

IN THE SUPREME COURT OF THE STATE OF NEVADA

ORLANDO VALBUENA, AN
INDIVIDUAL,
Appellant,


No. 52960

vs.

RUBY VALBUENA, AN
INDIVIDUAL AND OFFICER OF
GIRO AZTECA; WILLIAM R.
COSTELLANOS, AN INDIVIDUAL
AND OFFICER OF GIRO AZTECA;
AND GIRO AZTECA, A NEVADA
CORPORATION,
Respondents.

FILED

NOV 10 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a tort (fraud) action. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

Having reviewed de novo the parties' briefs and joint appendix, Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005), we conclude that respondents properly supported their summary judgment motion with evidence to rebut appellant's claims and to show that appellant had voluntarily transferred a money transfer business to

them in exchange for being relieved of lease rental obligations. Respondents also provided evidence to rebut one or more of the essential elements for appellant's claims of fraud, breach of fiduciary duty, and unjust enrichment. See Stalk v. Mushkin, 125 Nev. ___, ___, 199 P.3d 838, 843 (2009) (defining a breach of fiduciary duty); Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110-11, 825 P.2d 588, 592 (1992) (establishing elements for fraud); Topaz Mutual Co. v. Marsh, 108 Nev. 845, 856, 839 P.2d 606, 613 (1992) (defining unjust enrichment).

In responding to the motion, appellant made general allegations in his responsive pleading, but provided no evidence to support his claims of an oral agreement to be paid one-half of the profits from the business or to maintain silent ownership of the two new stores, and no evidence to support his various causes of action. See Barmettler v. Reno Air, Inc., 114 Nev. 441, 447, 956 P.2d 1382, 1386 (1998) (recognizing that when the defendant has provided proof to rebut the plaintiff's claims, the plaintiff's naked allegations are insufficient to raise a triable issue of fact and the plaintiff may not merely rest on the allegations of his or her pleadings), limited on other grounds by Olivero v. Lowe, 116 Nev. 395, 995 P.2d 1023 (2000); Bulbman, 108 Nev. at 111, 825 P.2d at 592 (stating that "[w]here an essential element of a claim for relief is absent, the facts, disputed or otherwise, as to other elements are rendered immaterial and summary judgment is proper"). As essential elements of appellant's claims for relief are absent, we conclude that the district court properly

granted summary judgment in respondents' favor on appellant's claims.¹

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Charles Lesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. David B. Barker, District Judge
Richard F. Scotti, Settlement Judge
Ciciliano & Associates, LLC
Rocheleau Law Group, PC
Garcia-Mendoza & Snavely, Chtd.
Eighth District Court Clerk

¹We do not consider appellant's argument that he was not provided with adequate notice of the district court's intent to grant summary judgment regarding his fraud and breach of fiduciary duty claims, as he failed to object to the district court's consideration of summary judgment as to these claims when the issues arose at the hearing on respondents' motion. See Southern Pac. Transp. Co. v. Fitzgerald, 94 Nev. 241, 244, 577 P.2d 1234, 1235-36 (1978) (stating that to preserve a contention for appellate review, specific objections must be made); cf. Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (stating that a point not raised in the district court is deemed to have been waived and will not be considered on appeal). With regard to appellant's remaining assertions of appellate error, we have considered those contentions and conclude that they lack merit.