IN THE SUPREME COURT OF THE STATE OF NEVADA

DEAKEN BUILDERS, INC., A NEVADA CORPORATION, Appellant, vs. RICK HALLGREN, AN INDIVIDUAL; AND VIRGINIA KNUDSEN, AN INDIVIDUAL, Respondents.	No. 48424
DEAKEN BUILDERS, INC., A NEVADA CORPORATION, Appellant, vs. RICK HALLGREN, AN INDIVIDUAL; AND VIRGINIA KNUDSEN, AN INDIVIDUAL, Respondents.	No. 48654

FILED

MAY 28 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL

These are consolidated appeals from a district court summary judgment in a contract action and a post-judgment order awarding attorney fees. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

This court reviews a district court's grant of summary judgment de novo, without deference to the findings of the lower court.[1]

[1]Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (citing Caughlin Homeowners Ass'n v. Caughlin Club, 109 Nev. 264, 266, 849 P.2d 310, 311 (1993)).

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Summary judgment is appropriate and "shall be rendered forthwith" when the pleadings and other evidence on file demonstrate that no "genuine issues as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law."[2] This court has noted that when reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party.[3]

Appellant Deaken Builders, Inc., argues that the district court erred in granting summary judgment in favor of respondents Rick Hallgren and Virginia Knudsen. Deaken contends that there were genuine issues of material fact regarding whether Hallgren had entered into the contract for tenant improvements in his individual capacity or as an authorized agent for R&R Fitness Centers, LLC (which was doing business as The Tone Zone).

Having reviewed the parties' arguments and the record on appeal, we conclude that the district court erred in granting summary judgment to Hallgren and Knudsen.

In Mullis v. Nevada National Bank, we held that summary judgment in a contractual dispute was not appropriate where there were ambiguities in the written contract and where extrinsic evidence was

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[2]NRCP 56(c); Wood, 121 Nev. at 729, 121 P.3d at 1029 (citing Tucker v. Action Equip. and Scaffold Co., 113 Nev. 1349, 1353, 951 P.2d 1027, 1029 (1997)).

[3]Wood, 121 Nev. at 729, 121 P.3d at 1029 (citing Lipps v. Southern Nevada Paving, 116 Nev. 497, 498, 998 P.2d 1183, 1184 (2000)).

required to ascertain the intention of the parties.[4] Because the contract in this case is ambiguous and because extrinsic evidence is necessary to ascertain the true intention of the parties, we conclude that the district court erred in granting summary judgment in favor of Hallgren and Knudsen.

While the four corners of the contract show that Hallgren entered into this contract with Deaken, the contract is ambiguous as to whether Hallgren was acting in his individual capacity or as an agent for R&R or The Tone Zone. The contract reveals that Deaken was to construct commercial tenant improvements for a property named as the The Tone Zone, but it does not reference R&R or The Tone Zone as the entities entering into this contract. While Hallgren's signature line in the contract lists him as an authorized representative, the contract does not specify which entity he is representing or that he was representing R&R or The Tone Zone. Further, the depositions of Hallgren and Ken Bagwell (Deaken's principal)—which were introduced in support of both Deaken's motion for summary judgment and Deaken's opposition to Hallgren's motion for summary judgment—reveal that Hallgren had not necessarily informed Deaken about the corporate structure for R&R or The Tone Zone and that Bagwell was under the impression that he was contracting and dealing with Hallgren directly. With these conflicting revelations, we conclude that the contract was ambiguous for which extrinsic evidence was necessary to ascertain the true intent of the parties.

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[4]98 Nev. 510, 513, 654 P.2d 533, 536 (1982).

Thus, in determining the parties' true intent, the district court was required to "construe the contract as a whole, including consideration of the contract's subject matter and objective, the circumstances of its drafting and execution, and the parties' subsequent conduct."[5] The district court could not accomplish this without engaging in fact finding, for which summary judgment was inappropriate.

While Hallgren and Knudsen argue that any ambiguity should be construed against Deaken, the drafter of the contract,[6] our holding in Mullis requires that "'summary judgment should not be entered in the face of contradictory or conflicting evidence.'"[7] Thus, the district court erred in granting summary judgment to Hallgren and Knudsen because there was a material dispute as to whether Hallgren was a party to the contract in his individual capacity or as an authorized agent for R&R or The Tone Zone.[8]

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[5]Ringle v. Bruton, 120 Nev. 82, 93, 86 P.3d 1032, 1039 (2004).

[6]See Dickenson v. State, Dep't of Wildlife, 110 Nev. 934, 937, 877 P.2d 1059, 1061 (1994) (providing that "when a contract is ambiguous, it will be construed against the drafter").

[7]98 Nev. at 513, 654 P.2d at 536 (quoting Mobile Acres, Inc. v. Kurata, 508 P.2d 889, 895 (Kan. 1973)).

[8]The determination of this issue is material to this case because Deaken had argued that Hallgren was personally liable under the contract as a result of Hallgren's purported failure in disclosing that he was acting as an agent on behalf of R&R or The Tone Zone. See Peccole v. Fresno Air Service, Inc., 86 Nev. 377, 380, 469 P.2d 397, 398-99 (1970) (holding that an agent is not absolved from liability on a contract that he has made for a partially disclosed principal). Thus, we conclude that Hallgren and Knudsen are not entitled to summary judgment because they cannot

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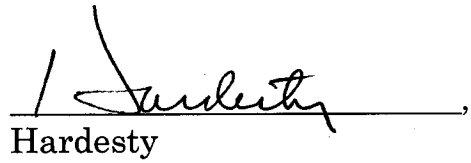
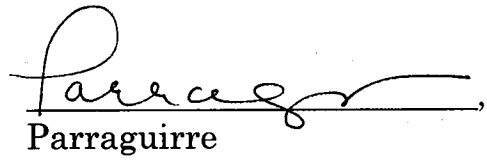
Because the district court's grant of summary judgment to Hallgren and Knudsen was inappropriate, we conclude that the district court also erred in awarding attorney fees to Hallgren and Knudsen under NRCP 68 and NRS 17.115. Accordingly, we

ORDER the judgments of the district court REVERSED.



_____, J.
Hardesty



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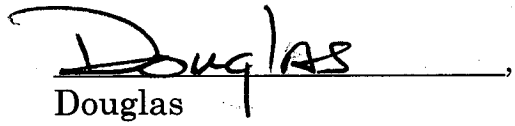
Parraguirre



_____, J.
Douglas

cc: Hon. Lee A. Gates, District Judge
Janet Trost, Settlement Judge
Pezzillo Robinson

. . . continued

defeat Deaken's argument without the district court making findings as to this disputed issue.

David J. Winterton & Associates, Ltd.
Eighth District Court Clerk