

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY B. CHARLES,
Appellant,
vs.
RUSSELL TSCHANZ,
Respondent.

No. 57367

FILED

JAN 17 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Ingerson*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from a district court summary judgment in a real property action. Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

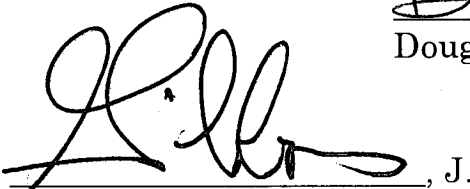
Having reviewed the briefs and appendices on appeal, we reverse the district court's summary judgment and remand this case for further proceedings. We conclude that the district court erred in ruling as a matter of law that an enforceable settlement agreement had been reached between the parties and that no questions of material fact existed. NRCP 56(c); Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (stating that summary judgment is only appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law).

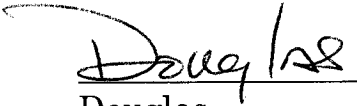
The moving party bears the initial burden in a summary judgment motion of demonstrating no material issues of fact. NRCP 56(c); Maine v. Stewart, 109 Nev. 721, 726-27, 857 P.2d 755, 758-59 (1993). Respondent failed to meet this burden as the documents submitted by respondent demonstrate that a material issue of fact exists concerning whether the parties reached a settlement agreement. Respondent argues that appellant waived any challenge to the existence of a settlement agreement by failing to raise the argument in district court. This argument lacks merit, however, because the burden never shifted to

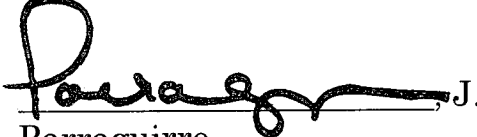
appellant to raise the issue in his opposition to the motion for summary judgment. Maine, 109 Nev. at 727, 857 P.2d at 759.

Additionally, material questions of fact exist concerning whether the waiver clause signed as part of the closing documents for the sale of the property validly waived any obligation to sign the restrictive covenant, as appellant set forth by affidavit that he provided the necessary documents for signing at closing but that, without appellant's knowledge, respondent refused to sign them. Thus, material issues of fact remain and summary judgment was improper. NRCP 56(c); Wood, 121 Nev. at 729, 121 P.3d at 1029. As a result of this conclusion, we also reverse the award of attorney fees and costs.¹ Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.²


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. James M. Bixler, District Judge
Jeffrey B. Charles
Shawn L. Morris, Ltd.
Eighth District Court Clerk

¹In light of this order, we deny as moot appellant's motion for leave to file a proper person reply brief.

²We reject respondent's argument that we lack jurisdiction over this appeal as without merit. See NRAP 3A(b)(1).