IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT THOMPSON, MAY THOMPSON, LOUIS PEARL, MARY PEARL, DAVID PEARL, JANET PEARL AND CHRISTOPHER VILLAREALE,

Appellants,

vs.

FIRST AMERICAN TITLE COMPANY OF NEVADA, A BUSINESS ENTITY,

Respondent.

No. 36167

FILED

NOV 09 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order granting summary judgment in an action for breach of contract, negligence, and related claims. The district court granted summary judgment in favor of respondent First American Title Company of Nevada, a business entity, ("FATCO") on all claims. We conclude that summary judgment by the district court was proper.

First, appellants Robert Thompson, Mary Thompson, Louis Pearl, Mary Pearl, David Pearl, Janet Pearl, and Christopher Villareale (collectively "Thompson and Pearl") argue that the district court erred in granting FATCO's motion for summary judgment since, pursuant to NRS 488.1823 and NRS 488.1825, they were not required to "hold a security agreement as a precondition to lien enforcement." Thompson and Pearl also assert that even if FATCO was not engaged by them to prepare documentation for a lender's lien on the boat, FATCO breached a fiduciary duty.

This court conducts a de novo review of an order granting summary judgment.[1] On appeal, this court must determine whether the district court erred in concluding that an absence of genuine issues of material fact justified the granting of summary judgment.[2]

---

[1]See Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992).

[2]See NRCP 56(e); see also Bird v. Casa Royale West, 97 Nev. 67, 68, 624 P.2d 17, 18 (1981).

01-18867

The record reflects that Thompson and Pearl did not require the Bachman Group, a non-party, to execute a security agreement for the boat and they never obtained the title documents required for the Bachman Group to perfect their security interest. The signed escrow instructions did not make the disbursement of funds contingent upon attachment and perfection, nor did they create any legal duty on behalf of FATCO. Thompson and Pearl were not entitled to rely on bare statements in their complaint to create an issue of fact,[3] and they presented no evidence that raised genuine issues of material fact in support of their contention that FATCO breached a duty owed to them. We therefore conclude that the district court was not precluded from entering an order granting FATCO's motion for summary judgment on this ground.

Second, Thompson and Pearl argue that the district court erred by failing to apply the plain wording and mandate of NRS 488.1823, which outlines the procedure for the perfection of a security interest. Specifically, they argue that the plain language of the statute provides the exclusive method for the perfection of a security interest in a boat: imposing a lender's lien by lien notation pursuant to NRS 488.1825. According to Thompson and Pearl, the attachment requirements of U.C.C. Article 9 are not required under the provisions of NRS Chapter 488.

We conclude that the plain language of NRS 104.9302(4) illustrates that security interests in watercrafts are subject to the requirements of Article 9 and are not limited to the provisions of NRS Chapter 488. Therefore, we conclude that NRS 488.1823 and NRS 488.1825 do not preclude the application of NRS 104.9203 to determine attachment of an enforceable security interest to the boat.[4]

Finally, Thompson and Pearl argue that the U.C.C.-1 financing statement signed by the Bachman Group was sufficient to

---

[3]See Dermody v. City of Reno, 113 Nev. 207, 211, 931 P.2d 1354, 1357 (1997).

[4]NRS 104.9203 governs the attachment and enforceability of a security interest while NRS 488.1823 governs the method for perfecting a security interest. Thompson and Pearl fail to distinguish between the initial step of attaching a security interest in the boat and the second step of perfecting the security interest. Therefore, we conclude that Thompson and Pearl's argument that under United States v. ZP Chandon, 889 F.2d 233 (9th Cir. 1989), 42 U.S.C. § 491 preempts NRS 488.1823 lacks merit.

(O)-4892

attach a security interest to the boat. We previously resolved this issue in Love v. Wells.[5] There, we concluded that a financing statement without language demonstrating an intent to create a security interest was insufficient to comply with NRS 104.9203 and to attach a security interest to the collateral.[6] Further, the record reflects that Thompson and Pearl effectively prevented the perfection of the security interest in the boat by failing to require the Bachman Group to execute a security agreement.

Having considered Thompson and Pearl's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.[7]

_______________, J.
Young

_______________, J.
Agosti

_______________, J.
Leavitt

cc: Hon. James C. Mahan, District Judge
Michael E. Kulwin
Morse & Mowbray
Clark County Clerk

---

[5] 96 Nev. 12, 604 P.2d 362 (1980).

[6] See id.

[7] Thompson and Pearl failed to present any evidence that Villareale participated in the loan or sustained any damages. Because Thompson and Pearl did not dispute FATCO's argument to the contrary, we conclude that the district court did not err in finding that Villareale could not state a claim for relief against FATCO.

(O)-4892