

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT W. HALL,
Appellant,
vs.
SUN CITY SUMMERLIN COMMUNITY
ASSOCIATION, INC.; AND THE STATE
OF NEVADA,
Respondents.

No. 57795

FILED

OCT 09 2012

TACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angela*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from district court orders granting motions to dismiss in a declaratory judgment action. Eighth Judicial District Court, Clark County; Rob Bare, Judge.

Appellant filed a complaint for declaratory relief, asking the district court to enjoin respondent State of Nevada and his homeowners association, respondent Sun City Summerlin Community Association, Inc., from applying the requirements of NRS Chapter 116 to Sun City and its Covenants, Conditions, and Restrictions (CC&Rs). The district court granted the State of Nevada's motion to dismiss on the bases that appellant failed to plead a present justiciable controversy ripe for declaratory relief and that appellant failed to set forth specific facts to establish all necessary elements for a claim for relief. Sun City's motion to set aside its default was also granted, and the district court subsequently granted Sun City's motion to dismiss on the bases that appellant lacked standing, as he did not own the property at issue in the complaint, and that the claims in appellant's complaint were subject to NRS Chapter 38, which required appellant's claims to be submitted to mediation or

arbitration. Appellant challenges the district court's orders granting the State's and Sun City's motions to dismiss. This court reviews de novo an order granting an NRCP 12(b)(5) motion to dismiss, accepting all factual allegations in the complaint as true, and drawing all inferences in the plaintiff's favor. Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008).


We have reviewed the record and appellant's opening brief, and we conclude that dismissal as to both respondents was appropriate. In his opposition to Sun City's motion to dismiss, appellant did not dispute that he did not personally own the property at issue in the complaint, which was owned by a limited partnership whose general partner is a corporation. As appellant lacks standing to bring an action regarding real property that he does not own, the district court's dismissal of appellant's claims was proper. NRCP 17; see NAD, Inc. v. Dist. Ct., 115 Nev. 71, 76, 976 P.2d 994, 997 (1999) (holding that only a real party in interest may pursue an action). Additionally, in order to be entitled to declaratory relief, the following conditions must be met:

(1) there must exist a justiciable controversy; that is to say, a controversy in which a claim of right is asserted against one who has an interest in contesting it; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy, that is to say, a legally protectible interest; and (4) the issue involved in the controversy must be ripe for judicial determination.

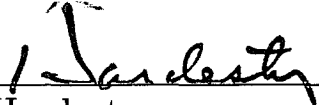
Doe v. Bryan, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986) (citation omitted). The record shows that appellant does not have a legal interest in the controversy, as he does not own the property at issue, and appellant failed to plead a present justiciable controversy as the vote to conform Sun

City's CC&Rs to NRS Chapter 116 had not taken place at the time he filed his complaint. Accordingly, the district court properly granted both the State's and Sun City's motions to dismiss,¹ and we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

cc: Hon. Rob Bare, District Judge
Robert W. Hall
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
Attorney General/Las Vegas
Eighth District Court Clerk

¹Although appellant also challenges the district court's order granting Sun City's motion to set aside its default, the record shows that appellant had granted Sun City an open extension of time to respond to the complaint and never notified Sun City that he was terminating that extension. Accordingly, the district court did not abuse its discretion in granting Sun City's motion to set aside its default. Fagin v. Fagin, 91 Nev. 794, 798, 544 P.2d 415, 417 (1975) (stating that a trial court's discretion to set aside a default judgment "is broad and such determinations will not be disturbed on appeal in the absence of clear abuse of discretion").

²We conclude that all other arguments made in appellant's appeal statement lack merit, and therefore, do not warrant reversal.