IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA GENERAL INSURANCE COMPANY, A NEVADA CORPORATION,
Appellant,
vs.
JESUS LOPEZ AND LOURDES VARELA,
Respondents.

No. 36194

FILED

SEP 11 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Appellant Nevada General Insurance Company (NGIC) appeals from a judgment in a first-party insurance contract dispute, following a jury trial. On appeal, NGIC challenges a pretrial order in which the district court granted respondents Jesus Lopez and Lourdes Varela (the "respondents") partial summary judgment on the issue of compliance with the insurance policy. We conclude that the district court erroneously granted respondents partial summary judgment, and we further conclude that this error nullified the jury verdict.

NGIC contends that the district court erroneously granted respondents partial summary judgment on the issue of compliance with the insurance policy. An appeal from an order granting summary judgment is reviewed de novo.[1] After viewing all evidence and taking every reasonable inference in the light most favorable to the nonmoving party, summary judgment is appropriate when there are no genuine issues

[1]Day v. Zubel, 112 Nev. 972, 977, P.2d 536, 539 (1996).

of material fact, and the moving party is entitled to summary judgment as a matter of law.[2]

The insurance policy provides that the insured—the respondents—had a duty to give "[NGIC] or anyone [it] designates, statements." The district court concluded that because the respondents did not refuse to give a statement directly to NGIC, the respondents "cannot be said to have refused to cooperate," thus respondents were in compliance with the policy. NGIC contends that whether the respondents were in compliance with the policy is a "reasonableness" inquiry, and therefore is a material question of fact not to be determined on summary judgment. We agree.[3] Therefore, we conclude that the district court erred in ruling that, as a matter of law, the respondents were in compliance with the policy because this was an appropriate question for the jury.

We further conclude that this error infected the entire trial because the jury, had it been given the opportunity to decide this issue, might have concluded differently. Thus, a new trial is warranted.

Accordingly, we

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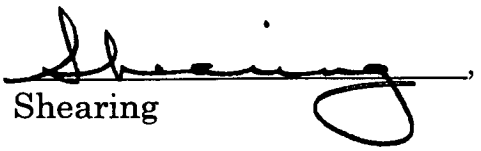
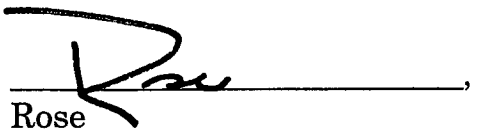
[2]Posadas v. City of Reno, 109 Nev. 448, 452, 851 P.2d 438, 441-42 (1993); see also NRCP 56(c).

[3]See Joynt v. California Hotel & Casino, 108 Nev. 539, 543-44, 835 P.2d 799, 802 (1992) (noting that the reasonableness of a person's conduct is a question of fact to be determined by the trier of fact).

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.



Shearing, J.



Rose, J.

cc: Hon. Sally L. Loehrer, District Judge
Lyles & Hawley
Beckley, Singleton, Chtd./Las Vegas
Parker Nelson & Arin, Chtd.
Clark County Clerk

BECKER, J., concurring in part and dissenting in part:

I concur that the district court's interpretation of the policy was in error. However, I would affirm the granting of the partial summary judgment. While I agree that "reasonableness" is usually a matter left to the jury, under the undisputed facts of this case, as a matter of law, respondents' conduct was not unreasonable and NGIC was not entitled to a declaration that it was relieved of any obligation under the policy of insurance. I would therefore affirm the judgment of the district court.

Becker, J.
Becker