

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN LUCKETT,
Appellant,

vs.

REZK M. MOHAMED, III; USB
FINANCIAL SERVICES, INC.; AND
DAW CORPORATION,
Respondents.

No. 60201

FILED

NOV 16 2012

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing a contract action. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Appellant filed a complaint alleging breach of contract, fraud, and intentional infliction of emotional distress against respondent Rezk M. Mohamed, III, and seeking injunctive relief against respondents USB Financial Services, Inc., and Daw Corporation. The district court dismissed the action concluding that it did not have jurisdiction because appellant could not recover more than \$9,650 in this action. This appeal followed.

In its dismissal order, the district court essentially dismissed appellant's fraud and intentional infliction of emotional distress claims for failure to state a claim upon which relief can be granted, insofar as the court concluded that appellant would not be able to recover damages on either of these claims. This court reviews de novo an order dismissing claims pursuant to NRCP 12(b)(5), 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 civil proper person appeal statement, and we conclude that the district court properly

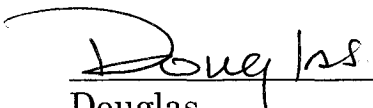
dismissed appellant's fraud and intentional infliction of emotional distress claims as he failed to plead facts to establish these claims. See NRCP 9(b) (requiring fraud to be pled with particularity); Chen v. State, Gaming Control Board, 116 Nev. 282, 284, 994 P.2d 1151, 1152 (2000) (explaining that, to establish fraud, a plaintiff must allege facts showing that (1) the defendant made a false representation of a material fact that he knew to be false, (2) the defendant intended the plaintiff to rely on the misrepresentation, (3) the plaintiff detrimentally relied on the misrepresentation, and (4) the misrepresentation proximately caused the plaintiff damages); see also Star v. Rabello, 97 Nev. 124, 125, 625 P.2d 90, 91-92 (1981) (providing that a plaintiff must allege, in his or her complaint, the following elements in order to establish a claim for intentional infliction of emotional distress: "(1) extreme and outrageous conduct with either the intention of, or reckless disregard for, causing emotional distress, (2) the plaintiff's having suffered severe or extreme emotional distress and (3) actual or proximate causation").


The district court also correctly concluded that the injunctive relief requested would be inappropriate. While appellant identified respondents USB Financial Services, Inc., and Daw Corporation as defendants, he failed to assert a cause of action against either of them. See Lamb v. Doe, 92 Nev. 550, 551, 554 P.2d 732, 733 (1976) (explaining that injunctive relief is inappropriate when there is no justiciable controversy with the named defendant); Shell Oil Co. v. Richter, 125 P.2d 930, 932 (Cal. Ct. App. 1942) (explaining that injunctive relief is a remedy, not a cause of action, and thus, a cause of action must be asserted against the party before injunctive relief may be requested against that party).

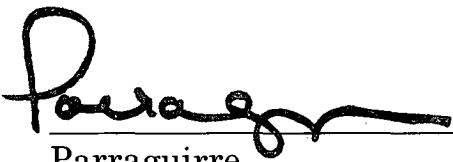
Having disposed of the fraud, intentional infliction of emotional distress, and injunctive relief claims, all that remained of

appellant's action was the breach of contract claim. The district court correctly determined to a legal certainty that the amount in controversy was insufficient to establish jurisdiction over that claim because appellant was only seeking \$9,650.¹ See Morrison v. Beach City LLC, 116 Nev. 34, 38, 991 P.2d 982, 984 (2000) (explaining that, when a court concludes to a legal certainty that a plaintiff cannot recover the amount of damages necessary to establish jurisdiction, dismissal for want of jurisdiction is appropriate); see also Royal Ins. v. Eagle Valley Constr., Inc., 110 Nev. 119, 120, 867 P.2d 1146, 1147 (1994) (explaining that attorney fees, costs, and interest are not included when calculating the amount in controversy for the purpose of establishing jurisdiction). Thus, the district court did not err by dismissing the action. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

¹Appellant claims that he could have recovered treble damages for respondent Mohamed's breach of contract and that the treble damages would have caused the amount in controversy to be sufficient to establish jurisdiction. Appellant raises this argument, however, for the first time on appeal, and thus, we decline to address it. See Mason v. Cuisenaire, 122 Nev. 43, 48, 128 P.3d 446, 449 (2006).

²We direct the clerk of this court to file respondent Daw Corporation's letter provisionally received on March 12, 2012. We conclude that no action needs to be taken on this document. Further, in light of this order, we deny as moot all pending motions in this matter.

cc: Hon. Robert W. Lane, District Judge
John Lockett
Snell & Wilmer, LLP/Las Vegas
Daw Corporation
Rezk M. Mohamed, III
Nye County Clerk