IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS SANDS, INC.; SHELDON ADELSON; AND WILLIAM WEIDNER,
Appellants/Cross-Respondents,
vs.
RICHARD SUEN AND ROUND SQUARE COMPANY LIMITED,
Respondents/Cross-Appellants.

No. 53163

FILED

NOV 17 2010

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

ORDER AFFIRMING IN PART, REVERSING IN PART, AND REMANDING

This is an appeal and cross-appeal from a judgment on a jury verdict on an unjust enrichment claim. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

I. Background

This case arises out of business transactions between appellants Las Vegas Sands, Inc. (LVSI), Sheldon Adelson, and William Weidner and respondent Richard Suen. LVSI owns and operates an assortment of casino and hotel operations. Adelson is the Chairman and Chief Executive Officer of LVSI, and Weidner was LVSI's President. Suen conducts business in Hong Kong, Macau, and the People's Republic of China (PRC). He contacted Adelson after Macau announced that it intended to end its government monopoly over gaming. Suen told Adelson that he and his group had government connections in Macau and in the PRC that could help LVSI obtain a Macau gaming license.

After the parties met, Suen and his group set up meetings in Beijing between Adelson, Weidner, and high-ranking officials from the PRC. Following these meetings, Suen and LVSI exchanged faxes about compensation for Suen and his group's work. Weidner offered to pay a success fee to Suen and his group if LVSI obtained a Macau gaming

license, and Suen accepted this offer on behalf of Round Square Company Limited (Round Square) by fax. Eventually, Macau gave LVSI a subconcession that permitted it to build, finance, and operate casinos.

Suen tried to obtain the success fee after LVSI received the subconcession, but Weidner and Adelson refused to pay it; however, Adelson did offer to compensate Suen through a procurement deal. Under this deal, Suen would work for LVSI on commission as a purchasing agent. Adelson stated that this procurement deal could be worth more than $100 million over time. Because under the procurement deal, Adelson refused to guarantee a minimum payment of $25 million and Suen could be fired at any time, leaving him with no compensation, Suen rejected the procurement deal.

Suen filed a complaint against the appellants alleging breach of contract, breach of the implied covenant of good faith and fair dealing, fraud, and quantum meruit. Prior to trial, the district court granted summary judgment to LVSI as to the breach of contract, breach of the implied covenant of good faith and fair dealing, and fraud causes of action. With regard to the quantum meruit claim, the jury awarded Suen $43,800,000 after a 29-day trial. LVSI now appeals, arguing that: (1) Suen may not recover in quantum meruit for the efforts of the members of his group, (2) the district court erred by failing to exclude evidence of the procurement deal as an offer to compromise, (3) the district court erred by admitting a statement with layers of hearsay, and (4) the district court erred by refusing to instruct the jury on the presumptions of governmental regularity. Suen and Round Square also filed a conditional cross-appeal, arguing that the district court erred by granting summary judgment to LVSI on the breach of contract and fraud claims.

While Suen has standing to recover in quantum meruit on behalf of his group and the district court did not err in admitting evidence of the procurement deal, we conclude that the district court committed reversible error. The district court's error in refusing to give the proposed jury instructions, combined with its error in admitting the hearsay statement, warrants a new trial. Further, with respect to the cross-appeal, we conclude that the district court also committed reversible error by granting LVSI summary judgment on the contract cause of action but did not commit reversible error by granting LVSI summary judgment on the fraud cause of action. Because the parties are familiar with the facts and procedural history in this case, we do not recount them further except as necessary for our disposition.

II. Standing: Suen can recover in quantum meruit for efforts of members of his group

As a threshold matter, LVSI contends that Suen does not have standing to bring a suit for quantum merit on behalf of the members of his group. We conclude that Suen must sufficiently demonstrate his associates' efforts and their expected payment in order to recover on their behalf to meet his burden of proof for quantum meruit.

Standing is a question of law that courts review de novo. Mid-Hudson Catskill Ministry v. Fine Host, 418 F.3d 168, 173 (2d Cir. 2005). Pursuant to NRCP 17(a), "[e]very action shall be prosecuted in the name of the real party in interest." When there is no express agreement but the plaintiff asserts a right to reasonable compensation, recovery in quantum meruit may be necessary to prevent unjust enrichment. Ewing v. Sargent, 87 Nev. 74, 79-80, 482 P.2d 819, 823 (1971). Nevada law allows for quantum meruit recovery when the plaintiff performs valuable services for the defendant with the defendant's knowledge and acquiescence. Bangle v. Holland Realty Inv. Co., 80 Nev. 331, 336, 393 P.2d 138, 141 (1964).

Suen purportedly had a group of business associates that helped him obtain a Macau gaming license for LVSI. This group included Zhu Zhensheng, George Chang, Steven Siu, and Choi Yuen Yuen. Although LVSI knew that Suen was working with a group of associates to coordinate obtaining the gaming license, LVSI chose to deal directly with Suen. On appeal, LVSI argues that Suen does not have standing to recover on quantum meruit for the members of his group because a party may only assert his or her own legal rights and may not recover for others.

To support the argument that Suen lacks standing, LVSI relies upon Mid-Hudson Catskill Ministry, 418 F.3d 168. In Mid-Hudson Catskill Ministry, the United States Court of Appeals for the Second Circuit considered the quantum meruit claim of a church where its members volunteered at a food stand. Id. at 171. The district court held that only the volunteers could claim the wage-based damages. Id. at 172. The Second Circuit affirmed the judgment of the district court, concluding that the church had standing to recover on its own behalf for its injuries but lacked association standing to recover for its volunteers on a theory of wage-based damages. Id. at 173. The court reasoned that an individualized inquiry was necessary for the church to recover on behalf of its volunteers because determining each volunteer's injury required individualized proof that the church could not provide. Id. at 174.

Suen's quantum meruit claim is distinguishable from Mid-Hudson Catskill Ministry. Suen is not attempting to recover for volunteers and Suen never presented the members of his group as volunteers. Nor did LVSI treat the members of Suen's group as volunteers, as evidenced by Adelson directing his brother to seek payment from Suen and refusing to deal directly with a member of Suen's group

who sought to circumvent Suen's coordination between LVSI and the group. LVSI knew that Suen's group expected payment for its efforts.

Nevada caselaw is consistent with Suen's assertion that he may recover in a quantum meruit claim for the services of the members of his group. In Romy Hammes, Inc. v. McNeil Construction Company, a jury awarded damages in quantum meruit to a construction company that sought to recover the value of the services performed, including fees charged by subcontractors. 91 Nev. 130, 132, 532 P.2d 263, 263-64 (1975). The issues on appeal were the sufficiency of evidence to support a quantum meruit recovery and the actual money awarded to a contractor. Id. (holding that a reasonable basis for recovery in quantum meruit was used in calculating the value of the services of the subcontractors). The court affirmed and reasoned that the contractor's testimony that the work performed by subcontractors was performed at the direction of the contractor and an itemized final statement of subcontractor expenses were sufficient to support a quantum meruit recovery by the contractor. Id. at 133-34, 532 P.2d at 263-65.

In Morrow v. Barger, this court reversed a grant of summary judgment on the claim of a real estate broker who, with the assistance of her husband, promoted a sale between two parties even though the seller no longer had a listing with the realtors. 103 Nev. 247, 249-50, 255, 737 P.2d 1153, 1154, 1158 (1987). The real estate broker brought the action in her name only, but claimed that the sale reflected her and her husband's efforts. Id. at 250, 737 P.2d at 1154. LVSI argues that these cases involve an underlying legal relationship that allows one to recover in quantum meruit on behalf of others.

Suen did not establish a contractual or partnership relationship with the members of his group, but LVSI knew that Suen

maintained a relationship with the members of his group that was designed to deliver the Macau gaming license to LVSI. Choi arranged the meeting in Beijing for Adelson with the Vice Premier of the PRC and the mayor of Beijing. Suen acted as one of Adelson's interpreters at these meetings. Suen demonstrated that LVSI directed the work performed by his group. See Romy Hammes, at 132, 532 P.2d at 264 (concluding that testimony that services were performed at the express direction of defendant was sufficient to support jury's conclusion that services were performed at the special instance and request of the defendant). Similar to Romy Hammes and Morrow, Suen may recover for the efforts of the members of his group as the coordinator of their efforts. LVSI knew Suen was engaging a group of people and knew that these people were to be paid by Suen for their efforts. We conclude that Suen demonstrated standing to sue in quantum meruit on behalf of the members of his group.

Although we hold that Suen may recover in quantum meruit on behalf of the members of his group, LVSI has a right at trial to inquire into the nature of Suen's financial relationship with the members of his group and the individual efforts of each member of the group to procure the gaming license for LVSI. Just as the contractor in Romy Hammes was expected to demonstrate the individualized work of his subcontractors, Suen must sufficiently demonstrate his associates' efforts and their expected payment in order to recover on their behalf to meet his burden of proof for quantum meruit.

III. The district court properly admitted evidence of the procurement deal

LVSI argues that the district court should have excluded evidence of the procurement deal because it was an offer to settle. We disagree.

Pursuant to NRS 48.105, evidence of an offer to compromise a claim that was disputed as to either validity or amount is inadmissible to prove liability for that claim. This provision seeks "to facilitate the settlement of disputes by encouraging the making of offers to compromise." See S.A. Healy Co. v. Milwaukee Metropolitan Sewerage, 50 F.3d 476, 480 (7th Cir. 1995) (this case refers to Federal Rule of Evidence 408, the federal analog of NRS 48.105). However, this provision is not applicable until the parties have rejected claims regarding performance and an actual dispute arises. See Johnson v. Land O' Lakes, Inc., 181 F.R.D. 388, 391 (N.D. Iowa 1998).

In Crues v. KFC Corp., the Eighth Circuit Court of Appeals affirmed the admission of a letter from defendant offering to convert plaintiff's fish franchise into a chicken franchise because there was no dispute between the parties at the time the letter was sent. 768 F.2d 230, 233-34 (8th Cir. 1985). Similarly, when LVSI offered Suen the procurement deal, there was no actual dispute between them; instead, LVSI was simply attempting to convert the method of payment to a procurement deal.

An attempt to renegotiate an existing agreement is a business communication, not a settlement offer. Walsh v. First UNUM Life Ins. Co., 982 F.Supp. 929, 931 (W.D.N.Y. 1997). In Walsh, an insurance company sent a letter to the plaintiff offering a "full and final settlement for [plaintiff's] claim," and the court admitted the letter because the insurance company did not dispute the claim but was rather offering to change the form of payment. Id. at 930. Here, the procurement deal was a business communication through which LVSI sought to renegotiate or replace the success fee agreement. LVSI argues that Weidner refused to compensate Suen when he directed Suen to Adelson for payment, thereby

creating a dispute. However, Adelson did not dispute Suen's claim for compensation, but instead told Suen that LVSI could not pay him under the success fee agreement due to issues with the Nevada Gaming Commission and the Foreign Corrupt Practices Act.

Because LVSI did not dispute Suen's right to compensation, denying the admission of the procurement deal under NRS 48.105 would have been inconsistent with the policy behind NRS 48.105 of encouraging the settlement of existing disputes. The procurement deal was contingent on Suen replacing his contractual rights under the success fee agreement with the procurement deal, but LVSI did not dispute Suen's claim for compensation. Therefore, the procurement deal appears to be a unilateral offer. Unilateral offers are not excluded as offers to compromise because a person receiving a unilateral offer does not realize that a dispute exists. See Cassino v. Reichhold Chemicals, Inc., 817 F.2d 1338, 1342-43 (9th Cir. 1987). We conclude that because LVSI never disputed Suen's claim for compensation prior to the offer of the procurement deal, the procurement deal was not an offer to settle and the district court did not abuse its discretion in admitting it.

IV. The district court erred by admitting a hearsay statement

LVSI argues that the district court erred because it admitted a statement with layers of hearsay without giving a limiting instruction to the jury. We agree.

This court may disturb a district court's admission of a declarant's out-of-court statement if there is a clear abuse of discretion. Crowley v. State, 120 Nev. 30, 34, 83 P.3d 282, 286 (2004). If the district court abused its discretion by admitting evidence, this court must determine whether the error compels reversal. Hallmark v. Eldridge, 124 Nev. 492, 504, 189 P.3d 646, 654 (2008). Reversal is appropriate when the

record indicates that but for the error, a different result may have occurred. Id. at 505, 189 P.3d at 654.

Hearsay is an out-of-court statement that a party offers in evidence to prove the truth of the matter asserted. NRS 51.035. A declarant's out-of-court statement is inadmissible at trial unless it falls within a definition of nonhearsay or an exception to the hearsay rule. See NRS 51.067; Weber v. State, 121 Nev. 554, 576-77, 119 P.3d 107, 122-23 (2005); Dorsey v. State, 96 Nev. 951, 953, 620 P.2d 1261, 1262 (1980). Pursuant to NRS 51.035(2), a declarant's out-of-court statement is nonhearsay when it is inconsistent with his or her trial testimony and the declarant is subject to cross-examination. When a statement contains layers of hearsay, it is inadmissible unless "each part of the combined statements conforms to an exception to the hearsay rule." NRS 51.067.

In this case, Weidner made the out-of-court statement at issue during a deposition. At the deposition, Weidner explained how Suen helped LVSI obtain a Macau gaming license by setting up the meetings in Beijing. During his explanation, Weidner stated:

> So fast forward, Brad Stone, our executive vice president, is in Hong Kong, and he's at a player party, runs into Stanley Ho. Stanley Ho–before the license is granted. Stanley Ho comes up to Brad Stone and says, By the way that Olympic thing, I think you guys won the bid, that Olympic thing. That's what I hear back from my guys in Beijing. Congratulations. So that was just a side story about that visit.

Although this statement contained layers of hearsay, the district court admitted it during trial as a prior inconsistent statement. It concluded that this was a prior inconsistent statement because Weidner testified at trial that there was no evidence showing that Suen helped LVSI obtain a license in Macau.

Suen argues that because a prior inconsistent statement "is not hearsay [it] may be admitted both substantively and for impeachment." Crowley, 120 Nev. at 35, 83 P.3d at 286; Levi v. State, 95 Nev. 746, 749, 602 P.2d 189, 190 (1979) (prior inconsistent statements admitted for all purposes). However, Weidner's deposition testimony did not impeach his trial testimony because the two were not inconsistent. "To be 'inconsistent,' a statement must contradict or negate another statement," i.e., there must be a "material variance between the testimony of the witness and the . . . other statements." Davis v. County of Clackamas, 134 P.3d 1090, 1095-96 (Or. Ct. App. 2006); see also Bauer v. Cole, 467 N.W.2d 221, 225 (Iowa 1991); Gudinas v. State, 693 So. 2d 953, 964 (Fla. 1997). At trial, Weidner was never asked whether he had heard a rumor that Suen's efforts had affected the tender process but, instead, testified only that he did not "know or have any evidence at all of anything that Mr. Suen did that had any impact on [LVSI] receiving a subconcession in Macau." The rumor Weidner heard does not represent something that Weidner knew. The inconsistent-statement exception does not allow a party to transmute remote multiple-hearsay statements into admissible evidence simply because the adverse party heard a rumor on an issue.

There are at least four layers of hearsay in this testimony: (1) Weidner's statement at the deposition, (2) Brad Stone's statement to Weidner, (3) Stanley Ho's statement to Brad Stone at the player party, and (4) the statements that Stanley Ho's associates in Beijing made about the 2008 Olympics. Even if the first layer in Weidner's statement qualifies as nonhearsay under NRS 51.035(2), the other layers must also fall under an exception to the hearsay rule or qualify as nonhearsay to be admissible. Weber, 121 Nev. at 576-77, 119 P.3d at 122-23; Dorsey, 96

Nev. at 953, 620 P.2d at 1262. Because Suen failed to identify exceptions for the other layers of hearsay, we conclude that the district court abused its discretion by admitting Weidner's statement.

Suen also argues that this statement was admitted solely to impeach Weidner, and not for its substance. However, if this were true, the district court should have submitted a limiting instruction to the jury that the statement was not admissible for the truth of the underlying statements. See Shults v. State, 96 Nev. 742, 751, 616 P.2d 388, 394 (1980). In Weber, the district court erred by focusing on a single layer of hearsay and by failing "to recognize that [the] testimony [at issue] contained statements by three declarants . . . involving as many as three levels of hearsay." 121 Nev. at 577, 119 P.3d at 123. Although the testimony in Weber was offered to show the out-of-court statements' effect on the defendant's mental state and not the truth of the matter asserted, the district court improperly admitted the statement because the hearsay exception for prior inconsistent statements only accounted for one of the multiple levels of hearsay. See id. at 576-79, 119 P.2d at 122-24.

The erroneous admission of evidence requires a new trial if "but for the error, a different result 'might reasonably have been expected.'" Hallmark, 124 Nev. at 505, 189 P.3d at 654 (quoting Beattie v. Thomas, 99 Nev. 579, 586, 668 P.2d 268, 273 (1983)). Suen attempted to prove to the jury that the Beijing meetings influenced the tender process. To do so, Suen relied on the hearsay statement. Without the hearsay statement, the jury may have found there was no connection between the Beijing meetings and the tender process. We conclude that this error, combined with the district court's errors in refusing to instruct the jury on the presumptions of governmental regularity and in granting summary

judgment on the breach of contract cause of action, discussed below, warrants reversal.

V. The district court erred in refusing to instruct the jury on the presumptions of governmental regularity

LVSI argues that the district court should have instructed the jury on the presumptions of governmental regularity. We agree.

This court reviews the denial of a proffered jury instruction for an abuse of discretion. Atkinson v. MGM Grand Hotel, Inc., 120 Nev. 639, 642, 98 P.3d 678, 680 (2004). "'[A] party is entitled to have the jury instructed on all of his case theories that are supported by the evidence.'" Id. (quoting Silver State Disposal v. Shelley, 105 Nev. 309, 311, 774 P.2d 1044, 1045 (1989)).

In this case, the district court refused to instruct the jury concerning the rebuttable presumptions "[t]hat official duty has been regularly performed" and "[t]hat the law has been obeyed." NRS 47.250(9), (16). Suen attempted to show that the governments of Macau and the PRC violated a noninterference provision in the PRC's Basic Law of the Macau Special Administrative Region. Pursuant to the Basic Law, Macau's government has independent executive, legislative, and judicial powers. The PRC may only interfere with issues of foreign affairs and national defense. LVSI argued that it did not owe Suen anything for the meetings he set up, which did not lead them to getting the license because the PRC had no involvement with the licensing procedure in Macau. Because LVSI presented evidence on this point and it was a theory of its defense, we conclude the district court's refusal to give the proposed jury instructions constituted an abuse of discretion.

We conclude that the error of refusing to give the proposed jury instructions combined with the errors of admitting the hearsay

statement and granting summary judgment on the breach of contract cause of action, discussed below, warrants reversal.

VI. The district court erred by granting summary judgment to LVSI on the breach of contract claim

Suen and Round Square argue that the district court erred by dismissing their breach of contract claim because there are genuine issues of material fact regarding whether the parties created a contract and whether LVSI breached that contract. We agree.

This court reviews de novo a district court's grant of summary judgment under NRCP 56(c). Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Courts may grant summary judgment when the evidence does not create a genuine issue of material fact. Id. When considering a motion for summary judgment, courts must view the evidence and any reasonable inferences in the light most favorable to the nonmoving party. Id.

In this case, the district court granted summary judgment for LVSI on Suen's claims for breach of contract and breach of the implied covenant of good faith and fair dealing. The district court concluded that deficient acceptance precluded the formation of a contract because Suen accepted LVSI's offer for a success fee on behalf of Round Square.

On September 10, 2001, LVSI sent a fax to Suen that stated: "[p]er my earlier fax of July 16th, we would offer your group a cash 'success fee' of $5 million and 2% of whatever ownership we end up with as our share of the net profits." On September 20, 2001, Suen sent a fax to LVSI on Round Square letterhead which stated: "we accept your offer of a cash 'success fee' of [$5 million] and 2% of your share of net profits from the resort hotel and casino in Macau." Suen signed this fax as the Director of Round Square. LVSI did not raise the claim of defective acceptance until years later.

There is a genuine issue of material fact as to whether or not LVSI believed it was dealing with Suen or with Suen acting on behalf of a group that included Round Square. See Stuhmer v. Centaur Sculpture Galleries, 110 Nev. 270, 273, 871 P.2d 327, 330 (1994) (explaining that the parties' course of dealing is relevant in determining whether there was defective acceptance). When Suen first met with Adelson, Suen gave Adelson his business card, which identified him as the Director of Round Square. Suen corresponded with LVSI on Round Square letterhead days before the September 10 faxed offer and numerous times thereafter. LVSI used Round Square's address, phone number, and fax number to contact Suen. When viewing this evidence in the light most favorable to Suen and Round Square, a reasonable inference could be drawn that LVSI knew it was dealing with Suen on behalf of a group which included Round Square. See Stuhmer, 110 Nev. at 273-74, 871 P.2d at 330 (holding that plaintiff contracted with defendant corporation rather than another corporation based on testimony that the plaintiff understood he was contracting with the same entity that he previously dealt with and based on the conduct of the corporation). A jury could reasonably conclude that LVSI did not immediately question Round Square's acceptance of the contract offer because LVSI expected that Round Square would be the contracting party. If LVSI was aware that Suen was acting on behalf of Round Square, the question of whether the September 20 acceptance formed a contract would be a question for the jury. The record shows that Suen and/or Round Square translated LVSI's marketing materials, arranged meetings, participated in meetings in Las Vegas, delivered LVSI's expression of interest to the Macau Tender Commission, and counseled LVSI about the unsuitability of LVSI's Taiwanese investment partner. We conclude the district court erred by granting LVSI summary judgment on the breach of

contract cause of action because when viewing the evidence in the light most favorable to the nonmoving party, a reasonable inference could have been drawn that LVSI knew it was dealing with Suen and his group through Round Square and that a contract was formed on September 20.

VII. The district court did not err by granting summary judgment to LVSI on the fraud claim

Suen argues that the district court erred by granting summary judgment to LVSI on the fraud claim because there are genuine issues of material fact with regard to LVSI's fraudulent intent. We disagree.

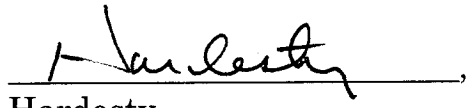
For a promissory fraud claim, the plaintiff must prove five elements by clear and convincing evidence: (1) the defendant made a false representation, (2) the defendant knew or believed that the representation was false, (3) the defendant intended to induce the plaintiff to act or to refrain from acting in reliance on the misrepresentation, (4) the plaintiff justifiably relied on the misrepresentation, and (5) the plaintiff suffered damages from the reliance. Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110-11, 825 P.2d 588, 592 (1992). Due to these elements, a plaintiff can survive a motion for summary judgment with regard to a fraud claim if there is evidence showing that the defendant had no intention of performing the promise at the time when he or she made the promise. Id. at 112, 825 P.2d at 592. However, a defendant's mere failure to fulfill a promise does not give rise to a promissory fraud claim. Id.

Suen contends that he produced evidence showing intentional wrongful conduct by LVSI. First, Suen argues that Adelson repudiated the contract by testifying that there was no contract because attorneys did not draft a final instrument. Second, Suen argues that Adelson changed the contract's terms because he first stated that Suen's job was to deliver the license by describing LVSI's favorable characteristics to officials, but later stated that Suen needed to call LVSI and say that he has the license

and LVSI should come and sign it. Third, Suen contends that Adelson tried to minimize the importance of the Beijing meetings by stating that Suen did not add value to LVSI's bid. Fourth, Suen argues that Weidner had an inconsistent view because he stated that although the parties did not create a contract, LVSI had a businessman's deal and moral obligation to Suen. Fifth, Suen contends that Weidner added an unauthorized condition after the parties formed a contract requiring Suen to find LVSI an investor.

LVSI does not dispute that it promised to compensate Suen if he delivered the license. Instead, LVSI disputes whether Suen actually delivered the license and deserves that payment. Suen failed to provide evidence that LVSI never intended to pay Suen from the beginning, instead offering evidence of the parties' negotiations as to his compensation. See id. at 110-11, 825 P.2d at 592. The parties' dispute involves contract claims, not fraud claims. See id. at 111-12, 825 P.2d at 592 (the district court properly rejected an effort to "convert a contract case into a fraud case"). Although Adelson never paid Suen for his work because Suen rejected the procurement deal, LVSI's failure to carry out a promise without further evidence does not show fraudulent intent. Id. at 112, 825 P.2d at 592. Based upon Suen's inability to present evidence that LVSI misrepresented its intention to pay him upon his successful delivery of the license, we conclude the court did not err in granting summary judgment to LVSI on the fraud claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[1]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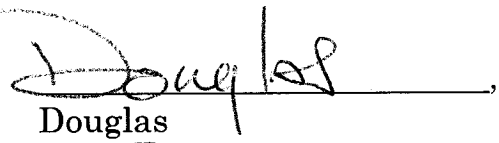
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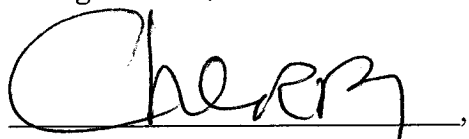
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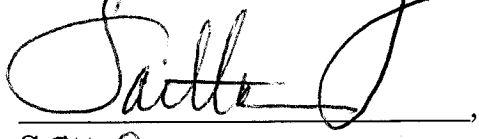
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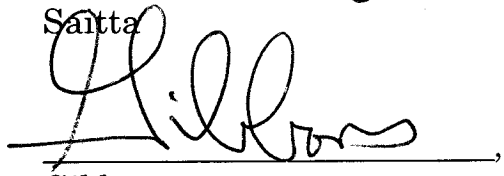
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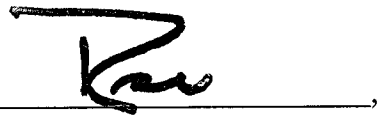
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[1]We have considered the other arguments of the parties and conclude that they are without merit.

cc: Hon. Michelle Leavitt, District Judge
Robert F. Saint-Aubin, Settlement Judge
Lionel Sawyer & Collins/Las Vegas
Mayer Brown LLP
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Eighth District Court Clerk