

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK MCKINNEY,
Appellant/Cross-Respondent,
vs.
CONSOLIDATED MORTGAGE
CORPORATION, A NEVADA CORPORATION,
Respondent/Cross-Appellant.

No. 49469

FILED

DEC 03 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal and cross-appeal from a district court order granting summary judgment in favor of a lender in a breach of contract action. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

The parties are familiar with the facts, and we do not recount them in this order except as is necessary for 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 Summary judgment is appropriate and "shall be rendered forthwith" when the pleadings and other evidence on file demonstrate that no 'genuine issue 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

¹Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

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

reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party.”³

On appeal, appellant Mark McKinney maintains that the district court erred by granting respondent Consolidated Mortgage Corporation’s (CMC) motion for summary judgment after finding, in relevant part, that CMC could not have breached its contract with McKinney to perform construction control when (1) the agreement between McKinney and CMC did not create a duty on the part of CMC to perform construction control on the project, and (2) undisputed evidence demonstrated that First Savings Bank (FSB) performed construction control for the project. McKinney argues that his contract with CMC reveals that CMC was responsible for construction control. At the very least, McKinney asserts that if the contract can be read to indicate that FSB was the entity required to perform construction control, instead of CMC, and that there was some ambiguity as to who performed construction control, then, according to McKinney, this factual issue must be presented to a trier of fact and this court should reverse the district court’s summary judgment.

We find McKinney’s arguments unpersuasive. As the district court found, the contract between McKinney and CMC clearly demonstrates that CMC was not responsible for construction control on the project. “[W]hen a contract is clear, unambiguous, and complete, its terms must be given their plain meaning”⁴ As such, we conclude

³Wood, 121 Nev. at 729, 121 P.3d at 1029.

⁴Ringle v. Bruton, 120 Nev. 82, 93, 86 P.3d 1032, 1039 (2004).

that the district court properly granted CMC's motion for summary judgment.

Additionally, we find CMC's cross-appeal regarding the amount of attorney fees awarded to them to be without merit. The amount of attorney fees awarded is within the trial court's discretion.⁵ A trial court should consider four factors in calculating attorney fees: "[1] the qualities of the advocate, [2] the character of the work to be done, [3] the work actually performed by the lawyer, and [4] the result."⁶ "[U]nless there is a manifest abuse of discretion, a district court award of attorney's fees will not be overturned on appeal."⁷

Based on the documents before us, we conclude that the district court did not manifestly abuse its discretion in awarding CMC \$10,000 in attorney fees. Although CMC contends that it is entitled to additional attorney fees, the parties extensively briefed the fee issue and the district court reviewed the parties' arguments and implicitly analyzed each of the Brunzell factors. The trial court was in the best position to determine the reasonableness of CMC's fees. Thus, we will not disturb this discretionary award.

Having considered McKinney's contentions on appeal, we conclude that the district court did not err in granting CMC's motion for summary judgment. Additionally, having considered CMC's arguments

⁵See Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 350, 455 P.2d 31, 33-34 (1969).


⁶Hornwood v. Smith's Food King No. 1, 107 Nev. 80, 87, 807 P.2d 208, 213 (1991) (outlining the Brunzell factors).

⁷Id.


made in support of its cross-appeal, we conclude the district court did not manifestly abuse its discretion in awarding CMC \$10,000 in attorney fees.

Accordingly, we

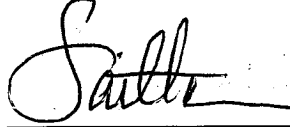
ORDER the judgment of the district court AFFIRMED.

 _____, J.

Cherry

 _____, J.

Gibbons

 _____, J.

Saitta

cc: Hon. Stewart L. Bell, District Judge
Israel Kunin, Settlement Judge
Hutchison & Steffen, Ltd.
Jennings, Strouss & Salmon, PLC
McCullough, Perez & Associates, Ltd.
Eighth District Court Clerk