

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW MCCLAIN, AN
INDIVIDUAL,
Appellant,
vs.
FOOTHILLS PARTNERS, A NEVADA
LIMITED PARTNERSHIP,
Respondent.

No. 54028

FILED

MAR 18 2011

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

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a real property contract action. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Having considered the parties' briefs and reviewed the appendices, we affirm the district court's summary judgment. In moving for summary judgment on its breach of contract claim, respondent pointed out that appellant admitted to the breach and that the contract provided for liquidated damages upon such breach. In response, appellant rested upon general allegations and conclusions as to the liquidated damages clause's enforceability. Thus, summary judgment was proper.¹ Wood v.

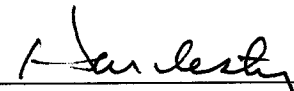
¹We perceive no abuse of discretion in the district court's decision to deny appellant's motion to extend the discovery deadline. Appellant failed to conduct any discovery before the deadline and his motion for an extension of time was untimely and not properly supported. See EDCR 2.35(a) (providing that a motion to extend discovery must be supported by a showing of good cause and must be submitted within 20 days before the discovery cut-off date, and that a motion made beyond that period shall not be granted unless the moving party demonstrates excusable neglect in failing to act); Matter of Adoption of Minor Child, 118 Nev. 962, 60 P.3d 485 (2002) (stating that a district court's discovery decision will not be disturbed absent a clear abuse of discretion).

Safeway, Inc., 121 Nev. 724, 729, 731-32, 121 P.3d 1026, 1029, 1030-31 (2005) (setting forth summary judgment requirements and recognizing that the nonmoving party may not rest upon general allegations and conclusions but must instead set forth, by affidavit or otherwise, specific facts demonstrating the existence of a genuine issue of material fact for trial to avoid summary judgment); Joseph F. Sanson Investment v. 268 Limited, 106 Nev. 429, 435, 795 P.2d 493, 497 (1990) (stating that “[a] liquidated damages clause is prima facie valid unless the challenging party proves its application amounts to an unenforceable penalty”). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Douglas


_____, J.
Saitta


_____, J.
Hardesty

cc: Hon. Elissa F. Cadish, District Judge
Stephen E. Haberfeld, Settlement Judge
Ciciliano & Associates, LLC
Kemp, Jones & Coulthard, LLP
Eighth District Court Clerk