

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RALPH PADILLA, TRUSTEE,
Appellant,
vs.
THE COOPER CASTLE LAW FIRM,
LLP,
Respondent.

No. 65753

RALPH PADILLA, TRUSTEE,
Appellant,
vs.
THE COOPER CASTLE LAW FIRM,
LLP,
Respondent.

No. 66270 ✓

FILED

AUG 3 1 2015

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

ORDER OF AFFIRMANCE

These are consolidated appeals from a district court summary judgment in an action relating to debt collection practices and a post-judgment order awarding attorney fees and costs.¹ Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Appellant Ralph Padilla filed the underlying action, alleging that respondent The Cooper Castle Law Firm, LLP, the trustee on his deed of trust relating to certain real property, had violated NRS 107.080(2) by posting a notice of breach and election to sell that failed to include all of the information required by that statute. Padilla further

¹The clerk of the court shall modify the caption for Docket No. 66270 to conform to the caption on this order.

asserted that the notice violated the United States Fair Debt Collection Practices Act, 15 U.S.C. § 1692e; the Nevada Deceptive Trade Practices Act, NRS 598.092(8); and the Nevada Unfair Trade Practices Act, NRS 598.0953, insofar as it included false information. Specifically, Padilla asserted that the notice falsely stated that he had failed to make an installment payment that had become due on August 1, 2012. The district court granted summary judgment to Cooper Castle and awarded Cooper Castle attorney fees, and these appeals followed.

NRS 107.080(2)

Initially, Padilla contends that Cooper Castle was not entitled to summary judgment because it failed to demonstrate the absence of any genuine issues of material fact with regard to whether the notice of breach and election to sell was deficient under the relevant statute governing such notices. In this regard, NRS 107.080(2) provides that a notice of breach and election to sell must include certain information, such as the names of the note holder, the current beneficiary, and any previous beneficiaries; the amount of default; and a good faith estimate of fees and costs.

In its motion for summary judgment, Cooper Castle asserted that the notice of breach contained all of the statutorily required information, indicating that Padilla would not be able to produce evidence to demonstrate that the notice was deficient. Moreover, the motion states that a copy of the notice was attached as an exhibit, an assertion Padilla does not dispute. In his appendix on appeal, however, Padilla did not include the copy of the notice of breach that was attached to Cooper Castle's motion for summary judgment, and thus, we presume that this

exhibit supported summary judgment in favor of Cooper Castle.² See *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (explaining that, when an appellant's appendix is missing necessary documentation, the court on appeal will "necessarily presume that the missing portion supports the district court's decision").

By pointing out that Padilla could not produce evidence to demonstrate that the notice of breach was deficient, Cooper Castle satisfied its initial burden on the summary judgment motion. See *id.* at 602-03, 172 P.3d at 134 (providing that, when a party moving for summary judgment will not have the burden of persuasion at trial, that party may meet its initial burden of production for a summary judgment motion by "pointing out . . . an absence of evidence to support the nonmoving party's case" (internal quotation marks omitted)). At that point, Padilla was required to demonstrate the existence of a genuine issue of material fact to overcome the summary judgment motion. *Id.* at 603, 172 P.3d at 134.

Padilla, however, did not identify any such fact issue. Indeed, although he asserted in his complaint that none of the requirements of NRS 107.080(2) were met, he failed to make any specific arguments in this regard in his opposition to the motion for summary judgment. Instead,

²In its appendix on appeal, Cooper Castle provided a copy of the notice of breach, which contains some of the information required by NRS 107.080(2), but the last page of the notice seems to have been omitted, such that not all of the information was on the copy provided to this court. Nonetheless, it is appellant's burden to ensure that the record is complete, and thus, we presume the missing portions of the document, which were not provided by Padilla, support the district court's resolution of the underlying matter. See *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007).

Padilla generally asserted that Cooper Castle had failed to meet its initial burden of showing the absence of an issue of material fact as to whether the notice of breach complied with NRS 107.080(2).

We note that, in his opening brief on appeal, Padilla asserts, in the section of the brief addressing attorney fees, that the notice speaks for itself with regard to the failure to comply with the requirements of NRS 107.080(2). In particular, he notes as an example that the amount of the default is not stated in the notice, and he refers to the copy of the notice of default that was attached to his complaint to support this assertion. The copy of the notice of default attached to Padilla's complaint did not state an amount of default, but that copy was also stamped by the Nye County Recorder's Office with the notation that the recorded document included ten pages. Padilla, however, attached only two pages of this document to the complaint. Thus, we cannot conclude that the notice attached to the complaint demonstrated the existence of a material issue of fact with regard to whether the requirements of NRS 107.080(2) were met. And because Padilla did not identify any such question of fact, the district court correctly granted summary judgment to Cooper Castle on this claim. *See Cuzze*, 123 Nev. at 602-03, 172 P.3d at 134.

Unfair debt collection, deceptive trade practices, and unfair trade practices

Next, Padilla contends Cooper Castle failed to demonstrate the absence of a genuine issue of fact with regard to whether the notice contained a false statement, and thus, whether Cooper Castle was entitled to judgment as a matter of law on Padilla's unfair debt collection,

deceptive trade practices, and unfair trade practices claims.³ In this regard, Cooper Castle argues that a false statement was a necessary element underlying each of these claims and that the undisputed facts showed the statements in the notice were truthful as a matter of law, such that it was entitled to summary judgment on each of these claims.

The statement at issue asserted that Padilla had failed to pay “[t]he installment of Principal, Interest, impounds and late fees which became due August 1, 2012.” Padilla asserts there is a genuine issue of fact as to whether this statement is true because he submitted a payment on his loan on August 1, 2012, and that payment was processed by the servicer on August 6, 2012. But Padilla does not dispute that he failed to make payments on his loan in February, March, April, May, and June 2012. He further does not dispute that the deed of trust for his loan required that payments be applied to each periodic payment in the order that they became due.

Thus, based on the undisputed terms of the deed of trust, the payment Padilla made in July 2012 was applied to the delinquent February 2012 payment and the payment he made in August 2012 was applied to the delinquent March 2012 payment. Moreover, Padilla did not produce any evidence to demonstrate the existence of a genuine issue of

³On appeal, as he did below, Padilla contends that Cooper Castle’s summary judgment motion was improperly based on hearsay evidence. But our decision herein is based only on the deed of trust and Padilla’s failure to dispute that he missed the payments for February through June of 2012. As Padilla does not dispute the authenticity of the deed of trust or otherwise argue that it would be inadmissible, his hearsay arguments are not implicated by our decision, and we do not address them further in this order.

fact as to whether any payment made by him was or should have been applied to the payment that became due on August 1, 2012. As a result, under the undisputed facts, the statement that he failed to pay the August 1, 2012, installment was true, and Padilla's unfair debt collection, deceptive trade practices, and unfair trade practices claims all failed as a matter of law. See 15 U.S.C. § 1692e; NRS 598.092(8); NRS 598.0953.

NRCP 56(f)

In addition to arguing that Cooper Castle failed to meet its burden, Padilla contends summary judgment was improper because he had requested an opportunity to engage in discovery under NRCP 56(f), which permits a court to deny a motion for summary judgment or order a continuance if a party demonstrates that he or she needs additional time to obtain evidence to oppose the summary judgment motion. In support of his NRCP 56(f) request, Padilla asserted he needed discovery to obtain evidence showing the servicer of his loan had agreed to allow him to make only his monthly payments while he was disputing certain arrearages. In this regard, Padilla indicated he would obtain his August 2012 payment coupon and testimony from the servicer's employees.

The evidence Padilla asserted he wanted to obtain would not, however, have created an issue of fact with regard to whether the statement in the notice of breach was false. See *Crow-Spieker # 23 v. Robinson*, 97 Nev. 302, 305, 629 P.2d 1198, 1199 (1981) (explaining that parol evidence may not be used to contradict or vary the clear and unambiguous terms of a contract). We therefore conclude that the district court did not abuse its discretion by denying Padilla's request for additional time to respond to Cooper Castle's summary judgment motion. See *Aviation Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 118, 110

P.3d 59, 62 (2005) (“A district court’s decision to refuse [an NRCP 59(f)] continuance is reviewed for abuse of discretion.”).

Attorney fees


Noting that an insurance company was listed as the client on the billing records for the underlying matter, Padilla next contends the district court should have denied Cooper Castle’s request for attorney fees because there was no evidence that Cooper Castle actually incurred attorney fees. In support of its motion for fees and costs, Cooper Castle provided the affidavit of Janice J. Brown, an attorney with Lewis Brisbois Bisgaard & Smith LLP, attesting that Cooper Castle had retained Lewis Brisbois in this matter and had incurred attorney fees for this representation. In light of this affidavit, together with the other evidence demonstrating the work performed by Lewis Brisbois on behalf of Cooper Castle, we conclude the district court did not abuse its discretion by finding that the evidence was sufficient to demonstrate that Cooper Castle had incurred attorney fees. *See Gunderson v. D.R. Horton*, 130 Nev. ___, ___, 319 P.3d 606, 615 (2014) (explaining that a district court’s decision regarding attorney fees is generally reviewed for an abuse of discretion); *see also Logan v. Abe*, 131 Nev. ___, ___, 350 P.3d 1139, 1142 (2015) (“[A] party can incur an expense that was paid on its behalf if the party would have been liable for the expense regardless of the third party’s payment.”).

Finally, with regard to the district court’s conclusion that Cooper Castle was entitled to attorney fees under NRCP 68; we note that the district court considered each of the relevant factors under *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983). Moreover, on the record before us, we cannot conclude that the district court’s findings as to the *Beattie* factors and the ultimate decision to award Cooper Castle

attorney fees were the result of an abuse of discretion. *See Gunderson*,
130 Nev. at ___, 319 P.3d at 615.

Accordingly, for the reasons discussed herein, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Robert W. Lane, District Judge
Robert E. Gaston, Settlement Judge
Bruce R. Mundy
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Nye County Clerk