

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBERT D. MASSI AND EILEEN F. MASSI,
Appellants,


vs.

JAMES TYGH, INDIVIDUALLY;
PHILIP H. DAVIS, INDIVIDUALLY;
PHD DEVELOPMENT, LLC; PHILIP H. DAVIS, MANAGER; AND PHD PROPERTIES, INC.,
Respondents.

No. 51117

FILED

FEB 26 2010

FRADIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ALBERT D. MASSI AND EILEEN F. MASSI,
Appellants/Cross-Respondents,

vs.

JAMES TYGH, INDIVIDUALLY;
PHILLIP H. DAVIS, INDIVIDUALLY;
PHD DEVELOPMENT, LLC; PHILIP H. DAVIS, MANAGER; AND PHD PROPERTIES, INC.,
Respondents/Cross-Appellants.

No. 51483

ORDER OF REVERSAL AND REMAND

This is a consolidated appeal from a district court summary judgment in a real property action and appeal and cross-appeal from post-judgment orders awarding attorney fees and costs. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

These consolidated matters arise from the sale of real property. After appellants/cross-respondents Albert and Eileen Massi sold the property to respondent/cross-appellant PHD Development, LLC, for \$1,450,000, the Massis discovered that the county had added a mixed-use development (MUD) overlay six months prior to the sale, changing the property's zoning and making it more valuable. The Massis then

filed an action against respondents/cross-appellants James Tygh, Phillip Davis, PHD Development, LLC, and PHD Properties, Inc., alleging that Tygh and Davis, employees of PHD, were acting as the Massis' real estate agents, that Tygh and Davis breached their duties to the Massis as their agents, and as a result the Massis sold the property to PHD at a price lower than its actual value. The district court granted a motion for summary judgment in favor of Tygh, Davis, and PHD, and awarded attorney fees to PHD. All parties now appeal.¹

On appeal, the Massis challenge the grant of summary judgment because they argue that genuine issues of material fact remain and contend that the district court should have denied the motion for summary judgment and allowed further discovery based upon their NRCP 56(f) motion. Specifically, the Massis requested additional discovery regarding Tygh's criminal record and Davis's relationships, and requested depositions of the appraisers. We agree with the Massis that the district court erred in granting the summary judgment motion and in not allowing the Massis to conduct further discovery pursuant to their NRCP 56(f) motion.²

¹The parties are familiar with the facts, and we do not recount them further except as necessary to our disposition.

²The Massis also contend that: (1) NRS 645.251 does not preclude common law liability for a violation of the statutory disclosure obligations found in NRS 645.252; (2) they did not have notice of the existence of the MUD overlay; (3) the district court erred in awarding Tygh, Davis, and PHD, attorney fees; and (4) the district court's award of attorney fees is excessive and unreasonable. Tygh, Davis, and PHD argue that the district court erred in arbitrarily reducing the amount of the attorney fees award. We conclude that these issues presented by the parties are

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Summary judgment

The Massis contend that the district court erred in granting summary judgment because they alleged and submitted admissible evidence that created genuine issues of material fact regarding disclosure and notice of the overlay. The Massis argue that the existence of the MUD overlay was a material and relevant fact that should have been disclosed by Tygh and Davis pursuant to the statutory disclosures enumerated in NRS 645.252 and because of their agency and fiduciary relationships.

This court reviews orders granting summary judgment de novo. Pegasus v. Reno Newspaper, Inc., 118 Nev. 706, 713, 57 P.3d 82, 87 (2002). Summary judgment is appropriate and shall be rendered forthwith when the pleadings and other evidence on file demonstrate that no genuine issue of material fact remains and that the moving party is entitled to judgment as a matter of law. NRCP 56(c); Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). “[W]hen 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.

We conclude that the Massis set forth specific facts demonstrating the existence of genuine factual issues regarding disclosure requirements, the relationships between the parties, and notice of the overlay. See id. at 731, 121 P.3d at 1030-31. As such, we

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without merit or rendered moot by our disposition. As such, we do not discuss them further here.


conclude that the district court improperly granted the motion for summary judgment because genuine issues of material fact remain.


Additional discovery

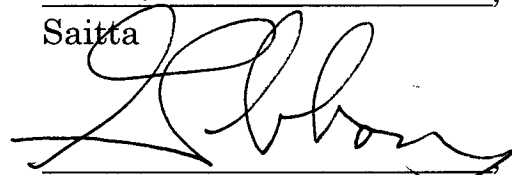
The Massis argue that the district court should have denied the motion for summary judgment based upon their NRCP 56(f) motion. We agree and conclude that the Massis have affirmatively demonstrated why a postponement on the summary judgment ruling will enable them to rebut Tygh, Davis, and PHD's showing of an absence of genuine fact. See Bakerink v. Orthopaedic Associates, Ltd., 94 Nev. 428, 431, 581 P.2d 9, 11 (1978). In their additional discovery requests, the Massis point to facts and request discovery that would create a genuine issue of material fact that should be submitted to a jury at trial. As such, the district court erred in granting the summary judgment motion and not allowing the Massis to conduct further discovery pursuant to their NRCP 56(f) motion.

Based on the foregoing, we

ORDER the judgment of the district court REVERSED and REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Chief Judge, Eighth Judicial District
Hon. Douglas W. Herndon, District Judge
Hon. Norman C. Robison, Senior Judge
Ara H. Shirinian, Settlement Judge
John Thayer Clark
Susan Frankewich, Ltd.
Marquis & Aurbach
Eighth District Court Clerk