

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LAURA K. RENZI, AN INDIVIDUAL,
Appellant,
vs.
SLS PROPERTIES THREE, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,
Respondent.

No. 62179

LAURA K. RENZI, AN INDIVIDUAL,
Appellant,
vs.
SLS PROPERTIES THREE, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,
Respondent.

No. 64278

FILED

APR 15 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

These unconsolidated appeals challenge a district court default judgment in favor of respondent, certified as final under NRCP 54(b), in a contract action and a post-judgment order calculating interest. Eighth Judicial District Court, Clark County; Joanna Kishner, Judge.

Renzi Towers, LLC, entered into a second mortgage with respondent SLS Properties Three, LLC, ("SLS") as part of a contract to purchase land from SLS. Appellant Laura Renzi, her husband, and her brother-in-law all signed personal guarantees for the second mortgage. When no payments were made on the second mortgage, SLS filed suit.

In the district court case, SLS initially obtained a default judgment when the defendants below, including Laura, failed to respond to the complaint. The district court later set aside that judgment on defendants' motion due to service issues. After filing their answer and counterclaims, however, defendants failed to respond to discovery requests

or appear for depositions. SLS then filed a motion to compel discovery and sought to have case-concluding sanctions imposed. Defendants failed to file an opposition to that motion, but the discovery commissioner declined to enter case-concluding sanctions at that time. Instead, the commissioner set a date for defendants to respond to all discovery requests and sanctioned them both monetarily and by prohibiting them from objecting to any discovery requests in their responses. Following the entry of the discovery order, defendants' counsel withdrew. Defendants, now proceeding in pro se, eventually submitted untimely discovery responses that were devoid of any of the requested information and again failed to appear for scheduled depositions, after which SLS refiled its motion for case-concluding sanctions. The discovery commissioner ultimately recommended granting the motion for sanctions, despite defendants' opposition to that request.

Defendants, through newly retained counsel, filed timely objections to the discovery commissioner's report and recommendation, which SLS opposed. The district court then held an evidentiary hearing and ultimately adopted the discovery commissioner's report in its entirety, which resulted in the striking of all of defendants' pleadings, and the entry of a default against them.¹ After Laura's subsequent motion for

¹This order specified that it did not apply to Laura's husband, as he filed for bankruptcy after the evidentiary hearing and an automatic stay was entered. See 11 U.S.C. § 362(a) (providing that filing of bankruptcy causes an automatic stay to be applied to any judicial proceedings currently ongoing against the debtor). Thus, all subsequent orders did not apply to Laura's husband.

reconsideration² was denied and a prove up hearing was held, the district court entered a default judgment against the remaining defendants. Only Laura has appealed from that decision, in the appeal pending as Docket No. 62179, where she challenges the imposition of case-concluding sanctions against her and the district court's refusal to reconsider that decision before entering a default judgment against her. Following the entry of the default judgment, the district court entered an order concluding that the interest rate set forth in the mortgage contract, rather than the statutory interest rate, would be used to calculate post-judgment interest.³ Laura has also appealed from that decision in Docket No. 64278.

Docket No. 62179

In challenging the striking of her pleadings, the resulting default and the default judgment entered against her, Laura primarily argues that the personal guaranty that SLS used to obtain the judgment against her was fraudulent. This argument, however, is not relevant to the propriety of the sanctions imposed upon Laura, as the district court's entry of default resulted in all facts alleged in the pleadings, including the assertion that Laura had personally guaranteed the second mortgage,

²Although counsel represented multiple defendants below, the motion for reconsideration specified that it was only being brought by Laura.

³Laura also purports to challenge the district court's denial of her motion to retax costs, but she makes no arguments regarding this issue, and thus, we do not consider the propriety of this decision. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that claims that are not cogently argued or supported by relevant authority need not be considered).

being deemed admitted. See *Foster v. Dingwall*, 126 Nev. ___, ___, 227 P.3d 1042, 1049 (2010) (“Generally, where a district court enters default, the facts alleged in the pleadings will be deemed admitted.”).

NRCP 37(b)(2)(C) gives the district court discretion to strike pleadings and enter a default judgment against a party that fails to obey a discovery order. While a decision to enter such sanctions is generally reviewed for an abuse of discretion, *Young v. Johnny Ribeiro Bldg, Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990), a somewhat heightened standard of review applies when the sanction imposed involves dismissal with prejudice or the entry of default.⁴ *Foster*, 126 Nev. at ___, 227 P.3d at 1048. In *Young*, the Nevada Supreme Court set forth a non-exhaustive list of factors to be considered before a district court dismisses a complaint or enters a default as a discovery sanction. 106 Nev. at 93, 787 P.2d at 780; see also *Foster*, 126 Nev. ___, 227 P.3d at 1048-49 (applying the *Young* factors in the context of the entry of default as a discovery sanction).

In this case, prior to adopting the discovery commissioner’s recommendation, the district court held an evidentiary hearing at which it considered the *Young* factors before deciding to adopt the recommendation and sanction Laura by striking her pleadings and entering a default against her. Thereafter, the district court entered detailed findings of fact

⁴While Laura argues that a de novo standard of review applies in this appeal because the case concerns issues of contract interpretation and because SLS’s fraud allegation must be proven by clear and convincing evidence, that argument lacks merit. Once a default was entered against Laura, the pleaded facts were deemed admitted, *Foster*, 126 Nev. at ___, 227 P.3d at 1049, and the question on appeal becomes whether the district court properly entered case-concluding sanctions under the applicable heightened standard of review. *Young*, 106 Nev. at ___, 227 P.3d at 1048.

and conclusions of law explaining why, in light of the *Young* factors, it had decided to strike Laura's answer and enter a default against her as a discovery sanction.

On appeal, Laura argues, without referencing the *Young* factors, that she should not be sanctioned because her prior attorneys failed to inform her of what was occurring in the case. *See Young*, 106 Nev. at 93, 787 P.2d at 780 (providing that one of the factors to be considered before imposing case-concluding sanctions is "whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney"). The testimony at the evidentiary hearing, however, demonstrated that Laura knew of the lawsuit and agreed to allow Richard Layfield, a Renzi Towers employee, to handle the suit without ever following up with him about the case. Furthermore, the district court's findings of fact note that, even after Laura's prior counsel withdrew, she still failed to meaningfully participate in discovery, and Laura makes no effort on appeal to refute these findings. Under these circumstances, to the extent that Laura attempts to argue that the sanctions unfairly penalized her for the actions of her former counsel, that argument lacks merit.

Laura's remaining appellate arguments emphasize the heightened standard of review applicable when case-concluding sanctions are imposed and Nevada's preference for deciding cases on the merits, which is also one of the factors to be considered before such sanctions are entered, *see Young*, 106 Nev. at 93, 787 P.2d at 780, but she does not

actually discuss any of the remaining *Young* factors.⁵ Among other things, Laura provides no arguments regarding whether her actions were willful, whether respondent would be prejudiced by a lesser sanction, the severity of the sanctions compared to the severity of the discovery violations, the fairness of a lesser sanction, or any of the other remaining *Young* factors, even though the district court entered findings of fact and conclusions of law with regard to those factors. *See id.* Because the arguments actually advanced by Laura on appeal are without merit, and given her failure to address the vast majority of the *Young* factors or the district court's examination of those factors, we conclude that, under the heightened standard detailed in *Young*, the district court did not abuse its discretion in striking Laura's answer and entering a default against her as a discovery sanction. *See id.* at 92, 787 P.2d at 779; *see also Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that we claims that are not cogently argued or supported by relevant authority need not be considered). Accordingly, we affirm the default judgment entered against Laura in this matter.

Docket No. 64278


In the appeal pending in Docket No. 64278, Laura challenges the district court's calculation of post-judgment interest. Specifically, she

⁵Indeed, despite citing the *Young* and *Foster* cases, which both discuss the factors to be considered before case concluding-sanctions are imposed, *see Young*, 106 Nev. at 93, 787 P.2d at 780; *Foster*, 126 Nev. at ___, 227 P.3d at 1048-49, in her appellate briefs, Laura asserts, in her reply brief, that this case presents an opportunity to delineate "what factors are reviewed and what analysis is applied when applying heightened scrutiny to a case which was concluded by a discovery sanction."

argues that the district court improperly held that interest would be calculated at the default rate specified in the second mortgage contract rather than at the lower statutory rate. See NRS 17.130(2) (providing a specified interest rate for all judgments in cases where “no rate of interest is provided by contract”). Laura bases this argument on her allegation that she did not sign a personal guaranty for the second mortgage. As stated above, however, once a default was entered in this case, all facts pleaded in the complaint were deemed admitted, *Foster*, 126 Nev. at ___, 227 P.3d at 1049, which includes the allegation that Laura signed the personal guaranty and is thus bound by the contractual default interest rate specified in the second mortgage contract. Therefore, the district court correctly applied the contractual, rather than statutory, interest rate to the final judgment. See NRS 17.130(2) (stating that the statutory rate only applies when the relevant contract does not provide an interest rate). Under these circumstances, the district court’s order determining how post-judgment interest will be calculated is affirmed.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Joanna Kishner, District Judge
Benjamin B. Childs
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Eighth District Court Clerk