

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID W. SEUFERT,
Appellant,
vs.
TORY TEUNIS, AN INDIVIDUAL; NV
MORTGAGE, INC., A NEVADA
CORPORATION D/B/A SOMA
FINANCIAL; AND SOMA FINANCIAL,
INC., A NEVADA CORPORATION,
Respondents.

No. 47796

FILED

FEB 15 2008

TRACE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART, AND
REMANDING

This is an appeal from a district court order granting summary judgment in a third-party contract dispute. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

In the summer of 2000, appellant David Seufert asserts, he entered into an oral agreement with his stepson, respondent Tory Teunis, to act as a "strawman" for the purposes of entering into a commercial lease agreement on behalf of Teunis, who could not obtain a lease due to a poor credit record. Seufert agreed that he would sign his name on all official lease documents, but that Teunis would actually occupy the leased premises, and be responsible for all monthly payments.

Pursuant to this verbal agreement, Seufert entered into a five-year lease agreement with NNN Park Sahara, LLC ("Park Sahara") for commercial premises located in Las Vegas. Teunis, and two companies

08.03818

with which he was affiliated, SOMA Financial, Inc., and NV Mortgage, Inc. (“the SOMA parties”), occupied the leased premises for a number of years, and paid rent directly to Park Sahara. However, at some point during 2004, the SOMA parties ceased making rental payments to Park Sahara, and vacated the premises.

As a result, Park Sahara filed suit against Seufert for breach of the lease agreement. Seufert filed a third-party complaint against Teunis and the SOMA parties, alleging claims for breach of contract, tortious breach of the implied covenant of good faith and fair dealing, equitable indemnity, and unjust enrichment.

After Seufert conducted little to no discovery before the discovery cut-off established by the district court, Teunis and the SOMA parties moved for summary judgment. Per NRCP 56(f), Seufert eventually responded with affidavits from Teunis’ mother and sister concerning the alleged agreement between Seufert and Teunis, pictures indicating that the SOMA parties had actually occupied the leased premises, and a cancelled check from SOMA, Inc. to Park Sahara. Despite this evidence, the district court granted summary judgment to both Teunis and the SOMA parties.

This court reviews a summary judgment order de novo.¹ “Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions, and affidavits on file show that there exists no genuine issue as to any material fact and that the moving

¹Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 713, 57 P.3d 82, 87 (2002).

party is entitled to judgment as a matter of law.”² A genuine issue of material fact exists if, based on the evidence, a reasonable jury could return a verdict for the non-moving party.³ Using this standard, we examine the propriety of summary judgment with respect to each of Seufert’s claims.

Breach of contract

To form a valid contract, basic contract principles require “offer and acceptance, meeting of the minds, and consideration.”⁴ A valid contract cannot exist where any of these material terms are “lacking or are insufficiently certain and definite.”⁵ “A contract can be formed, however, when the parties have agreed to the material terms, even though the contract’s language is not finalized until later.”⁶

In this case, counsel for Seufert conceded at the hearing on the motion for summary judgment that no contract or agreement ever existed between Seufert and SOMA Financial or Nevada Mortgage.⁷ Therefore,

²Id.

³Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).

⁴May v. Anderson, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005).

⁵Id.

⁶Id.

⁷Counsel for Seufert specifically stated that “I never once alleged that there was any direct agreement between Mr. Seufert and Soma or Nevada Mortgage. . . . [The SOMA parties’] motion for summary judgment was based on the premise that there was some sort of agreement between my client and Soma. I never make that claim. I never have.”

we conclude that the district court properly granted summary judgment with respect to any breach of contract claims against SOMA and Nevada Mortgage.

Nonetheless, the affidavits submitted by Teunis' mother and sister both indicated that Seufert and Teunis entered into an agreement wherein Seufert would enter into a lease contract, but Teunis would occupy the leased premises and reimburse Seufert for any payments due under the lease. The photographs and cancelled checks submitted by Seufert further indicate that SOMA Financial, a company with which Seufert was closely affiliated, actually occupied the leased premises, and submitted at least one lease payment to Park Sahara, as contemplated by the agreement between Seufert and Teunis. Based on these submissions, we conclude that Seufert produced sufficient evidence of an oral contract to survive a motion for summary judgment on his breach of contract claim against Teunis individually, and reverse the district court summary judgment with respect to this claim.⁸

Tortious breach of the implied covenant of good faith and fair dealing

Generally, every contract contains a covenant of good faith and fair dealing.⁹ This implied covenant may give rise to a remedy in tort

⁸Because it appears Seufert fully performed his obligations under the agreement with Teunis, we reject Teunis' argument that any oral contract is void under the statute of frauds. See Edwards Indus. v. DTE/BTE, Inc., 112 Nev. 1025, 1032, 923 P.2d 569, 574 (1996) (noting that full performance of an oral contract by one party satisfies the statute of frauds, and extinguishes the requirement of a signed writing).

⁹Insurance Co. of the West v. Gibson Title, 122 Nev. 455, 461, 134 P.3d 698, 702 (2006).

“in rare and exceptional cases’ when there is a special relationship between the victim and the tortfeasor.”¹⁰ This special relationship is “characterized by elements of public interest, adhesion, and fiduciary responsibility.”¹¹

Because no contract existed between Seufert and the SOMA parties, and because Seufert has not demonstrated any special relationship between himself and the SOMA parties, we conclude that the district court did not err in granting summary judgment with respect to Seufert’s breach of the implied covenant of good faith and fair dealing claims against the SOMA parties. However, due to the parent-stepchild relationship between Seufert and Teunis, and the possible existence of an oral contract between the pair, we conclude that genuine issues of material fact exist regarding whether Teunis is liable for a tortious breach of the implied covenant of good faith and fair dealing. Accordingly, we reverse the district court’s order granting summary judgment with respect to this claim against Teunis only.¹²

¹⁰Id. at 461, 134 P.3d at 702 (quoting K Mart Corp. v. Ponsock, 103 Nev. 39, 49, 732 P.2d 1364, 1370 (1987)).


¹¹Id. (quoting Great American Ins. v. General Builders, 113 Nev. 346, 355, 934 P.2d 257, 263 (1997)).


¹²At the beginning of his opening brief to this court, Seufert makes a general request that we also reverse the district court summary judgment with respect to his claims for equitable indemnity and unjust enrichment against both Teunis and the SOMA parties. However, Seufert provides no specific analysis of these claims, nor does he provide any legal authority to support his position. Therefore, we summarily reject Seufert’s argument that the district court erred in granting summary judgment on these claims. See Cummings v. Tinkle, 91 Nev. 548, 551, 539 P.2d 1213, 1215

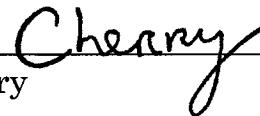
continued on next page . . .

For the reasons stated above, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C. J.
Gibbons


_____, J.
Maupin


_____, J.
Cherry

cc: Eighth Judicial District Court Dept. 18, District Judge
Ara H. Shirinian, Settlement Judge
Anthony M. Goldstein
Goodman Law Group
Eighth District Court Clerk

... continued

(1975) (noting that this court need not consider any alleged error where the appellant fails to provide any legal authority to support his claim).