

IN THE SUPREME COURT OF THE STATE OF NEVADA

KYMBERLY SHORTMAN; NICHOLAS
SHORTMAN; AND SYDNEY
SHORTMAN,
Appellants,

vs.

DENNY DUMMLER DC; AND
VALLEY SPINE AND HEALTH
CENTER,
Respondents.

No. 52925

FILED

FEB 05 2010

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

ORDER OF REVERSAL AND REMAND

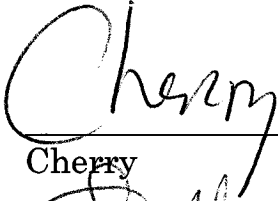
This is an appeal from a district court summary judgment in a tort action. Eighth Judicial District Court, Clark County; Michael Villani, Judge.


Having reviewed the briefs and appendices on appeal, we conclude that the district court erred in granting summary judgment. Appellants provided sufficient evidence to establish a material question of fact in support of their claim that respondents were involved in a joint venture with the third-party driver that caused the accident, such that respondents could be held liable for damages from the accident. Wood v. Safeway, Inc., 121 Nev. 724, 729-32, 121 P.3d 1026, 1029-31 (2005); Hook v. Giuricich, 108 Nev. 29, 31, 823 P.2d 294, 296 (1992) (defining what constitutes a joint venture).

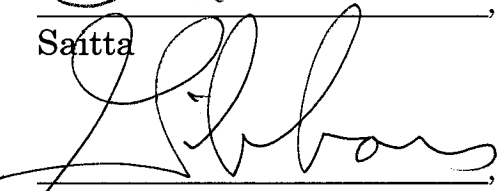
The district court did, however, properly determine that appellants failed to provide sufficient evidence to avoid summary judgment on its alternative claim that the third-party driver was an employee of respondents to impose vicarious liability. Appellants' arguments in support of this claim assumed an employee relationship

and then provided argument to support an exception to the coming and going rule. Appellants cannot, however, avoid summary judgment by assuming that an employee relationship existed, Wood, 121 Nev. at 731, 121 P.3d at 1030-31, and, regardless, the evidence appellants provided in their pleadings failed to establish such a relationship. But because appellants provided sufficient evidence to avoid summary judgment on their joint venture claim, summary judgment was improper. Accordingly, 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: Hon. Michael Villani, District Judge
Howard Roitman, Settlement Judge
Gunderson Law Firm
Law Offices of Zilinskas & Woosley
Schuetze & McGaha, P.C.
Eighth District Court Clerk