

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN LAWRENCE RACE,
Appellant,
vs.
CITY OF LAS VEGAS; AND OSCAR B.
GOODMAN,
Respondents.

No. 50333

FILED

DEC 03 2008

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing a contract action. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

Proper person appellant John Lawrence Race filed a district court complaint against respondents City of Las Vegas and its mayor, Oscar B. Goodman, alleging that Race had made Goodman an offer to obtain exclusive rights relating to Race's homeland security training business known as Citizen Security 2000, Inc. The offer was not accepted by Goodman and ultimately expired on December 9, 2002. Nevertheless, Race claimed that he detrimentally relied upon a purportedly exclusive relationship with Goodman and the City, who he maintains tortiously interfered with his prospective advantage, intentionally destroyed his corporation, and thwarted his attempts to obtain Homeland Security training or funding, thus causing damages in excess of \$200 million. Race's complaint further alleged that the City, Goodman, and Senator Harry Reid, who was not named as a defendant in the complaint, entered into a purported conspiracy to explicitly forbid any media coverage of

issues concerning Citizen Security. Additionally, Race contended that the City, Goodman, and Reid created "an Extra Judicial court order suppressing all media from reporting or even reviewing Citizen Security." Race also alleged that the City and Goodman declared jurisdiction under admiralty law in violation of the Tenth Amendment of the United States Constitution in order to nullify and moot the United States Constitution and all federal and state laws, including NRS 30.170, which provides for relief from court orders prohibiting media reports. Race alleged that the City and Goodman intentionally obstructed justice, committed perjury, and issued extra judicial court orders with intentional malice. Finally, Race alleged that the City and Goodman acted under color of law and in violation of 18 U.S.C. § 24.5.

Attached to Race's complaint was an unfiled, undated, and unsigned complaint to the Nevada Ethic Commission. Race's district court complaint incorporated by reference the allegations made in the ethics complaint, including contradictory allegations that (1) Race had given the City and Goodman confidential information; (2) Race notified them that he would be terminating the offer on December 9, 2002, and would be publicly disclosing the project; (3) since April 2, 2002, Race had been e-mailing press releases to 1,500 news agencies worldwide to publicly disclose the proposed project in order to sell his company, replace the City and Goodman, or to "find suitable advise and consent" for an unspecified purpose; (4) the City and Goodman retaliated against Race for his threat of public disclosure and termination of the offer by conspiring to "gag" all media, thereby completely destroying the company; and (5) the Ethics Commission lacked jurisdiction over the complaint.

Without filing an answer, the City and Goodman moved to dismiss Race's complaint under NRCP 12(b)(5). They argued that the City does not have a duty to engage in business ventures with any specific individual and has the discretion to determine the suitability of any person with whom it will enter a public contract and that the City is immune from liability under NRS 41.032(2). Race opposed the motion, arguing that he never sought a public contract with the City and approached Goodman personally, not as an officer or employee of the City, so that there was no immunity under NRS 41.032. Race also included the only two letters that he ever received from Goodman in response to his proposal, both of which were on Goodman's official stationery as mayor. The first letter thanked Race for a press kit and the second letter wished Race "the best in all [his] future endeavors." Race claimed that "[d]efendants ha[d] never said 'yes' or 'no' to the proposal." Following a hearing, the district court entered an order summarily granting the City and Goodman's motion to dismiss from which Race now appeals.

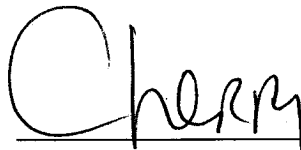
In determining whether a claim has been sufficiently stated to survive an NRCP 12(b)(5) motion to dismiss, all inferences must be construed in favor of the nonmoving party and all factual allegations in the complaint must be accepted as true.¹ Legal conclusions, however, are reviewed de novo.² Having reviewed the civil proper person appeal statement, respondents' answering brief, and the record on appeal, we

¹Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. ___, ___, 181 P.3d 670, 672 (2008).

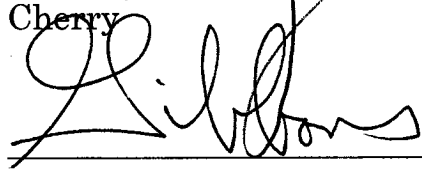
²Id.

conclude that Race could prove no set of facts, which, if true, would entitle him to relief.³ Accordingly, we

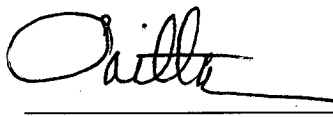
ORDER the order of the district court AFFIRMED.

 _____, J.

Cherry

 _____, J.

Gibbons

 _____, J.

Saitta

cc: Hon. Jessie Elizabeth Walsh, District Judge
John Lawrence Race
Las Vegas City Attorney
Eighth District Court Clerk

³Id.