

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE POWER COMPANY, INC., A
NEVADA CORPORATION,
Appellant,
vs.
THE CITY OF LAS VEGAS, A
MUNICIPAL CORPORATION,
Respondent.

No. 50185

FILED

MAR 12 2009

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court partial summary judgment, certified as final under NRCP 54(b), in a matter concerning a Las Vegas City Council decision. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

The underlying proceeding stems from a civil fine imposed by the Las Vegas City Council (LVCC) against appellant The Power Company in the amount of \$2,192,000. The Power Company filed a complaint in the district court seeking an injunction, among other things. The respondent The City of Las Vegas filed a counterclaim seeking to reduce the LVCC's fine to judgment. The City subsequently moved for summary judgment, which was granted. The documents before this court show that the LVCC arrived at the \$2,192,000 fine amount based on its conclusion The Power Company previously pleaded guilty to a federal criminal charge of participating in a conspiracy to engage in a racketeering enterprise between 2000 and 2005, a period of 2,192 days.¹ On appeal, The Power

¹The Las Vegas Municipal Code gives the Las Vegas City Council discretion, "[u]pon a showing of good cause," to impose a \$1000 maximum civil fine for each day a violation has occurred. See LVMC § 6.02.360. On appeal, The Power Company does not contest the LVCC's authority to impose the civil fine.

Company contends that the district court erred in granting summary judgment in favor of the City because the LVCC's decision to fine The Power Company for a criminal conspiracy lasting 2,192 days was in dispute. Specifically, The Power Company maintains that under the terms of its plea agreement, it actually pleaded guilty to committing the conspiracy between 2000 and 2003, a period of 1,461 days.

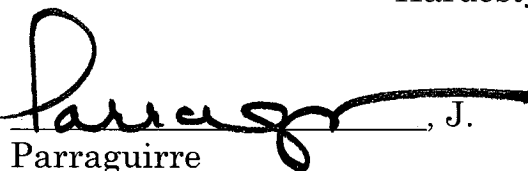
“This court reviews a district court’s grant of summary judgment de novo, without deference to the findings of the lower court.” Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is appropriate when the pleadings and other evidence demonstrates that there are no genuine issues of material fact remaining and that the moving party is entitled to a judgment as a matter of law. Id.; NRCP 56(c). “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.” Wood, 121 Nev. at 729, 121 P.3d at 1029.

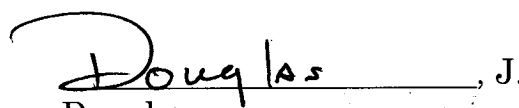
Having reviewed the record and the parties’ briefs on appeal, we conclude that the district court erred in granting summary judgment in favor of the City because a genuine issue of material fact exists as to how long The Power Company participated in the conspiracy, and consequently, whether the fine imposed was for the appropriate amount. The plea memorandum, outlining the plea agreement between The Power Company and the United States, indicates that The Power Company pleaded guilty to count 1 of the federal criminal information, which alleged that the conspiracy was committed between 2000 and 2005. Under the “facts supporting the guilty plea,” however, the plea memorandum clearly states that the conspiracy was for a period between 2000 and 2003. In its order imposing the \$2,192,000 fine, the LVCC recognized this discrepancy.

Nonetheless, in a conclusory manner, the LVCC indicated that it had “resolved the conflicting evidence” and determined that The Power Company committed the conspiracy between 2000 and 2005. In its order granting summary judgment, the district court, without explanation, agreed that the LVCC had resolved the plea memorandum’s inconsistency. Our review of the appellate record fails to show how the LVCC resolved the discrepancy. Thus, given that there are two possible timelines as to when The Power Company actually participated in the underlying conspiracy, there remains a genuine issue of material fact with respect to how long The Power Company participated in the conspiracy and whether the resulting fine was in the appropriate amount. See Wood, 121 Nev. at 729, 121 P.3d at 1029. Therefore, we conclude that the district court erred in granting summary judgment in favor of the City after finding that substantial evidence supported the \$2,192,000 fine. Accordingly, we reverse the portion of the district court’s order granting the City’s motion for summary judgment as to the LVCC’s imposed fine and we remand this matter to the district for further proceedings. ²

It is so ORDERED.


_____, C.J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

²In light of this order, we need not consider appellant’s remaining arguments.

cc: Hon. Mark R. Denton, District Judge
Janet Trost, Settlement Judge
Patti, Sgro & Lewis
Las Vegas City Attorney
Eighth District Court Clerk