

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN LUCKETT,
Appellant,
vs.
BROTHER MANUFACTURING
CORPORATION, INC.; OFFICE DEPOT,
INC.; AND VARITEK, INC.,
Respondents.

No. 58617

FILED

MAR 08 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from district court orders granting motions to dismiss and for summary judgment in a breach of contract, fraud, and tort action. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Appellant filed a complaint, alleging claims for breach of contract, intentional infliction of emotional distress, fraud, and negligence against respondents, based on appellant's purchase of an allegedly defective fax machine sold by respondent Office Depot, Inc., manufactured by respondent Brother Manufacturing Corporation, Inc., and serviced by respondent Varitek, Inc. Respondents filed motions for dismissal and for summary judgment as to all of appellant's claims. Appellant opposed the motions, and the district court granted the motions. Appellant also requested the district court judge's recusal, which was denied. This appeal followed.

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). This court reviews summary judgments de novo. Wood v.

Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is appropriate if the pleadings and other evidence on file, viewed in the light most favorable to the nonmoving party, demonstrate that no genuine issue of material fact remains in dispute and that the moving party is entitled to judgment as a matter of law. Id.

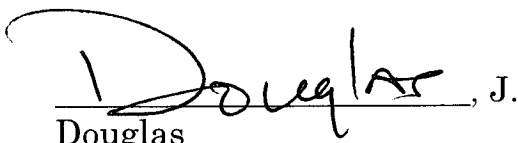
We have reviewed the record and considered appellant's civil proper person appeal statement, and we conclude that the district court's dismissal order and summary judgment were appropriate. Appellant failed to allege the existence of any valid contract between appellant and any of the respondents in his complaint. Saini v. International Game Technology, 434 F. Supp. 2d 913, 919–920 (D.Nev. 2006) (citing Richardson v. Jones, 1 Nev. 342, 345 (1865) (holding that the elements of a breach of contract action in Nevada include proof of the existence of a valid contract)). Appellant also failed to allege any extreme and outrageous conduct by any of the respondents. Barmettler v. Reno Air, Inc., 114 Nev. 441, 447, 956 P.2d 1382, 1386 (1998) (stating that extreme and outrageous conduct is a necessary element of an intentional infliction of emotional distress claim).


As a matter of law, claims for fraud must be stated with particularity. NRCP 9(b). Appellant's fraud allegations as to Office Depot and Varitek are not stated with sufficient particularity, and therefore were properly dismissed. As to Brother, appellant alleges that Brother misrepresented that the model purchased by appellant was an upgraded model from the machine previously owned by appellant. Appellant failed to allege, however, that Brother made the representation that the model purchased by appellant was an upgraded model with knowledge that the representation was false or without a sufficient basis for making the

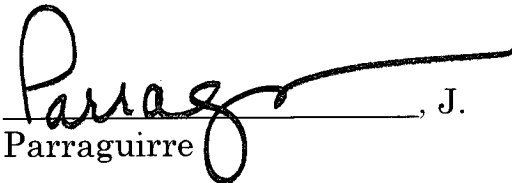
representation. Blanchard v. Blanchard, 108 Nev. 908, 910-11, 839 P.2d 1320, 1322 (1992).

A claim for negligence in Nevada requires that the plaintiff satisfy four elements: (1) an existing duty of care, (2) breach, (3) legal causation, and (4) damages. Turner v. Mandalay Sports Entm't, 124 Nev. 213, 217, 180 P.3d 1172, 1175 (2008). Appellant's complaint does not allege any existing duty of care owed by any of the respondents to appellant. The district court's judgment in favor of respondents as to appellant's negligence cause of action was therefore also appropriate.¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Ronald J. Israel, District Judge
John Luckett
Murchison & Cumming, LLC/Las Vegas
Eighth District Court Clerk

¹To the extent that we affirm the dismissal of any of appellant's claims on grounds different than the district court, we note that this court will affirm a district court decision if it reached the right result, albeit for a different reason. Rosenstein v. Steele, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987).

²We do not perceive any error in the district court's denial of appellant's unfiled demand for recusal, and therefore, reversal is not warranted on this ground.