IN THE SUPREME COURT OF THE STATE OF NEVADA

MARGARET OWENS,
Appellant,
vs.
SANTA BARBARA VILLAGE HOMEOWNERS ASSOCATION, A NEVADA CORPORATION,
Respondent.

No. 49481

FILED

APR 30 2009

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

ORDER OF AFFIRMANCE

This is an appeal from a district court's grant of summary judgment in a homeowners' association dispute. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Appellant Margaret Owens argues that the district court erred when it granted respondent Santa Barbara Village Homeowners Association's motion for summary judgment. Owens contends that she presented sufficient circumstantial evidence to the district court to support her allegation that, as a result of the Association's failure to maintain the common areas of the property, her condominium suffered significant water damage.[1] Specifically, Owens asserts that she presented

[1]Owens raises two additional arguments in this appeal. First, she argues that, pursuant to the continuous trigger theory, the statute of limitations had not run when she brought her claim. We need not consider this argument because the district court did not grant summary judgment based upon Owens' claim being time-barred. Second, Owens argues that the district court abused its discretion when it deferred to the arbitrator's decision that the TLC Roof Services and Durango Construction, Inc. reports were inadmissible. We conclude that we need not consider whether it was proper for the district court to rely upon the arbitrator's determination because, as noted in this order, our review of

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the district court with letters that she had sent to the Association requesting that it repair the common area of her condominium, a mold report, and reports written by TLC Roof Services and Durango Construction.

The Durango Construction report relied, in part, on the TLC Roof Services report. Accordingly, during arbitration between Owens and the Association, the arbitrator determined that the TLC Roof Services and Durango Construction reports were inadmissible because the drafter of the TLC Roof Services report was unavailable to be deposed. The district court, in granting summary judgment, adopted the arbitrator's decision to exclude this evidence. Owens contends that, in granting the Association's motion for summary judgment, the district court erred by failing to take this evidence into consideration.

We disagree. Owens failed to comply with NRCP 56, which governs summary judgment, because she did not submit affidavits or other admissible evidence in support of her contention that the Association's actions caused the water damage. As the parties are familiar with the facts of this case, we do not recount them except as necessary to our disposition.

. . . *continued*

the record indicates that this evidence was inadmissible. Finally, because we find that Owens did not present admissible evidence in support of her motion for summary judgment, we determine that we need not reach her additional arguments that (a) the Association could not delegate its responsibility to maintain the condominium's common area and (b) that the issue of damage was a matter for the jury to decide.

DISCUSSION

Standard of review

This court reviews a grant of summary judgment de novo. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Pursuant to NRCP 56, summary judgment is appropriate "when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law." Id. at 731, 121 P.3d at 1031. A genuine issue of material fact exists if, based on the evidence, "a rational trier of fact could return a verdict for the nonmoving party." Id.

When reviewing a grant of summary judgment, this court views the pleadings and evidence in the light most favorable to the nonmoving party. Id. at 732, 121 P.3d at 1031. To prevail, the nonmoving party must point to facts demonstrating a genuine material issue. Id. That is, the nonmoving party "bears the burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts in order to avoid summary judgment being entered in the moving party's favor." Id. (quoting Matsushita Elec. Industrial Co. v. Zenith Radio, 475 U.S. 574, 586 (1986)); see NRCP 56(e). Rather, "the nonmoving party 'must, by affidavit or otherwise, set forth specific facts demonstrating . . . a genuine issue [of fact]. . . .'" Id. (quoting Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992)); see NRCP 56(e). "The nonmoving party 'is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture.'" Id. (quoting Collins v. Union Fed. Savings & Loan, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983)).

Admissibility of the TLC Roof Services and Durango Construction reports

The trial court enjoys broad discretion when determining the admissibility of evidence. Sheehan & Sheehan v. Nelson Malley & Co., 121 Nev. 481, 492, 117 P.3d 219, 226 (2005). A district court abuses its discretion when its decision is arbitrary or capricious or if it "'exceeds the bounds of . . . reason.'" Countrywide Home Loans Inc. v. Thitchener, 124 Nev. ____, ____, 192 P.3d 243, 250 n.15 (2008) (quoting Skender v. Brunson Built Const. & Dev. Co., 122 Nev. 1430, 1435, 148 P.3d 710, 714 (2006)).

We conclude that the district court did not abuse its discretion when it found that the TLC Roof Services and Durango Construction reports were inadmissible. Neither report was authenticated, rendering them both inadmissible for the purpose of summary judgment. Orr v. Bank of America, NT & SA, 285 F.3d 764, 773 (9th Cir. 2002) (further noting that the person offering the document bears the burden of authenticating it). Moreover, the reports constitute hearsay because they are out-of-court statements admitted for the truth of the matter asserted. See NRS 51.035. Because the reports do not fall within one of the hearsay exceptions, they are inadmissible and cannot be considered for the purpose of summary judgment. See NRS 51.065(1). Further, the record adequately established that the district court considered the reports during the motion for summary judgment hearing. The decision to exclude them, therefore, was neither arbitrary nor capricious and not an abuse of discretion.

Motion for Summary Judgment

NRCP 56(e) governs the form of affidavits that are required to be filed in conjunction with motions for summary judgment. In full, NRCP 56(e) states:

> Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

In this case, Owens failed to comply with NRCP 56 or the standard set forth in Wood v. Safeway because she presented neither affidavits nor other admissible evidence of specific facts that support finding a genuine issue of fact as to whether the Association's actions caused the water damage to her condominium. Viewed in the light most favorable to Owens, the letters and other evidence she presented do not demonstrate a genuine material issue of fact because, while they indicate damage, they do not sufficiently indicate causation. See Sims v. General Telephone & Electric, 107 Nev. 516, 521, 815 P.2d 151, 154 (1991), overruled on other grounds by Tucker v. Action Equip. and Scaffold Co.,

113 Nev. 1349, 1356-57 n.4, 951 P.2d 1027, 1031-32 n.4 (1997) (noting that summary judgment is proper in negligence claims where the respondent can show that one of the elements necessary to prove negligence is lacking). Therefore, the district court did not err when it granted summary judgment in favor of the Association. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_______________, J.
Cherry

_______________, J.
Saitta

_______________, J.
Gibbons

cc: Hon. Valerie Adair, District Judge
William F. Buchanan, Settlement Judge
Reade & Associates
Kajioka & Associates
Eighth District Court Clerk