

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE FINANCIAL AMERICAN GROUP,
LLC, A DELAWARE LIMITED
LIABILITY COMPANY,
Appellant,

vs.

CH MONTROSE, LLC, A NEVADA
LIMITED LIABILITY COMPANY; DA
1147, LLC, A NEVADA LIMITED
LIABILITY COMPANY; DA 1148, LLC,
A NEVADA LIMITED LIABILITY
COMPANY; ONE HUNDRED YEAR,
LLC, A NEVADA LIMITED LIABILITY
COMPANY; WILLIAM GAYLER, AN
INDIVIDUAL; FIRST AMERICAN
TITLE COMPANY, A CALIFORNIA
CORPORATION; AND TAMARA
TURNER, AN INDIVIDUAL,
Respondents.

No. 56224

FILED

DEC 27 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *Tracie K. Lindeman*
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

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

Appellant The Financial American Group, LLC contracted with the respondents, CH Montrose, LLC; DA 1147, LLC; DA 1148, LLC; One Hundred Year, LLC; and William Gayler (Montrose Parties), for the purchase of land. Afterwards, Financial American also contracted with DII Capital, Inc. to sell the property that it was purchasing from the Montrose Parties. Respondent Tamara Turner, as an employee of respondent First American Title Company (FATCO), acted as the escrow agent for both transactions.

The contracts between Financial American and the Montrose Parties were never completed because the Montrose Parties failed to timely provide required documents and Financial American failed to timely tender a subsequent deposit. Financial American filed a lawsuit against the Montrose Parties alleging breach of contract. The Montrose Parties then canceled the contracts. After the cancelation, Turner disclosed to the Montrose Parties that the deal was a double escrow. The Montrose Parties later sold the disputed property to DII Capital. Following the disclosure, Financial American amended its complaint to add additional claims against the Montrose Parties, FATCO, and Turner.

The district court granted the Montrose Parties summary judgment on Financial American's claims for breach of contract and intentional interference with contractual relations. The district court also granted FATCO and Turner summary judgment on Financial American's claims for breach of contract, breach of the implied covenant of good faith and fair dealing, breach of fiduciary duties, professional negligence, and intentional interference with contractual relations. After the bench trial, the district court entered judgment for the Montrose Parties on Financial American's claim for breach of the implied covenant of good faith and fair dealing.

We conclude that the Montrose Parties' failure to file an answering brief constitutes a confession of error, and therefore, we reverse the district court's grant of summary judgment to the Montrose Parties on the breach-of-contract and intentional-interference-with-contractual-relations claims against them, as well as the district court's judgment for the Montrose Parties on the implied-covenant-of-good-faith-and-fair-dealing claim. We further conclude that the district court properly

granted summary judgment to FATCO and Turner on all claims because there was no actual or proximate causation.

The parties are familiar with the facts and procedural history of this case, and we do not recount them further except as necessary for our disposition.

I. The Montrose Parties' failure to file an answering brief constitutes a confession of error

We agree with Financial American that the Montrose Parties' failure to file an answering brief constitutes a confession of error. If a respondent fails to file an answering brief, this court may treat such failure as a confession of error and an appropriate disposition may be made. NRAP 31(d). Financial American filed a timely opening brief, but the Montrose Parties have not filed an answering brief. After reviewing Financial American's opening and reply briefs and the record on appeal, we elect to treat the Montrose Parties' failure to respond as a confession of error. See id.; see also Rockwell v. Rockwell, 98 Nev. 80, 81, 640 P.2d 1318, 1318 (1982). Therefore, we reverse the district court's grant of summary judgment to the Montrose Parties on the breach-of-contract and intentional-interference-with-contractual-relations claims and the district court's judgment for the Montrose Parties on the implied-covenant-of-good-faith-and-fair-dealing claim.

II. The district court properly granted summary judgment to FATCO and Turner on all of Financial American's claims

We disagree with Financial American that the district court improperly granted summary judgment to FATCO and Turner on all of its claims against them because genuine issues of material fact existed regarding whether Turner's disclosure of the double escrow caused any damages.

We review a district court's order granting summary judgment de novo. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. Id. When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. Id. However, the nonmoving party bears the burden of demonstrating that a genuine issue of material fact exists. Id. at 732, 121 P.3d at 1031. General allegations and conclusory statements do not create genuine issues of fact. Id. at 731, 121 P.3d at 1030-31.

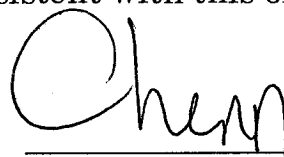
Causation is a required element in each of Financial American's claims against FATCO and Turner for breach of contract, breach of the implied covenant of good faith and fair dealing, breach of fiduciary duties, professional negligence, and intentional interference with contractual relations. See Reichert v. General Insurance Company of America, 442 P.2d 377, 381 (Cal. 1968) (stating that a breach-of-contract claim requires a plaintiff to suffer damages as a result of the alleged breach); Nelson v. Heer, 123 Nev. 217, 226, 163 P.3d 420, 427 (2007) (breach of the implied covenant of good faith and fair dealing requires a party to engage in unfair acts that result in a disadvantage to the other party); Mosier v. So. Cal. Physicians Ins. Exchange, 74 Cal. Rptr. 2d 550, 565 (Ct. App. 1998) (breach-of-a-fiduciary-duty claim requires proof that the breach proximately caused damages); Charleson v. Hardesty, 108 Nev. 878, 883-84, 839 P.2d 1303, 1307 (1992) (professional negligence claim requires a "proximate causal connection between the negligent conduct and the resulting injury"); J.J. Indus., LLC v. Bennett, 119 Nev. 269, 274,


71 P.3d 1264, 1267 (2003) (claim for intentional interference with contractual relations requires the interference to result in damages).


We conclude that Financial American failed to demonstrate that there was a genuine issue of material fact regarding causation. Financial American did not show that there was a genuine issue of material fact as to whether the Montrose Parties canceled the contracts prior to Turner disclosing the double escrow. Instead, the evidence demonstrated that the Montrose Parties canceled the contracts before Turner disclosed the double escrow on May 18. With the cancelation of the contracts, Turner's disclosure could not have caused Financial American to suffer any damages.

Furthermore, in Conclusion of Law No. 3 in the judgment resulting from the bench trial of Financial American's claim against the Montrose Parties for breach of the implied covenant of good faith and fair dealing, the district court concluded that it was not persuaded that William Gayler was motivated to cancel the deal because he may have known about the double escrow. See NRCP 52(c) ("If during a trial without a jury a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue."). This finding confirms our conclusion that the judgment in favor of FATCO and Turner on all of Financial American's claims should be affirmed because there was no actual or proximate causation. 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.


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering

cc: Hon. Susan Johnson, District Judge
Stephen E. Haberfeld, Settlement Judge
Fennemore Craig, P.C./Las Vegas
CH Montrose, LLC
DA 1147, LLC
DA 1148, LLC
Kemp, Jones & Coulthard, LLP
One Hundred Year, LLC
William A. Gayler
Eighth District Court Clerk