IN THE SUPREME COURT OF THE STATE OF NEVADA

EMMA WAGNER,
Appellant,
vs.
CHEVRON U.S.A., INC., A PENNSYLVANIA AND/OR A CALIFORNIA AND/OR A MARYLAND CORPORATION; WESTERN STATES GEOTHERMAL COMPANY, A DELAWARE CORPORATION; OESI POWER CORPORATION, A DELAWARE CORPORATION F/K/A ORMAT ENERGY SYSTEMS; ORMAT NEVADA, INC., A DELAWARE CORPORATION; SODA LAKE RESOURCE PARTNERSHIP, A NEVADA GENERAL PARTNERSHIP; SODA LAKE LIMITED PARTNERSHIP, A NEVADA LIMITED PARTNERSHIP; SODA LAKE HOLDINGS, LLC, A DELAWARE LIMITED LIABILITY COMPANY; HARBINGER SODA LAKE I, LLC, A DELAWARE LIMITED LIABILITY COMPANY; HARBINGER SODA LAKE II, LLC, A DELAWARE LIMITED LIABILITY COMPANY; AMOR III CORPORATION, A DELAWARE CORPORATION; AMOR IX CORPORATION, A DELAWARE CORPORATION; AMOR 17 CORPORATION, A DELAWARE CORPORATION; PRUDENTIAL INSURANCE COMPANY OF AMERICA, A NEW JERSEY MUTUAL BENEFIT COMPANY; CD SODA SLR, INC., A MARYLAND CORPORATION; CD SODA I, INC., A MARYLAND CORPORATION; CD SODA II, INC., A MARYLAND CORPORATION; NEVADA

No. 51114

FILED

SEP 25 2009

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

09-23362

OPERATIONS, INC., A DELAWARE CORPORATION; CONSTELLATION ENERGY GROUP, INC., A MARYLAND CORPORATION; CONSTELLATION HOLDINGS, INC., A MARYLAND CORPORATION; CONSTELLATION INVESTMENTS, INC., A MARYLAND CORPORATION; CONSTELLATION OPERATING SERVICES, INC., A MARYLAND CORPORATION; CONSTELLATION OPERATING SERVICES, A PARTNERSHIP; COSI-ULTRA, INC., A MARYLAND CORPORATION; COSI-ULTRA II, INC., A MARYLAND CORPORATION; CONSTELLATION POWER, INC., A MARYLAND CORPORATION; GEOR III CORPORATION, A DELAWARE CORPORATION; U.S. BANK NATIONAL ASSOCIATION, A NATIONAL BANKING CORPORATION F/K/A U.S. BANK TRUST NATIONAL ASSOCIATION; JOSEPH F. SKRUCH; DANIEL SCHOCHET; DOUGLAS S. PERRY; HEZY RAM; AND STEVEN D. KING,
Respondents.

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in an action involving compensation for the use of geothermal resources. Third Judicial District Court, Churchill County; Robert E. Estes, Judge.

Appellant Emma Wagner owns land that is part of the Soda Lake Unit (the Unit), a geothermal cooperative unit located in Churchill

County, Nevada.[1] The Unit is a federal geothermal production unit administered by the Bureau of Land Management (the BLM). Respondents are various entities and individuals (collectively Chevron)[2] who are involved in the production of electricity through the use of geothermal energy at the Unit. In 2003, Wagner filed her initial complaint against Chevron. After the complaint was removed to federal court and remanded back to state court, Wagner filed an amended complaint. In the 2005 amended complaint, Wagner alleged that Chevron failed to compensate her for the use of geothermal resources underneath her property. The amended complaint included 15 claims, including claims for breach of contract, accounting, fraud, deceit, slander of title, and conversion. Chevron filed a motion for summary judgment based on a statute-of-limitations defense. The district court granted summary judgment, dismissing all of Wagner's claims based on its finding that Wagner failed to conduct diligent discovery after receiving notice of her claims and, as such, the claims were time-barred by the applicable statutes of limitations.

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[1]"Geothermal Energy is heat . . . derived from the earth." Geothermal Resources Council, What is Geothermal? http://www.geothermal.org/what.html (last visited on September 9, 2009). Pursuant to NRS 534A.050, "[t]he owner of real property owns the rights to the underlying geothermal resources unless they have been reserved by or conveyed to another person."

[2]As needed, we will use an entity's separate name to distinguish it from the collective (for example, Chevron U.S.A., Inc. acting in its own capacity, will be referred to as Chevron Oil).

On appeal, Wagner's main contention is that summary judgment was improper because the determination of whether her claims are time-barred is a question of material fact that should have been submitted to a trier of fact.[3] We disagree. The parties are familiar with the facts and we do not recount them here except as necessary to our disposition.

Standard of review

"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). In 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." Id. However, 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. at 732, 121 P.3d at 1031 (quoting Matsushita Elec. Industrial Co. v. Zenith Radio, 475 U.S. 574, 586 (1986)). Instead, "[t]he nonmoving party 'must, by affidavit or

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[3]Wagner also argues that: (1) the district court misconstrued her breach-of-contract claim; (2) the district court did not rule on Prudential Insurance Company's motion for summary judgment; (2) summary judgment was not proper because Chevron is still converting her property; (3) public policy provides that energy producers, like Chevron, owe a quasi-fiduciary duty to property owners, like Wagner, and that this duty tolls the running of the statute of limitations on claims such as those in this case; and (4) summary judgment was inappropriate as to U.S. Bank because her failure to answer discovery requests was excusable in light of the transfer of the case to a new attorney. We have carefully considered these arguments and conclude that they are all without merit.

otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial.'" Id. (quoting Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992)). Summary judgment may be based on the nonmoving party's complaints and attachments to those complaints. See NRCP 56(c).

If a review of the pleadings and other evidence in the record demonstrate no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law, summary judgment must be granted. See NRCP 56(c); Clark v. Robison, 113 Nev. 949, 950, 944 P.2d 788, 789 (1997). Concomitantly, summary judgment is appropriate "when a cause of action is barred by the statute of limitations." Clark, 113 Nev. at 950-51, 944 P.2d at 789.

Summary judgment was proper because Wagner failed to exercise due diligence

Wagner argues that the district court erred when in determining that she failed to exercise due diligence in discovering her cause of action and, therefore, in granting Chevron's motion for summary judgment. In so arguing, Wagner mistakenly relies on this court's prior decisions, which concluded that whether a party exercised due diligence in discovering her cause of action is a question of fact that should be determined by a trier of fact after a full hearing. See Bemis v. Estate of Bemis, 114 Nev. 1021, 1026, 967 P.2d 437, 441 (1998); Petersen v. Bruen, 106 Nev. 271, 274, 792 P.2d 18, 20 (1990).

The "discovery rule" tolls the statutory period of limitations "until the injured party discovers or reasonably should have discovered facts supporting a cause of action." Petersen, 106 Nev. at 274, 792 P.2d at 20. This court has applied the discovery rule for actions of breach of

contract, conversion, and all others brought pursuant to a statute that does not specify when a cause of action accrues. Bemis, 114 Nev. at 1025 n.1, 967 P.2d at 440 n.1. Additionally, this court has held that "mere ignorance" as to reasonably accessible information will not delay or stop accrual of a discovery-based statute of limitation if the fact finder determines that the party failed to exercise diligence. See Siragusa v. Brown, 114 Nev. 1384, 1394, 971 P.2d 801, 807 (1998). If a party's knowledge is not "complete[,] she [is] under a duty to exercise proper diligence to learn more." Aldabe v. Adams, 81 Nev. 280, 284-85, 402 P.2d 34, 36 (1965), overruled on other grounds by Siragusa, 114 Nev. at 1393, 971 P.2d at 807.

In Bemis, the appellants were two brothers and it was their parents' divorce decree, entered when both were minors, which gave rise to their claims for conversion and breach of contract based upon their father's failure to establish a trust in their name pursuant to the divorce decree. 114 Nev. at 1023-24, 967 P.2d at 439. This court stated that "[d]ismissal on statute of limitations grounds is only appropriate '"when uncontroverted evidence irrefutably demonstrates plaintiff discovered or should have discovered"' the facts." Id. at 1025, 967 P.2d at 440 (quoting Nevada Power Co. v. Monsanto Co., 955 F.2d 1304, 1307 (9th Cir. 1992) (quoting Mosesian v. Peat, Marwick, Mitchell & Co., 727 F.2d 873, 877 (9th Cir. 1984))). More importantly for the circumstances in the instant matter, in Bemis, this court noted that in Allen v. Webb, 87 Nev. 261, 270, 485 P.2d 677, 682 (1971), it had recognized the "well-known principle that the public recording of real estate deeds constitute[d] constructive notice of the transaction." Bemis, 114 Nev. at 1026 n.2, 967 P.2d at 441 n.2 (emphasis added). In its conclusion, this court specifically stated that

there was an absence of "uncontroverted evidence" in the record and, therefore, whether the appellants practiced due diligence was a question of fact that needed to be resolved by a trier of fact. See id. at 1028, 967 P.2d at 442.

Wagner's reliance on Bemis is misplaced. Unlike the brothers in Bemis, who were minors when the trust was created and had no documents in their possession regarding their parents' divorce or the trust, Bemis, 114 Nev. at 1023-24, 967 P.2d at 439, Wagner was a grown, married woman when her husband entered into the leases with Phillips Petroleum (Phillips). It is undisputed that Wagner had constructive notice of the 1977 Unit Agreement by October 1977 when Chevron filed the document in Churchill County. By her own admission, Wagner knew that Phillips entered into the lease with her husband so that it could develop the land for geothermal purposes. Wagner also had a high school degree and had made a career out of engaging in land transactions—buying and selling real estate. Further, she was knowledgeable enough to help with her husband's civil engineering business and later help in the administration of a gold mining project.

In 1977, Wagner inherited her husband's interests and kept in her possession all of his files and documents regarding the land in Churchill County. In contrast, the Bemis case involved a trust fund, where the plaintiffs did not have access to the related documents. Bemis, 114 Nev. at 1023-24, 967 P.2d at 439. Moreover, Wagner's claims involve real estate transactions and deeds and beginning with the 1980 and 1981 leases, which permitted Phillips to include Wagner's geothermal resources to the Unit, all of the documents at issue in this matter were promptly

recorded in Churchill County and, therefore, were a matter of public record.

In addition to all the publicly available records, Wagner negotiated, corresponded, and otherwise communicated with all of the respondents, whether individually or through an attorney, for a period of several years. Specifically, the March 1983 letter from Chevron expressly advised Wagner of the existence of the Unit and that the United States government had declared the Unit capable of producing geothermal resources. Moreover, in July 1983, Chevron Oil invited Wagner to the Unit to observe its efforts in securing geothermal resources. Yet Wagner elected not to investigate the March letter (simply turning it over to one of her attorneys), declined the July invitation, and failed to conduct any investigation as to her potential interests until some 15 years later, in 1998.

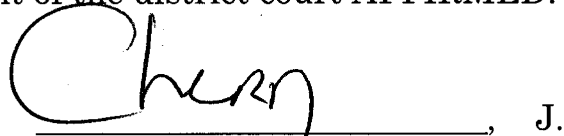
Even after 1983, when both Phillips and Chevron Oil tried to extend the 1980 and 1981 leases, Wagner refused the offer and allowed the leases to expire. When Chevron Oil sent Wagner a letter confirming the expiration of the leases, Wagner failed to investigate the status of her interests.

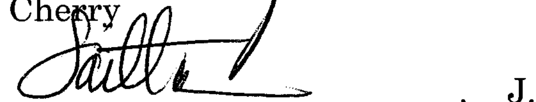
It is also important to note that almost every document submitted in support of Wagner's first amended complaint was from either her own files (inherited in 1977 upon the death of her husband), recorded documents in Churchill County, or other public files from the Bureau of Land Management (BLM) and the State of Nevada. As noted in Allen, the recording of a real estate deed constitutes constructive notice of the transaction. Allen, 87 Nev. at 270, 485 P.2d at 682. Therefore, based on these uncontroverted facts, Wagner had constructive notice of any claims

regarding her property beginning at some point in the late 1970s or the early 1980s.

Further, we note that by Wagner's own admission, she did not begin to investigate any possible claims against Chevron until 1998, after almost two decades of negotiations and correspondence with Chevron. Wagner admitted that she never practiced diligence, always preferring to rely on her attorneys. During the two decades that Wagner dealt with Phillips, Chevron Oil, and the various other respondents, she was, at all times, represented by attorneys. During this time, Wagner never exercised proper due diligence to investigate her interest in the Unit—neither on her own, nor by enlisting the aid of her attorneys—in fact, she knowingly allowed her leases with Chevron to expire. As this court's jurisprudence has established in Bemis, Siragusa, and Aldabe, Wagner had a duty to exercise proper diligence to learn more about her claims. Wagner failed to fulfill this duty; instead, she simply closed her eyes to information that was reasonably accessible. Accordingly, we conclude that the uncontroverted evidence in this matter demonstrates that Wagner did not exercise due diligence in discovering all of her claims, including her real property, tort, contract and constructive trust claims. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_______________________, J.
Cherry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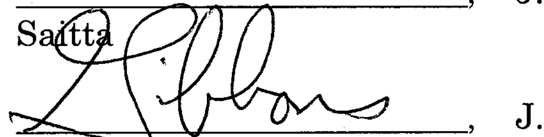
_______________________, J.
Gibbons

cc: Third Judicial District Court Dept. 3, District Judge
Lansford W. Levitt, Settlement Judge
Belanger & Plimpton
McGloin, Davenport, Severson & Snow
Briggs & Morgan, P.A.
Holland & Hart, LLP/Denver
Holland & Hart, LLP/Salt Lake City
Kummer Kaempfer Bonner Renshaw & Ferrario/Carson City
Mackedon, McCormick & King
Snell & Wilmer, LLP/Las Vegas
Thorndal Armstrong Delk Balkenbush & Eisinger/Reno
Weil, Gotshal & Manges, LLP/Dallas
Woodburn & Wedge
Churchill County Clerk