IN THE SUPREME COURT OF THE STATE OF NEVADA

WORTH GROUP MASTERBUILDERS, INC., A NEVADA CORPORATION,
Appellant,
vs.
RICHARD SMITH,
Respondent.

No. 51466

FILED

DEC 04 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 order dismissing an employment contract action. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

When, as here, the district court considers matters outside of the pleadings in reviewing a motion to dismiss, it must treat the motion as one for summary judgment. Schneider v. Continental Assurance Co., 110 Nev. 1270, 1271, 885 P.2d 572, 573 (1994). Consequently, although the order is phrased as one of dismissal, we apply summary judgment standards.

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1030-31 (2005). The pleadings and other proof must be construed in a light most favorable to the nonmoving party. Id. at 731-32, 121 P.3d at 1030-31. But once the movant has properly supported the

summary judgment motion, the nonmoving party may not rest upon general allegations and conclusions and must instead set forth, by affidavit or otherwise, specific facts demonstrating the existence of a genuine issue of material fact for trial to avoid having summary judgment. Id.; see also NRCP 56(e). This court reviews an order granting summary judgment de novo. Wood, 121 Nev. at 729, 121 P.3d at 1029.

Here, while the district court's order did not expressly state its reasons for granting summary judgment, we nevertheless conclude that it erred in granting summary judgment on any of the three main arguments made by respondent on appeal.[1] First, regardless of the lack of a signed employment or noncompetition agreement specifying that Nevada law applied, the district court clearly had subject matter jurisdiction in the underlying case, which sought damages in excess of $10,000 and injunctive relief. See Nev. Const. art. 6, § 6 (giving the district courts original jurisdiction in all cases excluded by law from the justice courts' original jurisdiction and the power to issue injunctive relief); NRS 4.370 (giving the justice courts original jurisdiction in cases involving damage claims that do not exceed $10,000); Edwards v. Emperor's Garden Rest., 122 Nev. 317, 325-36, 130 P.3d 1280, 1285-86 (2006); Edwards v. Direct Access, LLC, 121 Nev. 929, 932-33, 124 P.3d

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[1]We reject, as meritless, respondent's other arguments that the change of venue provisions of NRS 13.050(2)(c) or choice of law principles require that this case be transferred to a different state.

1158, 1160-61 (2005), abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. ___, 181 P.3d 670 (2008).

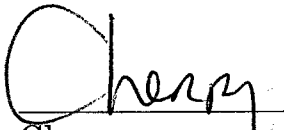
Second, the district court erred to the extent that it granted dismissal on the basis of forum non conveniens, when the respondent merely made general allegations without any affidavit or specific facts as to why it would be necessary to view the premises in California with respect to the parties' employment dispute or why witnesses could not be brought to Nevada, especially when appellant's employees and witnesses are located in Nevada and both parties are Nevada residents. Payne v. District Court, 97 Nev. 228, 229, 626 P.2d 1278, 1279 (1981) (providing that a dismissal based on forum non conveniens is reviewed for an abuse of discretion), overruled on other grounds by Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004); Eaton v. District Court, 96 Nev. 773, 616 P.2d 400 (1980) (applying a balancing approach taking into account various, non-exclusive factors and requiring the moving party to make a specific factual showing and not merely rely upon general allegations), overruled on other grounds by Pan, 120 Nev. at 228, 88 P.3d 844.

Finally, to the extent that the district court may have dismissed the case based on the lack of a signed noncompetition agreement, we conclude that genuine issues of material fact remain as to whether the noncompetition provisions were effectively incorporated into the employment offer, contract, policies, or handbook, and thus, summary judgment was improper.

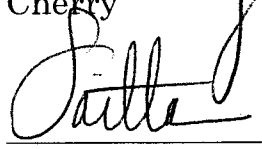
Accordingly, as the district court has subject matter jurisdiction, respondent failed to make a specific showing that the case

should be dismissed on forum non conveniens grounds, and genuine issues of material fact remain concerning appellant's claims, we

ORDER the judgment of the district court REVERSED and REMAND this matter to the district court for further proceedings.



_____, J.
Cherry



_____, J.
Saitta

_____, J.
Gibbons

cc: Hon. Jessie Elizabeth Walsh, District Judge
Carolyn Worrell, Settlement Judge
Laxalt & Nomura, Ltd./Reno
Peel Brimley LLP
Eighth District Court Clerk