IN THE SUPREME COURT OF THE STATE OF NEVADA

GOLDEN GAMING, INC.,
Appellant/Cross-Respondent,
and
GOLDEN TAVERN GROUP; LUCCA REAL PROPERTY MANAGEMENT; BLAKE L. SARTINI; AND MATTHEW W. FLANDERMEYER,
Cross-Respondents,
vs.
CORRIGAN MANAGEMENT, INC., A NEVADA CORPORATION; BUFFALO INVESTMENTS, INC., A NEVADA CORPORATION; COLONADE INVESTMENTS, INC., A NEVADA CORPORATION; TRUE WEST INVESTMENTS, INC., A NEVADA CORPORATION; THE F.M. AND NANCY L. CORRIGAN TRUST; AND F.M. CORRIGAN,
Respondents/Cross-Appellants.

No. 61696

BLAKE L. SARTINI, AN INDIVIDUAL; AND MATTHEW W. FLANDERMEYER, AN INDIVIDUAL,
Appellants,
vs.
CORRIGAN MANAGEMENT, INC., A NEVADA CORPORATION; BUFFALO INVESTMENTS, INC., A NEVADA CORPORATION; COLONADE INVESTMENTS, INC., A NEVADA CORPORATION; TRUE WEST INVESTMENTS, INC., A NEVADA CORPORATION; THE F.M. AND NANCY L. CORRIGAN TRUST; AND ITS TRUSTEE, F.M. CORRIGAN,
Respondents.

No. 62200

FILED

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

15-09178

ORDER AFFIRMING IN PART, REVERSING IN PART, VACATING IN PART AND REMANDING

These are consolidated appeals and a cross-appeal from a final district court order and a post-judgment order awarding costs and denying attorney fees. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Respondents/cross-appellants, the Corrigans and related entities (the Corrigans), entered into two agreements to sell four Roadrunner Restaurants/Taverns to appellants/cross-respondents Blake Sartini and related entities, including the Golden Tavern Group. These agreements eventually fell apart and each party accused the other of breaching them. The Corrigans ultimately sued Golden Tavern alleging breach of the agreement. Golden Tavern filed counterclaims, alleging that the Corrigans breached the agreement. The Corrigans later amended their complaint, adding Golden Gaming (Golden Tavern's parent company), Blake Sartini individually, and Matthew Flandermeyer individually, as parties. The Corrigans' amended complaint also alleged fraudulent misrepresentation, intentional interference with contractual relations, and civil conspiracy. At a hearing, the district court orally granted partial summary judgment in favor of Flandermeyer, Sartini, and Sartini's related entities on Corrigans' tort claims. The remaining claims were set for trial.

The parties then reached a settlement agreement at a settlement conference held shortly before the trial date. The settlement agreement was signed two days before the district court filed a written order granting partial summary judgment on the Corrigans' tort claims. The settlement agreement included a release provision, along with a

provision stating that Golden Tavern would purchase the Pebble Roadrunner and assume "the existing lease." The parties now dispute which lease the term "existing lease" refers to. Several people signed the settlement agreement, including Sartini on behalf of Golden Gaming as guarantor. Attorney Walter Cannon also signed the agreement on behalf of "defendants and counterclaimants." Although Sartini and Flandermeyer were defendants in the underlying case, the parties now dispute whether Cannon represented Sartini and Flandermeyer in their individual capacities, and whether he was authorized to sign the release on their behalf.

After the conference, issues arose regarding performance of the settlement agreement. The Corrigans filed a motion with the district court to enforce the settlement agreement, and the district court entered an order regarding the scope of the release and the court's interpretation of the term "existing lease." The district court concluded that Golden Gaming was within the scope of the settlement agreement's release, while Sartini and Flandermeyer were not. The district court also concluded that "the existing lease" referred to the lease on Pebble Roadrunner at the time the settlement agreement was signed. Subsequently, Sartini and Flandermeyer sought to recover costs and attorney fees from the Corrigans. The district court granted a prorated amount of costs to Sartini and Flandermeyer, but declined to award attorney fees.

Flandermeyer, Sartini, and Sartini's related entities appealed, arguing that (1) the district court erred when deciding the scope of the release, (2) the district court erred in interpreting the term "existing lease" in the settlement agreement, and (3) the district court abused its

discretion in reducing the claimed costs and declining to award any attorney fees.

The Corrigans and their related entities also appealed, and cross-appealed. Their arguments include that the district court erred (1) when excluding Sartini and Flandermeyer from the scope of the settlement agreement's release, and (2) in granting partial summary judgment on Corrigans' tort claims.

The district court correctly found that Golden Gaming was within the scope of the settlement agreement's release

When reviewing a district court's interpretation of a contract, this court applies a de novo standard of review. *Grisham v. Grisham*, 128 Nev. ___, ___, 289 P.3d 230, 236 (2012); *In re AMERCO Derivative Litigation*, 127 Nev. ___, ___, 252 P.3d 681, 693 (2011) (noting that settlement agreements are contracts, thus contract law applies). Parties will often include a release in their settlement agreement, which "extinguishes claims against the released part[ies]." *Marder v. Lopez*, 450 F.3d 445, 452 (9th Cir. 2006). When reviewing the scope of a release in a settlement agreement, a reviewing court "[seeks] to effectuate the contracting parties' intent." *AMERCO*, 127 Nev. at ___, 252 P.3d at 693. If the release is unambiguous and clear, then "we must construe it from the language contained within it." *Id.* In a release, "[a]n ambiguity exists when a party can identify an alternative, semantically reasonable, candidate of meaning of a writing." *Solis v. Kirkwood Resort Co.*, 114 Cal. Rptr. 2d 265, 269 (Ct. App. 2001).

We conclude that the district court properly found that Golden Gaming was within the scope of the release. The settlement agreement states that the "undersigned parties" are subject to the agreement and the release. On June 13, 2014, the date the settlement agreement was signed,

the district court had not yet entered a written order granting summary judgment in Golden Gaming's favor on the Corrigans' tort claims. As such, Golden Gaming was still a party at the time the settlement agreement was signed. *See Canterino v. Mirage Casino-Hotel*, 118 Nev. 191, 194, 42 P.3d 808, 810 (2002) (noting that "until the entry of a final judgment, the district court remains free to reconsider and issue a written judgment different from its oral pronouncement; thus, only a final judgment has any effect"). Although Golden Gaming only signed the agreement as a guarantor, the plain language of the release still encompasses Golden Gaming because it is one of the parties that signed the agreement. Therefore, the district court did not err in dismissing Golden Gaming's claims against the Corrigans pursuant to the terms of the settlement agreement's release.

An evidentiary hearing is required to determine whether Sartini and Flandermeyer are within the scope of the settlement agreement's release

As discussed above, the release applies to parties who signed the settlement agreement. While Sartini signed the settlement agreement on behalf of Golden Gaming as guarantor, neither Sartini nor Flandermeyer signed the agreement in their individual capacities. However, attorney Walter Cannon signed the agreement on behalf of "defendants and counterclaimants." Because Sartini and Flandermeyer were defendants in the underlying action, the Corrigans argue Cannon's signature binds Sartini and Flandermeyer to the release. Sartini and Flandermeyer argue, however, that Cannon did not represent them in their individual capacities and, therefore, was not authorized to sign the release on their behalf.

From our review of the record, it is unclear whether Cannon either (1) represented Sartini and Flandermeyer in their individual

capacities, or (2) had the authority to release claims on their behalf. If Cannon did have authorization to sign on behalf of Sartini and Flandermeyer, then they are subject to the release. In contrast, if Cannon was not authorized to sign on behalf of Sartini and Flandermeyer, then they are not subject to the release because they did not sign the settlement agreement. Accordingly, we reverse the district court's finding that Sartini and Flandermeyer are outside the scope of the release and remand the issue for an evidentiary hearing on whether Cannon was authorized to sign the settlement agreement on behalf of Sartini and Flandermeyer in their individual capacities.

The district court's order granting partial summary judgment in favor of Sartini and Flandermeyer is vacated and remanded

"This court reviews a district court's grant of summary judgment de novo, without deference to the findings of the lower court." *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). "Summary judgment is appropriate and 'shall be rendered forthwith' when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.'" *Id.* (quoting NRCP 56(c)). "This court has noted that when reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." *Id.*

We conclude that whether Sartini and Flandermeyer are subject to the settlement agreement's release is an issue of material fact that must be resolved prior to deciding if summary judgment is appropriate. If Sartini and Flandermeyer are subject to the release, then the Corrigans' tort claims must be dismissed and deciding the merits of the motion for partial summary judgment will be unnecessary.

Accordingly, because the evidentiary hearing discussed above will address an issue of material fact, we vacate the district court's order granting partial summary judgment in favor of Sartini and Flandermeyer on the Corrigans' tort claims and remand the issue to be decided pending the outcome of the evidentiary hearing.

Similarly, because the district court's order granting partial summary judgment is vacated, the district court's order awarding costs to Sartini and Flandermeyer is also vacated because there is no "prevailing party" at this time. NRS 18.020(3) (providing that "[c]osts must be allowed of course to the *prevailing party* against any adverse party whom judgment is rendered . . . [i]n an action for the recovery of money or damages, where the plaintiff seeks to recover more than $2,500" (emphasis added)).

Golden Gaming lacks standing to appeal the district court's decision regarding the "existing lease"

NRAP 3A(a) provides that "[a] party who is aggrieved by an appealable judgment or order may appeal from that judgment or order, with or without first moving for a new trial." A party is aggrieved "'when either a personal right or right of property is adversely and substantially affected' by a district court's ruling." *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994) (quoting *Estate of Hughes v. First Nat'l Bank*, 96 Nev. 178, 180, 605 P.2d 1149, 1150 (1980)). "[A] substantial grievance . . . includes '[t]he imposition of some injustice, or illegal obligation or burden, by a court, upon a party, or the denial to him of some equitable or legal right.'" *Las Vegas Police Prot. Ass'n Metro, Inc. v. Eighth Judicial Dist. Court*, 122 Nev. 230, 240, 130 P.3d 182, 189 (2006) (quoting *Esmeralda Cnty. v. Wildes*, 36 Nev. 526, 535, 137 P. 400, 402 (1913)).

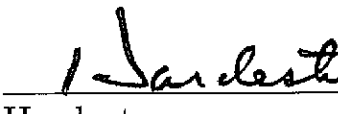
Here, the settlement agreement provides that Golden Tavern must assume the "existing lease" for the Pebble Roadrunner, and the district court ordered Golden Tavern to do so. However, Golden Gaming—which was not ordered to assume the Pebble Roadrunner's lease—is the party appealing the district court's order. Moreover, while Golden Gaming signed as a guarantor under the first two provisions of the settlement agreement, it did not sign as a guarantor under the provision regarding the assumption of the lease. As such, Golden Gaming does not have standing to appeal the district court's order regarding Golden Tavern's assumption of lease, because Golden Gaming was not aggrieved by that portion of the decision. Further, Golden Tavern did not appeal from the district court's order, and its time to do so has passed. *See* NRAP 4(a)(1). Accordingly, we decline to consider Golden Gaming's arguments regarding the lease. *See Mahaffey v. Investor's Nat'l Sec. Co.*, 102 Nev. 462, 463, 725 P.2d 1218, 1218 (1986) (concluding that "a timely notice of [appeal] is mandatory and jurisdictional").

Conclusion

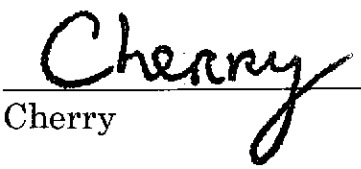
We conclude that (1) the district court correctly found that Golden Gaming was within the scope of the settlement agreement's release, (2) the district court's finding that Sartini and Flandermeyer are outside the scope of the settlement agreement's release is reversed and remanded for an evidentiary hearing, (3) the district court's order granting partial summary judgment in favor of Sartini and Flandermeyer on the Corrigans' tort claims is vacated and remanded, (4) the district court's order awarding costs to Sartini and Flandermeyer is vacated and

remanded, and (5) Golden Gaming lacks standing to appeal the district court's decision regarding the "existing lease."[1] Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART, REVERSED IN PART, VACATED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Kathleen M. Paustian, Settlement Judge
Pisanelli Bice, PLLC
Olson, Cannon, Gormley, Angulo & Stoberski
Bailey Kennedy
Eighth District Court Clerk

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[1]We have considered the parties' remaining arguments and conclude that they are without merit.