

IN THE SUPREME COURT OF THE STATE OF NEVADA

INVESTORS FINANCIAL GROUP, LLC,  
F/K/A TERRA WEST FINANCIAL,  
Appellant,  
vs.  
NATIONAL TITLE COMPANY, INC., A  
NEVADA CORPORATION,  
Respondent.

No. 51066

**FILED**

**JUL 31 2009**

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting judgment as a matter of law in a contract and tort action. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Appellant Investors Financial Group, LLC (IFG), argues that respondent National Title Company, Inc. (National), fraudulently induced it to loan \$800,000 to E.A. Collins Development Corporation (Collins) for a land development in Pahrump, Nevada. IFG alleges that National knew that certain water rights securing the loan had previously been pledged to another lender.

In its complaint, IFG asserted claims against National for concealment, constructive fraud, breach of contract, negligence, and breach of the covenant of good faith and fair dealing. Before trial, the district court granted National's motion to exclude evidence of a prior similar claim against it. At the conclusion of IFG's case, the district court also granted National's motion for judgment as a matter of law, concluding

that IFG did not provide sufficient evidence to merit submission to a jury. On appeal, IFG assigns error to both rulings.<sup>1</sup>

At the outset, we note that IFG's appellate briefs fail to support its assignments of error with sufficient citations to the record. "Every assertion in briefs regarding matters in the record shall be supported by a reference to the page and volume number, if any, of the appendix where the matter relied on is to be found." NRAP 28(e)(1). Additionally, we "will not reverse an order of judgment unless error is affirmatively shown." Schwartz v. Estate of Greenspun, 110 Nev. 1042, 1051, 881 P.2d 638, 644 (1994); see also Charmicor, Inc. v. Bradshaw Finance Co., 92 Nev. 310, 313, 550 P.2d 413, 415 (1976) (affirming summary judgment where the record did not substantiate appellant's allusion to facts in its brief).

Although IFG's opening brief makes numerous assertions of fact, it only cites to the record twice. However, these cites reference large sections of the trial transcript, including counsel's opening statement. They do not refer to specific page or line numbers. Thus, IFG's failure to affirmatively show error gives us sufficient reason to affirm. Nonetheless, we will consider IFG's arguments on their merits.

The district court did not abuse its discretion in excluding evidence of a prior similar fraud claim against National

National moved to exclude evidence of a prior fraud claim involving American West Homes (AWH) and Collins. In that case, AWH

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<sup>1</sup>We have also considered IFG's arguments that the district court erred by prohibiting IFG from impeaching witness testimony and in holding that out-of-pocket damages would have been the appropriate damages measure. We conclude that these arguments lack merit.

alleged that National acted as Collins's sole agent and ignored AWH's escrow instructions. The case settled before trial.

Absent a clear abuse of discretion, we will not disturb a trial court's ruling on the relevance and admissibility of evidence. Crowley v. State, 120 Nev. 30, 34, 83 P.3d 282, 286 (2004). The district court's determination of admissibility of prior bad acts in a civil proceeding is to be afforded great deference and will not be reversed absent manifest error. Taylor v. Thunder, 116 Nev. 968, 973, 13 P.3d 43, 46 (2000). Prior bad acts evidence may be admitted in civil proceedings provided the evidence is relevant, the prior incident is proven by clear and convincing evidence, and probative value is not substantially outweighed by danger of unfair prejudice. Id.; see also NRS 48.035.

The prior-fraud-claim evidence might be relevant because it tends to show that National engaged in a common plan or scheme to defraud lenders. See NRS 48.015. However, IFG failed to produce clear and convincing evidence that the alleged fraud occurred. Rather, IFG only provided its counsel's affidavit stating that he had reviewed the deposition transcripts and documentary evidence in the AWH case and came to that conclusion. The affidavit then outlines the facts of the case, but provides no evidence of fraud other than counsel's assertion that National was obligated to insure water rights and closed escrow without fulfilling that obligation. Notably, the affidavit does not identify or include the depositions or documentary evidence IFG's counsel supposedly reviewed or the outcome of the dispute.

This is not a case in which the district court gave IFG's argument short shrift. On the contrary, IFG did not respond to the district court's offer to hold an evidentiary hearing on the admissibility of

evidence of the prior litigation. Thus, IFG did not inform the judge of the substance of the evidence beyond its counsel's affidavit, which raised more questions than it answered. IFG thereby failed to create a record sufficient to establish abuse of discretion by the district court or reversible error on appeal. See NRS 47.040.

Since IFG failed to provide clear and convincing evidence of fraud in the AWH case, a substantial risk existed that this collateral matter would have created a trial within a trial. This would result in unfair prejudice to National from having to litigate this collateral matter.

We therefore conclude that the district court did not abuse its discretion in granting the motion in limine to exclude the prior fraud claim evidence.

The district court did not err in granting National judgment as a matter of law

We review de novo an order granting judgment as a matter of law. Nelson v. Heer, 123 Nev. 217, 223, 163 P.3d 420, 425 (2007). Additionally, we apply the same standard of review as the district court and view the evidence and all inferences in favor of the nonmoving party. Id. at 222-23, 163 P.3d at 424. To defeat the motion, the nonmoving party must have presented sufficient evidence such that the jury could grant relief to the party. Id.

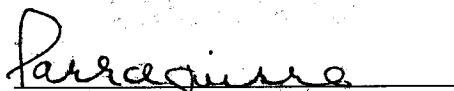
Mark Properties v. National Title Co. is dispositive. 117 Nev. 941, 34 P.3d 587 (2001). In Mark Properties, we held that an escrow agent has a duty to disclose fraud committed by another party to the escrow "if the facts actually known to the escrow agent present substantial evidence of fraud." Id. at 945, 34 P.3d at 590 (quoting Burkons v. Ticor Title Ins. Co. of Cal., 813 P.2d 710, 720 (1991)). However, the escrow agent has no

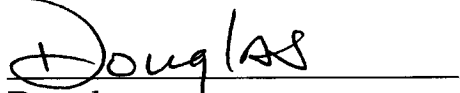
duty to investigate the circumstances surrounding a particular sale to discover fraud. Id. at 945, 34 P.3d at 590-91.

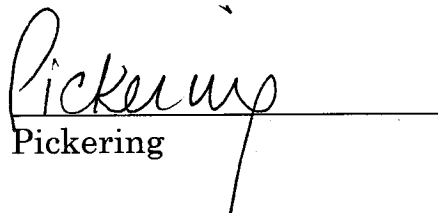
The circumstances in this case show that National had no actual knowledge of facts presenting any evidence of fraud. National told IFG that it would not undertake responsibility for the water rights and IFG signed an escrow agreement acknowledging this. Moreover, Collins's water rights were changing constantly. Thus, the fact that National acted as escrow agent for two Collins's loans involving water rights does not lead to the inference that National knew the same water rights secured both loans. Rather, National's refusal to involve itself in the water rights on both loans is strong counterevidence that it would not have known the particular details of the water rights securing either loan.

IFG based its claims on the theory that National knew that the water rights were previously pledged and breached a duty to disclose this information. The evidence, however, shows that National simply did not get involved in water rights issues and did not have the knowledge that IFG claims it did. Thus, even when viewing the evidence and all reasonable inferences in IFG's favor, sufficient evidence did not exist such that the jury could grant IFG relief. Therefore, the district court did not err in granting National's motion for judgment as a matter of law. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.  
Parraguirre

 J.  
Douglas

 J.  
Pickering

cc: Hon. Jackie Glass, District Judge  
Thomas J. Tanksley, Settlement Judge  
Law Offices of James J. Lee  
Greenberg Traurig, LLP  
Eighth District Court Clerk