

an affidavit from Southwick. Respondents disagree, arguing that the district court did not abuse its discretion in striking the Southwick affidavit and that summary judgment was proper because the facts, as set forth by the evidence presented to the district court, are undisputed or otherwise immaterial.

A district court's grant of summary judgment is reviewed de novo and evidence will be construed in the light most favorable to the nonmoving party. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Here, the district court, in granting summary judgment, concluded, among other things, that it was an undisputed material fact that "[a]t the time of [the disputed transaction between Shapiro and respondents] the payments to [respondents on the notes that respondents were selling to Shapiro] were current and not in arrears." Having reviewed the parties' briefs and the record on appeal, we conclude that there was a material dispute of fact regarding whether the payments on these notes, apparently being made by Southwick or his corporate entities, were current and whether Shapiro was misled on this point, as evidenced by Shapiro's deposition, the existence of a "catch-up payment" after the deal between Shapiro and respondents was concluded, and respondent Bruce S. Gillis's January 2, 2008, "declaration," stating that there was an oral forbearance on the notes payments.¹

¹Because we conclude that this evidence is sufficient to demonstrate a dispute on this material issue of fact, we do not reach Shapiro's challenge to the district court striking the Southwick affidavit or respondents' arguments that the affidavit of Jerry Smith should not be considered by this court in determining whether summary judgment was proper. Our review of the record reveals that the determinations to strike

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Contrary to respondents' arguments, these facts are material, at least when viewed under the summary judgment standard, as Shapiro might not have entered into the disputed transaction with respondents with the intent to resell the notes, very shortly thereafter, to Southwick if he had known Southwick was having trouble meeting the payments on the notes. Shapiro's statements to the effect that he was not worried about the exact value of the notes and the fact that Shapiro received a catch-up payment after purchasing the notes do not persuade us that these facts are not material. Accordingly, summary judgment was improper on Shapiro's claims to the extent that the claims challenge the transaction between Shapiro and respondents, and thus we reverse the district court's summary judgment in part. Wood, 121 Nev. at 729, 121 P.3d at 1029.

We also conclude, however, that summary judgment was proper on Shapiro's claims to the extent that the claims are asserted against respondents for their alleged involvement with the defendants who are not a part of this appeal, such as Southwick, allegedly breaching a subsequent contract to purchase, shortly thereafter, the notes from Shapiro. Shapiro himself admitted in his deposition that he was expressly cautioned that respondents were in no way connected with a possible second sale of the notes. Thus, a reasonable jury could not find respondents liable for these other defendants' alleged subsequent breach of contract. Thus, we affirm in part the summary judgment.

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these affidavits were solely made within the summary judgment context and do not constitute rulings that the parties cannot attempt to enter these affidavits into evidence at any subsequent trial.

Accordingly, for the reasons set forth above, we
ORDER the judgment of the district court AFFIRMED IN
PART AND REVERSED IN PART AND REMAND.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Mark R. Denton, District Judge
Santoro, Driggs, Walch, Kearney, Holley & Thompson
Morris Peterson/Las Vegas
Eighth District Court Clerk