IN THE SUPREME COURT OF THE STATE OF NEVADA

ALEJANDRO MALDONADO, AN INDIVIDUAL,
Appellant,
vs.
ECT HOLDING, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Respondent.

No. 54995

FILED

SEP 28 2010

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

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment entered in a real property contract action. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

After a bench trial, the district court ruled that appellant breached his lease when he abandoned the leased premises and failed to pay rent. On appeal, appellant argues that the district court abused its discretion by failing to find that (1) respondent breached its duty to install a fire sprinkler system and repair structural problems on the leased premises, thus releasing appellant from his duties under the lease; (2) appellant was constructively evicted from the premises; and (3) the lease was subject to rescission based on mutual mistake. Having reviewed the parties' briefs and appellant's appendix, we conclude that substantial evidence supports the district court's determinations. See NOLM, LLC v. County of Clark, 120 Nev. 736, 739, 100 P.3d 658, 660-61 (2004).

As to the fire sprinkler system and structural problems, the district court found that because appellant failed to give written notice of the alleged deficiencies, respondent did not breach any duty arising out of the lease. Appellant contends, for the first time in his reply brief, that written notice was not required unless he intended to repair the conditions

himself and apply the cost of the repair against the rent. We need not address an issue raised for the first time in a reply brief. Phillips v. Mercer, 94 Nev. 279, 283, 579 P.2d 174, 176 (1978). Regardless, section 19.2 of the lease stated that, if a default by respondent remained uncured for 30 days after appellant gave written notice of the default, appellant had the right to cure the default and deduct the cost of curing from the rent. Moreover, section 27 of the lease stated that all notices or communications provided for in the lease were required to be in writing. Thus, the plain language of the lease established that appellant was required to give respondent written notice of any default. See Canfora v. Coast Hotels & Casinos, Inc., 121 Nev. 771, 776, 121 P.3d 599, 603 (2005) (holding that "when a contract is clear on its face, it will be construed from the written language and enforced as written") (internal quotation marks omitted); see also Anvui, LLC v. G.L. Dragon, LLC, 123 Nev. 212, 215, 163 P.3d 405, 407 (2007) (explaining that contractual interpretation is reviewed de novo). Because appellant concedes that he gave only oral notice of the alleged default, substantial evidence supports the district court's conclusion that respondent did not breach the lease.

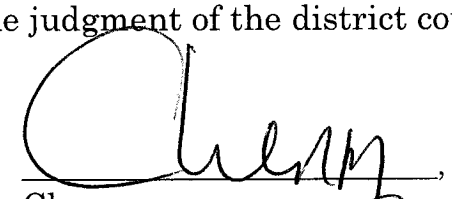
Regarding appellant's constructive eviction claim, the district court found that appellant's actions, rather than any action by respondent, were what rendered the premises untenable. See Krieger v. Elkins, 96 Nev. 839, 841, 620 P.2d 370, 372 (1980) ("Constructive eviction results from an active interference with, or disturbance of, the tenant's possession by an act of the landlord, which renders the whole, or a substantial part of the premises, unfit for occupancy for the purpose for which it was demised."). Because appellant has not provided the trial transcripts, we presume that the evidence presented at trial supports the district court's

decision. Cuzze v. Univ. & Cmty. Coll. Sys. of Nev., 123 Nev. 598, 603, 172 P.3d 131, 135 (2007).

Finally, appellant argues that rescission was an appropriate remedy because the parties were mutually mistaken about the condition of the property. The district court found, however, that appellant was aware that he did not know the condition of the building but failed to adequately investigate before entering into the lease agreement. See Tarrant v. Monson, 96 Nev. 844, 845, 619 P.2d 1210, 1211 (1980) ("One who is uncertain assumes the risk that the facts will turn out unfavorably to his interests."). Again, because appellant has not provided this court with the trial transcripts, we presume that the trial evidence supported the district court's findings. Cuzze, 123 Nev. at 603, 172 P.3d at 135.

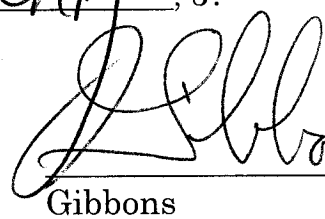
Because substantial evidence supports the district court's conclusions, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Cherry

_____, J.
Saitta



_____, J.
Gibbons

cc: Hon. Susan Johnson, District Judge
M. Nelson Segel, Settlement Judge
Dixon Truman & Fisher
Claggett & Associates, Inc.
Eighth District Court Clerk