).

⁶Bernard v. Rockhill Dev. Co., 103 Nev. 132, 135, 734 P.2d 1238, 1240 (1987) (recognizing that a breach of contract arises from the failure to perform a duty arising under an agreement).

⁷Frantz v. Johnson, 116 Nev. 455, 465 n.4, 999 P.2d 351, 358 n.4 (2000) (noting that the implied covenant of good faith and fair dealing generally "forbids arbitrary, unfair acts by one party that disadvantage another")

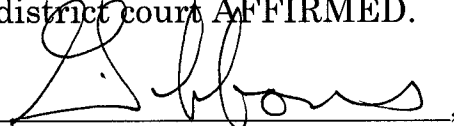
⁸Collins v. Burns, 103 Nev. 394, 397, 741 P.2d 819, 821 (1987) (noting that one liable for intentional (or fraudulent) misrepresentation generally must have communicated information knowing its falsity).

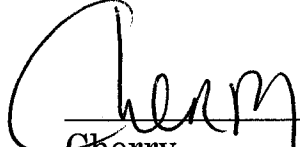
The district court also granted summary judgment to respondent on its unjust enrichment claim. This appears improper, however, since an unjust enrichment claim is not viable "when there is an express, written contract." LeasePartners Corp. v. Brooks Trust, 113 Nev. 747, 755-56, 942 P.2d 182, 187 (1997). Here, the record contains evidence of an express, written between the parties. Nevertheless, the district court's summary judgment on respondent's unjust enrichment claim does not warrant reversal since the court did not award separate damages with respect to that claim.


evidence of fraud in the record supports the district court's award of punitive damages to respondent.⁹

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Cherry


_____, J.
Saitta

cc: Hon. Douglas W. Herndon, District Judge
William F. Buchanan, Settlement Judge
Snell & Wilmer, LLP/Las Vegas
Jolley Urga Wirth Woodbury & Standish
Eighth District Court Clerk

⁹See NRS 42.005; Bernard, 103 Nev. at 134, 734 P.2d at 1240 (noting that “torts can . . . be committed by parties to a contract” (quoting Malone v. University of Kansas Medical Center, 552 P.2d 885, 888 (Kan. 1976))).