

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUDITH B. BUSHKIN AND MICHAEL  
HARRIS,  
Appellants,  
vs.  
NHU THI TRAN AND IVAN S. FISHER,  
Respondents.

No. 35535

**FILED**

APR 08 2003

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART AND REVERSING IN PART

This is an appeal from a district court judgment and other orders in favor of Nhu Thi Tran and Ivan S. Fisher in an action involving a real estate transaction. The Internal Revenue Service (IRS) seized property owned by Fisher in Clark County. The IRS conducted an auction and sold the property to Tran for \$51,100. Tran received a certificate of sale, the purchase subject to Fisher's right to redeem the property within one-hundred-eighty days pursuant to 26 U.S.C.A. § 6337.<sup>1</sup> Michael Harris offered to assist Fisher in redeeming the property. Harris explained that he did not have the money to redeem the property, but that he had a good friend, Judith B. Bushkin, who did.

Fisher and Bushkin executed escrow instructions in which Fisher signed as seller and Bushkin signed as buyer of the property which had been auctioned. The sale was conditional upon title being free of encumbrances, including the IRS tax lien. Fisher was to receive no proceeds of the sale. The purchase price was to be used to redeem the

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<sup>1</sup>After the one-hundred-eighty days, Tran would have received a deed of the property free of any liens, 26 U.S.C.A. § 6337(b) (2002), or Fisher could redeem the property within that time by paying twenty percent above the auction sale price.

property from Tran and to pay the IRS to discharge the tax lien. The parties designated Harris to execute the redemption of the property. Harris procured special powers of attorney from Bushkin and Fisher. Harris was authorized to act on behalf of Bushkin in the transaction and to redeem the property from the IRS on behalf of Fisher.

Harris wrote Tran a letter to arrange a meeting to redeem Fisher's property. Tran never responded to this letter. Harris met with Cedric Nelson, an IRS agent, and told him that he would be redeeming the property for Fisher, and that Bushkin was going to purchase the property if the IRS would issue a conditional discharge of the lien for \$18,000.

Subsequently, Tran and her agent visited Nelson to determine when a deed would be issued in place of the certificate of sale. Nelson informed them that Fisher was planning to exercise his redemption rights and sell the property to a third party. Tran's agent contacted Fisher, who told him that Tran had to bid \$10,000 above the existing offer if she wanted to protect her interest in the property. Tran agreed to pay the additional amount.

When Harris attempted to redeem the property on behalf of Fisher, Nelson informed Harris that he had had a better offer from Tran and was obligated to accept the best offer to discharge the lien. Harris offered only \$18,000 for discharge of the lien, while Tran offered \$28,000. If Harris had redeemed the property, he would have had to take the property subject to the IRS lien. Fisher redeemed the property and sold it back to Tran. The IRS accepted the package offer of \$28,000 and discharged the lien against the property. Tran received clear title to the property and recorded the deed to the property.

Subsequently, Bushkin filed a notice of lis pendens and a complaint against Tran and Fisher. Bushkin alleged that Fisher breached their contract and sought specific performance. Bushkin also alleged that Tran intentionally interfered with her and Fisher's contractual relations and sought to quiet title in the property. Bushkin sought attorney fees, and compensatory and punitive damages. Tran asserted crossclaims and counterclaims. Tran sought to quiet title and alleged that Bushkin did not file the notice of lis pendens in good faith, and thereby, committed slander of title. Additionally, Tran sought attorney fees and damages.

The district court held a bench trial and found that Tran did not intentionally interfere with Bushkin and Fisher's contractual relations. The district court quieted title in Tran and expunged the lis pendens. Additionally, the district court found that Bushkin and Harris committed slander of title, abuse of process, and fraud. The district court assessed \$100,000 in punitive damages against Harris, and ordered Bushkin and Harris to pay Tran and Fisher costs and attorney fees. Bushkin and Harris filed a motion for a new trial and motion to amend findings of fact and conclusions of law, which the district court denied. Bushkin and Harris appealed.

Substantial evidence supports the district court's findings regarding the title to the property and the charges against Tran and Fisher. However, the district court's findings regarding Tran's claims against Harris and Bushkin are not supported by substantial evidence.

Tran alleged that Bushkin and Harris committed slander of title by filing the lis pendens. The elements of slander of title "are [1] that the words spoken be false, [2] that they be maliciously spoken and [3] that the plaintiff sustain some special damage as a direct and natural result of

their having been spoken.”<sup>2</sup> The lis pendens did not contain any false statements, and there was no evidence of malice. The lis pendens only states that “a Complaint for Specific Performance and to Quiet Title has been filed in the above-entitled Court by the foregoing Plaintiff against the foregoing Defendants.” The lis pendens went on to describe the property at issue. This evidence does not constitute slander of title.

The district court found that Bushkin and Harris committed abuse of process. The elements of abuse of process are “(1) an ulterior purpose by the defendants other than resolving a legal dispute, and (2) a willful act in the use of the legal process not proper in the regular conduct of the proceeding.”<sup>3</sup> None of the facts surrounding this case suggests that appellants had any motive other than resolving a legal dispute over a property interest.

The district court found that Buskin and Harris committed fraud. To commit fraud, a party must make false representations and know or believe the representations are false.<sup>4</sup> The party must intend to induce the plaintiff, and the plaintiff must justifiably rely upon the misrepresentation, and the reliance must result in damage to the plaintiff.<sup>5</sup> The district court found that Harris committed fraud through the letters he sent Tran and Fisher. None of the letters Harris sent Fisher or Tran appeared to contain any false statements or statements Harris

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<sup>2</sup>Rowland v. Lepire, 99 Nev. 308, 313, 662 P.2d 1332, 1335 (1983).

<sup>3</sup>Kovacs v. Acosta, 106 Nev. 57, 59, 787 P.2d 368, 369 (1990).

<sup>4</sup>Wohlers v. Bartgis, 114 Nev. 1249, 1260-61, 969 P.2d 949, 957-58 (1998).

<sup>5</sup>Id. at 1261, 969 P.2d at 957-58.

believed to be false. Further, the record indicates that neither Tran nor Fisher justifiably relied on the letters.

The district court held Harris personally liable for \$100,000 in punitive damages, to be divided equally between Tran and Fisher. NRS 42.005 provides that punitive damages may be awarded against a party upon a showing of fraud, oppression or malice by clear and convincing evidence. "An award of punitive damages may not stand where the record lacks substantial evidence to support the required finding of "oppression, fraud or malice, express or implied.""<sup>6</sup> Since the record demonstrates that Harris did not commit fraud, abuse of process, or slander of title, there is no substantial evidence to support a finding of oppression, fraud or malice. Consequently, we reverse the award of punitive damages.

The district court awarded both Tran and Fisher \$50,000 in attorney fees because it did not feel that anyone "should have to come into court and defend a spurious lawsuit like this [one] without being made whole." A court may grant attorney fees when it finds that a party's claim was brought without reasonable grounds or to harass the prevailing party.<sup>7</sup> This court has held that "a claim is groundless if the complaint contains allegations which are not supported by any credible evidence at trial."<sup>8</sup> The record does not suggest that Bushkin brought suit without

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<sup>6</sup>First Interstate Bank v. Jafbros Auto Body, 106 Nev. 54, 56, 787 P.2d 765, 767 (1990) (quoting Village Development Co. v. Filice, 90 Nev. 305, 315, 526 P.2d 83, 89 (1974) quoting former NRS 42.010); see NRS 42.005(1).

<sup>7</sup>NRS 18.010(2)(b).

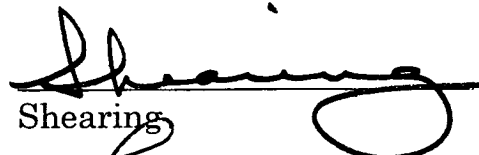
<sup>8</sup>Semenza v. Caughlin Crafted Homes, 111 Nev. 1089, 1095, 901 P.2d 684, 688 (1995).


reasonable grounds or to harass Fisher. The escrow instructions, although ambiguous, provided reasonable grounds for Bushkin to file suit. Therefore, the district court abused its discretion in awarding Fisher and Tran attorney fees under NRS 18.010(2)(b), and we reverse the attorney fees award.


However, under NRS 18.020(5), in an action involving the title to real estate, costs must be allowed to the prevailing party. Since Tran and Fisher were the prevailing parties in such an action, the district court's award of \$3,145.97 in costs to Tran and \$179.29 to Fisher is affirmed.

We affirm the portions of judgment quieting title to the property in Tran and awarding costs to Tran and Fisher. We reverse those portions of the judgment awarding punitive damages and attorney fees to Tran and Fisher.

It is so ORDERED.

  
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Shearing J.

  
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Leavitt J.

  
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Becker J.

cc: Hon. Norman C. Robison, Senior Judge  
Beckley Singleton, Chtd./Las Vegas  
Alverson Taylor Mortensen Nelson & Sanders  
Jeffrey R. Albregts & Associates  
Clark County Clerk