IN THE SUPREME COURT OF THE STATE OF NEVADA

DIPLOMAT CORPORATION,
Appellant,
vs.
MARVIN SIMON AND GLORIA SIMON, INDIVIDUALLY AND AS TRUSTEES OF THE MARVIN B. SIMON AND GLORIA G. SIMON LIVING TRUST,
Respondents.

No. 49999

ORDER OF AFFIRMANCE

This is an appeal from a post-judgment district court order granting in part and denying in part a post-judgment motion involving an alleged breach of a settlement agreement. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

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

Appellant Diplomat Corporation is the owner of the subject property located in an industrial area of Las Vegas, Nevada. Diplomat subleased the property to respondents Marvin and Gloria Simon, who, in turn, leased a portion of the property to Izrafeel Razack. The parties stipulate that Razack dumped a large amount of hazardous material on the property, which resulted in what initially appeared to be minimal near-surface contamination.

On November 24, 2003, Diplomat sued to evict the Simons and Razack from the property. Thereafter, on April 11, 2005, the parties entered into a settlement agreement, which stated that the Simons were to clean the property to the reasonable satisfaction of Diplomat within 90

days. At the time of the settlement, neither the Simons nor Diplomat knew of the extent of the contamination.

In April 2005, the Simons began the process of removing the contamination. Less than one month later, the cleanup project was completed. At about the same time, the Simons began proceedings to evict Razack. On May 27, 2005, the district court entered an order terminating Razack's sub-lease. However, Razack was allowed remain on the premises until August 31, 2005.

On September 2, 2005, the parties entered and examined the premises and discovered that the contamination was much worse than they originally envisioned. After realizing the additional cleanup costs, Diplomat filed a motion to be made whole, seeking $181,594.67 in damages. The district court denied Diplomat's motion since the Simons had fulfilled their obligations under the terms of the settlement agreement. This appeal followed.

On appeal, Diplomat contends that it is entitled to civil compensatory contempt damages for the Simons' purported failure to adhere to the terms of the settlement agreement.[1] For the following reasons, we affirm the decision of the district court.

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[1]Diplomat also argues that (1) the district court misinterpreted the terms of the settlement agreement, and (2) the terms of the settlement agreement render the Simons liable for removing the remaining contamination. After review of the record, we find these arguments without merit.

The district court did not err in refusing to award civil compensatory contempt damages

Diplomat contends that it is entitled to civil compensatory contempt damages because the Simons violated the terms of the settlement agreement by failing to clean up the property to the reasonable satisfaction of Diplomat within 90 days. We disagree.

In Young v. Johnny Ribeiro Building, we indicated that district court judges are afforded broad discretion in imposing sanctions. 106 Nev. 88, 92, 787 P.2d 777, 779 (1990). "Generally, an order for civil contempt must be grounded upon one's disobedience of an order that spells out 'the details of compliance in clear, specific and unambiguous terms so that such person will readily know exactly what duties or obligations are imposed on him.'" Southwest Gas Corp. v. Flintkote Co., 99 Nev. 127, 131, 659 P.2d 861, 864 (1983) (quoting Ex Parte Slavin, 412 S.W.2d 43, 44 (Tex. 1967)). The "'sanction for "[c]ivil contempt is characterized by the court's desire to . . . compensate the contemnor's adversary for the injuries which result from the noncompliance."'" State, Dep't Indus. Rel. v. Albanese, 112 Nev. 851, 856, 919 P.2d 1067, 1071 (1996) (quoting In re Crystal Palace Gambling Hall, Inc., 817 F.2d 1361, 1366 (9th Cir. 1987) (quoting Falstaff Brewing Corp. v. Miller Brewing Co., 702 F.2d 770, 778 (9th Cir. 1983))) (alteration in original). However, the compensation must be based upon the party's actual loss. Id.

According to Diplomat, the actual losses resulting from the Simons' civil contempt include: (1) $36,617.25 in additional environmental research; (2) $25,327 in additional attorney fees and costs; and (3) $96,800 for the diminution of the property's value. We disagree.

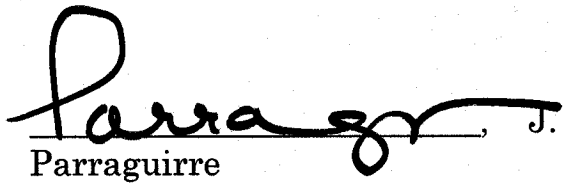
First, the record on appeal demonstrates that the Simons reimbursed Diplomat $30,562.22 for the environmental inspections of the

property that were conducted by Ninyo & Moore. This reimbursement was expressly provided for under the terms of the settlement agreement. The settlement agreement does not, however, provide for any additional reimbursement for environmental inspections. Accordingly, we conclude that the district court was correct in refusing to award Diplomat $36,617.25 for additional environmental research.

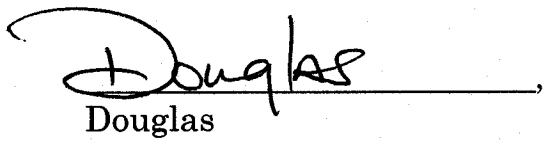
Second, we conclude that Diplomat's claim for attorney fees and costs was properly rejected because, under the terms of the settlement agreement, both parties agreed to bear their own attorney fees and costs. Furthermore, Diplomat's claim for attorney fees and costs does not fall under any rule or statute. See NRS 18.010; RTTC Communications v. Saratoga Flier, 121 Nev. 34, 40, 110 P.3d 24, 28 (2005).

Third, we conclude that Diplomat's claim for civil compensatory contempt sanctions, in the amount of $96,800, for diminution of the property's value was properly rejected because Diplomat dismissed all of its claims with prejudice when it entered into the settlement agreement. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Parraguirre



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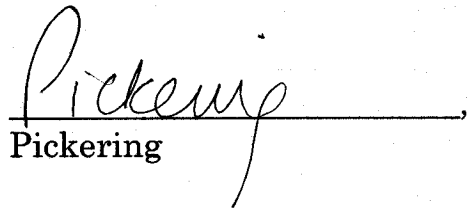

_____, J.
Pickering

cc: Eighth Judicial District Court Dept. 7, District Judge
Carolyn Worrell, Settlement Judge
Fennemore Craig, P.C./Las Vegas
Santoro, Driggs, Walch, Kearney, Holley & Thompson
Eighth District Court Clerk