IN THE SUPREME COURT OF THE STATE OF NEVADA

WIRRULLA HAYWARD LIMITED LIABILITY COMPANY, A FOREIGN LLC REGISTERED AND DOING BUSINESS IN NEVADA, AND WIRRULLA USA, INC., A FOREIGN CORPORATION DOING BUSINESS IN NEVADA,
Appellants,
vs.
FREMONT STREET EXPERIENCE LIMITED LIABILITY COMPANY,
Respondent.

No. 53245

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a contract action and from a post-judgment order denying NRCP 60(b) relief. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Respondent Fremont Street Experience, LLC (Fremont) entered into multiple agreements with World Entertainment Centers/Las Vegas, Inc. (WEC) in the 1990s. The agreements dealt with the use and access, parking, and security for the Neonopolis Mall.

In July 2006, FAEC Holding Wirrulla, LLC (FAEC Holding), which is not involved in this case, acquired the Neonopolis Mall from WEC and assumed all rights and obligations held by WEC. Rohit Joshi managed the Neonopolis through appellants Wirrulla Hayward, LLC, and Wirrulla USA, Inc., the managing member of Wirrulla Hayward (collectively, Wirrulla). Starting in August 2006, Wirrulla paid Fremont pursuant to the agreements. However, in December 2007, Wirrulla stopped making payments to Fremont.

Fremont eventually filed a district court complaint for breach of contract and unjust enrichment against Wirrulla. In the complaint, Fremont alleged that FAEC Holding had purchased the Neonopolis and assumed all rights and obligations held by WEC and that Wirrulla had been acting as assignee for the agreements by paying the monthly fees due under them. In their answer, Wirrulla denied all the allegations and, as part of their affirmative defenses, argued that they "performed pursuant to the agreement between the parties."

Fremont moved for summary judgment, seeking the unpaid fees due under the agreements, arguing Wirrulla had assumed the agreements by making payments for FAEC Holding. Fremont supported its motion with an affidavit from the general manager of Fremont, the agreements, demand letters and responses from Wirrulla, and a balance sheet showing the amount due under the agreements.

In opposition to Fremont's motion for summary judgment, Wirrulla argued that the agreements lacked consideration, that settlement discussions should not be considered by the district court, and that Wirrulla should be granted additional time under NRCP 56 to conduct discovery. Wirrulla did not dispute any of the facts asserted in Fremont's motion for summary judgment. From the opposition, it is clear Wirrulla thought they owned the Neonopolis as they refer to "Wirrulla's purchase of Neonopolis," they then state "Wirrulla purchased Neonopolis in 2006."

The district court heard oral argument on the motion and then granted Fremont's motion for summary judgment. In the order, the district court made findings of fact that: "FAEC Holdings Wirrul[l]a LLC acquired Neonopolis and assumed all the rights and obligations held by

WEC" and "[a]s early as August 2006, Wirrulla Hayward LLC, Wirrul[l]a USA Inc. and/or Mr. Joshi have been acting as assignee for all agreements with and between [Fremont] and the associated operations of Neonopolis and as evidenced by payment of monthly invoices to [Fremont]." The district court also made conclusions of law relating to Wirrulla's arguments in its opposition:

> The consideration for each agreement is apparent from the agreements themselves, and there is simply no legal basis to rescind contracts that were performed for nearly a decade prior to Defendants' breach. Finally, Defendants' request for additional time in accordance with NRCP 56 cannot be granted because there is no affidavit accompanying the request, as specifically required by that rule.

After the district court entered summary judgment against Wirrulla for the amount owed pursuant to the agreements, Wirrulla filed an NRCP 60(b) motion to set aside the judgment based on mistake because FAEC Holding was the actual owner of the Neonopolis and therefore, Fremont was not in privity of contract with Wirrulla. Fremont filed an opposition to the motion to set aside judgment, arguing there was no mistake. Fremont argued that Wirrulla had adequate notice from the pleadings that FAEC Holding owned Neonopolis and that Fremont's argument was that Wirrulla had assumed FAEC Holding's rights and obligations under the agreements by acting as assignees. The district court denied the motion to set aside judgment.

Wirrulla raises two issues on appeal: (1) was summary judgment properly rendered against Wirrulla, and (2) did the district court abuse its discretion in denying Wirrulla's NRCP 60(b)(1) motion to set aside the judgment. We conclude summary judgment was proper and the

district court did not abuse its discretion in denying Wirrulla's NRCP 60(b)1) motion to set aside the judgment, and therefore, we affirm.

Summary judgment

"This court reviews a district court's grant of summary judgment de novo, without deference to the findings of the lower court." Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). "Summary judgment is appropriate and 'shall be rendered forthwith' when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.'" Id. (alteration in original) (quoting NRCP 56(c)). The party opposing a motion for summary judgment must "'by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine factual issue.'" Id. at 731, 121 P.3d at 1030-31 (quoting Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 713, 57 P.3d 82, 87 (2002)). "[W]hen reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." Id. at 729, 121 P.3d at 1029.

Wirrulla failed to argue that there was a genuine issue as to any material fact in its opposition to Fremont's motion for summary judgment. Wirrulla did not dispute any of the facts argued by Fremont. Therefore, the district court properly made findings of fact based on the affidavit and documents submitted by Fremont in support of its motion for summary judgment. The district court's factual finding that FAEC Holding had assumed all the rights and obligations held by WEC and that Wirrulla Hayward and Wirrulla USA acted as assignee for all the agreements with Fremont associated with the operations of the Neonopolis

was supported by substantial evidence. As such, we must confirm that there were no genuine issues of material fact remaining and the district court did not err in granting summary judgment in favor of Fremont.[1]

Motion to set aside the judgment

Under NRCP 60(b)(1) a district court may relieve a party from a final judgment order or proceeding upon a showing of "mistake, inadvertence, surprise, or excusable neglect." This court has held that a district court "has wide discretion in deciding whether to grant or deny a motion to set aside a judgment under NRCP 60(b). Its determination will not be disturbed on appeal absent an abuse of discretion." Stoecklein v. Johnson Electric, Inc., 109 Nev. 268, 271, 849 P.2d 305, 307 (1993).

Wirrulla argues that there was a mistake in this case that only came to light after the hearing on Fremont's motion for summary judgment. Wirrulla argues that Wirrulla Hayward and Wirrulla USA are separate entities from FAEC Holding, the actual owner of the Neonopolis. Wirrulla then argues that it did not learn that FAEC Holding was the actual owner until it was provided a grant bargain and sale deed that indicated FAEC Holding had purchased WEC's rights. Wirrulla argues it merely loaned money to FAEC Holding and that paying FAEC Holding's bills was not an assumption of the agreements.

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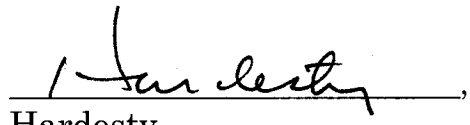
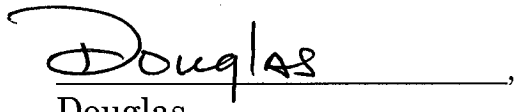
[1]Additionally, the agreements between Fremont and FAEC Holding, which Wirrulla assumed as assignees, were supported by adequate consideration; the district court did not use offers of compromise to prove liability for an obligation of the amount thereof; and the district court did not abuse its discretion in denying Wirrulla's request to conduct discovery, pursuant to NRCP 56(f), as Wirrulla did not provide an affidavit in support of the request or express how discovery would lead to the creation of a genuine issue of material fact.

Wirrulla has failed to make a showing of mistake. Fremont specifically stated in its complaint, motion for summary judgment, and affidavit supporting summary judgment that FAEC Holding acquired the Neonopolis and Wirrulla assumed the obligations under the agreements. Additionally, the district court's order granting summary judgment made the exact finding of fact Wirrulla now claims it only learned of after the motion for summary judgment was argued. Wirrulla failed to argue it had not assumed the agreements in their answer or opposition to the motion for summary judgment and they cannot undo those mistakes now. The district court did not abuse its discretion in denying Wirrulla's motion to set aside the judgment. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Hardesty



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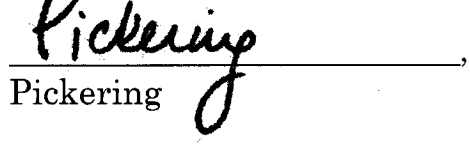

_____, J.
Pickering

cc: Hon. Mark R. Denton, District Judge
Leonard I. Gang, Settlement Judge
Aldrich Law Firm, Ltd.
Holland & Hart LLP/Las Vegas
Eighth District Court Clerk