

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASMYN K. BAILEY; KRYSTAL V. BAILEY; ROGER CANDELARIA; WINONIA CARTER; ARIDNY LINO CASALS; JASMINE CLARK; SHERRY J. CLARK; TERRY CUTLER; JOYCE JEFFERSON; DARLENE MAYORAL; CRAIG MCQUILLAN; CHRISTOPHER J. MONTGOMERY; PETER PARSONS; KIMBERLIE QUIOCHO; DEON ROSE; VENITA SIMONE; EMILY WEST; GYPSY WINSLOW; AND JOHN DAVID WRIGHT,
Appellants,
vs.
H & B ONE MANAGEMENT, LLC, A NEVADA LIMITED LIABILITY COMPNAY; AND PRIME ASSET MANAGEMENT GROUP, INC., A NEVADA CORPORATION,
Respondents.

No. 64451

FILED

JUN 29 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order granting summary judgment. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

As relevant to this appeal, appellants sued respondents H&B One Management, LLC, and Prime Asset Management Group, Inc., on various tort and contract claims. Appellants are prior residents of Rainwalk Apartments, which was extensively damaged by fire resulting from a tenant's failure to properly extinguish a cigarette. Appellants were not allowed to reenter their apartments following the fire, and eventually their property was stolen, destroyed, or otherwise lost.

Appellants assert respondents' acts or omissions caused their property loss. In their complaint, appellants' claims included that respondents negligently rented an apartment to the tenant who started the fire, unreasonably barred appellants from accessing their apartments following the fire, allowed appellants' lists of valuables to be used to further the theft of appellants' property, and failed to adequately safeguard appellants' property.

Midway through discovery, respondents moved for summary judgment on all claims, arguing the exculpatory clauses in appellants' leases relieved respondents of any liability because a third party started the fire that caused the property loss.¹ Respondents asserted appellants failed to present any evidence to support their claims, and specifically argued appellants failed to show respondents were aware the tenant responsible for the fire had any history of setting fires. Appellants opposed the motion by reiterating the claims made in their complaint and arguing genuine issues of material fact remained regarding those claims. In support of their opposition, they attached their complaint, but nothing more.

The district court granted summary judgment, finding the exculpatory clauses in the leases justified summary judgment because appellants had not shown respondents were negligent in renting to the tenant who started the fire.

¹A majority of the lease agreements were not entered into evidence. Respondents presented an affidavit attesting all tenants signed form leases and all form leases included the exculpatory clauses. Appellants do not contest they each signed a lease agreement. This is sufficient evidence to support the district court's finding the exculpatory clauses existed in each lease.

On appeal, appellants argue the district court erred in granting respondents' motion for summary judgment and dismissing the case in its entirety. We review a grant of summary judgment de novo, without deference to the district court's findings, viewing the facts in the light most favorable to the nonmoving party. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Although here we agree the district court's order was deficient, we hold under the particular facts of this case, summary judgment was appropriate.

Summary judgment enables courts to identify and dismiss claims that are unsupported by evidence. See *Las Vegas Tribe of Paiute Indians v. Phebus*, 5 F. Supp. 3d 1221, 1227 (D. Nev. 2014). "The gist of a summary judgment motion is to require the adverse party to show that it has a claim or defense, and has evidence sufficient to allow a jury to find in its favor on that claim or defense." *Schuck v. Signature Flight Support of Nevada, Inc.*, 126 Nev. 434, 439, 245 P.3d 542, 545 (2010) (quoting *Carmen v. San Francisco Unified School Dist.*, 237 F.3d 1026, 1031 (9th Cir. 2001)).

Although a party moving for summary judgment bears the initial burden of showing the absence of any genuine issue of material fact, the requirements to meet that burden depend upon the burden the nonmoving party would bear should the case proceed to trial. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). When the nonmoving party will bear the burden of persuasion at trial, the moving party satisfies its burden on summary judgment by showing the nonmoving party failed to gather evidence to support its case. *Cuzze*, 123 Nev. at 602-03, 172 P.3d at 134.

Once the moving party has met its burden, “the nonmoving party must transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact.” *Id.* at 603, 172 P.3d at 134. The nonmoving party cannot avoid summary judgment by relying “solely on general allegations and conclusions set forth in the pleadings,” and summary judgment is justified when the nonmoving party fails to set forth specific facts or affidavits showing genuine issues support the claims. *Choy v. Ameristar Casinos, Inc.*, 127 Nev. ___, ___, 265 P.3d 698, 700 (2011).

Here, had this case proceeded to trial, appellants would have borne the burden of proof. Under *Cuzze*, therefore, respondents satisfied their burden on summary judgment by pointing to appellants’ failure to offer facts in support of their case. Although respondents’ arguments focused on a particular claim, respondents did generally argue appellants failed to present sufficient evidence to support any of their claims at trial. Because respondents met their burden, appellants were required to respond with something more than general allegations to avoid summary judgment.

Appellants did not meet their burden. In opposing summary judgment, appellants merely reiterated the allegations made in their complaint and attached, as evidence in support of their opposition, their complaint. Nevada law is well-established that bare allegations, without more, will not enable the opposing party to withstand summary judgment. *See Choy*, 127 Nev. at ___, 265 P.3d at 700. Merely attaching the complaint was insufficient to avoid dismissal. NRCP 56(e) (an opposition to summary judgment must be supported by specific facts). *See also Kerr v. Cohen*, 548 S.E.2d 17, 21 (Ga. Ct. App. 2001) (conclusory allegations in a

complaint will not support an opposition to summary judgment). The complaint contained the same bare allegations appellants made in their opposition to summary judgment, and gave no factual basis to support the opposition. More specifically, appellants provided *no evidence* that could be used to support their claims at trial. Given these facts, the district court did not err in granting summary judgment.

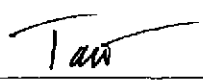
We note NRCP 56(f) allows a party facing summary judgment to move for a continuance of the motion so the opposing party may conduct the discovery necessary to support that party's claims and survive summary judgment. *Choy*, 127 Nev. at ___, 265 P.3d at 700. However, the party must support the request with an affidavit setting forth the particular reasons why the party cannot, without further discovery, present adequate support for its opposition. *Id.* Here, appellants could have moved to continue summary judgment, but they did not do so. Nor does our review of the record reveal any affidavit that would support either the denial of summary judgment or any continuance on the motion.

We agree, however, the district court's order granting summary judgment was deficient. The district court based its decision on the exculpatory clauses in appellants' leases and appellants' failure to present evidence of respondents' alleged knowledge regarding the tenant who started the fire. The order failed to address the many remaining allegations in the complaint or find whether respondents' acts or omissions contributed to any property loss or damage occurring after or separate from the fire. Yet, we may affirm a district court's order if the district court reached the correct result, even if for the wrong reason. *Saavedra-Sandoval v. Wal-Mart Stores*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010). As discussed above, here summary judgment was appropriate

because appellants failed to provide any evidence that could support their claims at trial. *See Wood v. Safeway, Inc.*, 121 Nev. at 731, 121 P.3d at 1030. Under these facts, we will affirm the district court's grant of summary judgment even though the court's order was deficient. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Kathleen E. Delaney, District Judge
Paul H. Schofield, Settlement Judge
Stovall & Associates
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Eighth District Court Clerk