

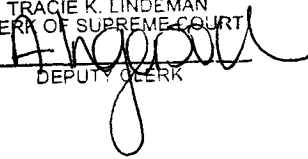
IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICK RADCLIFF,
Appellant,
vs.
YUSIF AMIRASLANOV, AN
INDIVIDUAL; LIRA MOTORS, LLC, A
NEVADA LIMITED LIABILITY
COMPANY D/B/A LIRA MOTORS;
ANDREY KULAKOV, AN INDIVIDUAL;
AND SOUTHERN NEVADA
COMMERCIAL SERVICES, LLC, A
NEVADA LIMITED LIABILITY
COMPANY D/B/A UNI TRANS,
Respondents.

No. 56786

FILED

MAY 10 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order dismissing appellant's claims arising from the purchase of a used vehicle from respondents. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

Appellant filed a complaint alleging breach of contract, breach of express warranty, bad faith, intentional misrepresentation, fraudulent concealment, deceptive trade practices, and conspiracy. He sought rescission, restitution, declaratory relief, recovery under NRS 482.345, and monetary damages. He also argued that respondents should be estopped from enforcing or contending the validity of the sales contract based on their conduct. Respondents moved to dismiss or for summary judgment on all of appellant's claims, and appellant opposed the motion. The district court granted respondents' motion, finding that appellant "failed to set forth sufficient specificity as to the fraud claim," and that he failed to show a basis for express warranty. The court concluded that appellant therefore

failed to meet the jurisdictional limit and “transferred [the case] to the justice court.”

Summary judgment is appropriate when there is no genuine issue of material fact, and thus, the moving party is entitled to judgment as a matter of law. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). To avoid summary judgment once the movant has properly supported the summary judgment motion, 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. NRCP 56(e); Wood, 121 Nev. at 731, 121 P.3d at 1030-31. In granting summary judgment, the district court must set forth in its order the undisputed material facts and legal determinations that provide the basis for its determination. NRCP 56(c); ASAP Storage, Inc. v. City of Sparks, 123 Nev. 639, 656-57, 173 P.3d 734, 746 (2007).

Appellant alleged that respondents actually knew of mechanical and structural problems with the vehicle at the time of the sale and intentionally and fraudulently concealed the information. The district court summarily concluded that appellant did not sufficiently specify his fraud claim and it entered summary judgment on that claim. Because the order did not set forth the requisite undisputed facts providing the basis for its determination, that decision must be reversed and remanded for further proceedings.

Next, appellant challenges the district court’s decision on his breach of express warranty claim. Express warranties may be created by an affirmation of fact that relates to the goods or a description of the goods, where the information is made part of the basis of the bargain.

NRS 104.2313; Allied Fidelity Ins. Co. v. Pico, 99 Nev. 15, 17-18, 656 P.2d 849, 850 (1983). A vehicle inspection report may constitute such a warranty where it is part of the basis of the bargain. Words or conduct that create an express warranty are reasonably construed against words or conduct that tends to negate or limit a warranty. NRS 104.2316(1). In some instances, courts have found disclaimer clauses ineffective to avoid express warranties that were part of the basis of the bargain. See, e.g., Sellman Auto, Inc. v. McCowan, 89 Nev. 353, 513 P.2d 1228 (1973); Sierra Diesel Injection Service, Inc. v. Burroughs Corp., Inc., 890 F.2d 108 (9th Cir. 1989).

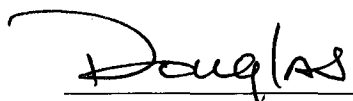
Accepting all factual allegations in the complaint as true and drawing every inference in favor of the nonmoving party, the district court erred when it dismissed appellant's breach of express warranty claim under NRCPP 12(b)(5).¹ From appellant's assertions that an express warranty was created by the vehicle inspection report and the "as is" provision was not a reasonable disclaimer, it does not appear beyond a doubt that he can prove no set of facts that, if true, would entitle him to relief under this claim. Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). We thus reverse the dismissal of appellant's breach of express warranty claim and remand for further proceedings.

Finally, the portion of the district court's order transferring appellant's remaining claims to the justice court because it found that the

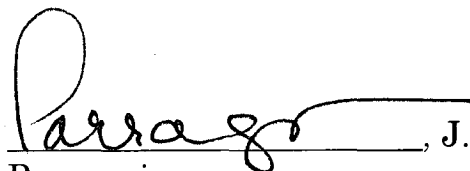
¹Even if the district court granted respondents' alternative request for summary judgment on the breach of express warranty claim, the district court's order did not resolve the disputed material facts or set for the basis for its determination in accordance with NRCPP 56(c).

jurisdictional threshold had not been met effectively operated as a dismissal of appellant's equitable claims. Lee v. GNLV Corp., 116 Nev. 424, 427, 996 P.2d 416, 418 (2000) (recognizing that in determining the finality of a district court's order, this court looks at what the order substantively accomplishes, rather than its label). Appellant raised claims for both monetary and equitable relief in his complaint, and it does not appear that equitable relief was improperly sought solely to invoke jurisdiction. The district court therefore retains jurisdiction over the entire matter, even if it denies the equitable relief and regardless of whether the monetary threshold for jurisdiction was met. See Edwards v. Emperor's Garden Rest., 122 Nev. 317, 323-24, 130 P.3d 1280, 1284-85 (2006); Seaborn v. District Court, 55 Nev. 206, 29 P.2d 500 (1934). Thus, on remand, the district court should reinstate appellant's dismissed claims. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Kathy A. Hardcastle, District Judge
Stephen E. Haberfeld, Settlement Judge
George O. West, III
The Firm, P.C.
Eighth District Court Clerk