

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL LADNER,
Appellant,
vs.
COURTESY IMPORTS, INC., AND
AMERICREDIT FINANCIAL
SERVICES, INC.,
Respondents.

MICHAEL LADNER,
Appellant,
vs.
COURTESY IMPORTS, INC., AND
AMERICREDIT FINANCIAL
SERVICES, INC.,
Respondents.

No. 35955

FILED

JUL 18 2002

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

No. 36321

ORDER DENYING PETITION FOR REHEARING AND CLARIFYING
ORDER OF AFFIRMANCE

Appellant, Michael Ladner, contends that the district court erroneously entered summary judgment in favor of respondent, Courtesy Imports, Inc. ("Courtesy"), without having actually ruled upon Courtesy's motion for that relief. Although the district court also granted summary judgment in favor of co-respondent, Americredit Financial Services, Inc. ("Americredit"), no substantive claim is lodged in connection with that order. We note that Americredit's motion for summary judgment was unopposed, except as noted later in this order on rehearing.

In our order affirming the judgments below, we found that the judgments were entered on proper notice, that the district court properly ruled upon the merits of Courtesy's motion for summary judgment in appeal no. 35955, and properly awarded costs in appeal no. 36321. We conclude that the correct result was reached and therefore deny rehearing.

However, because Mr. Ladner raises several points with regard to the record generated below, we clarify our initial order as follows.

FACTUAL AND PROCEDURAL CHRONOLOGY

On March 17, 1999, Mr. Ladner filed a civil complaint against Courtesy Imports and Americredit containing several causes of action in connection with a used automobile purchase. The car was seven years old with high mileage. Both respondents answered the complaint. On November 2, 1999, Courtesy filed a motion for summary judgment as to all claims.

On November 24, 1999, counsel for Mr. Ladner filed an opposition to Courtesy's motion for summary judgment. On December 6, 1999, all parties being present through counsel, and Mr. Ladner being in attendance, the district court granted summary judgment in favor of Courtesy on all claims except for those alleging fraud. A written order partially granting summary judgment was filed on December 21, 1999. The order specifically dismissed all claims, except the two causes of action for fraud, deferred rulings on these claims, and gave Mr. Ladner sixty days to conduct discovery. A status check was set for February 7, 2000.

On December 29, 1999, Americredit filed its separate motion for summary judgment. This motion was granted in open court on January 24, 2000, and the district court clerk filed the written order awarding summary judgment to Americredit on the same date. No opposition to the motion was filed, and neither Mr. Ladner nor his counsel appeared at this hearing. Given the deferred ruling on the unresolved portion of Courtesy's separate motion, no action was taken by the district court with respect to that application at that time.

On February 7, 2000, the district court held the status check, at which time Mr. Ladner's counsel indicated that no discovery had been

conducted and requested an additional sixty days so that Mr. Ladner could raise the funds to pay his counsel for this effort. The district court gave Mr. Ladner an additional thirty days to conduct discovery on the fraud claims and re-scheduled the status check for March 6, 2000. A transcript of the February 7, 2000, status check confirms the district court's instruction that no further proceedings would be necessary in the event no further discovery was initiated on behalf of Mr. Ladner. Mr. Ladner was sanctioned \$150 at that proceeding.

On March 6, 2000, the matter came on for a status check but was taken off calendar due to non-appearance by any of the parties.

On March 9, 2000, Mr. Ladner filed a document entitled "motion for reconsideration before final entry of order and motion to request admissions from Americredit." Mr. Ladner filed a separate motion on the same date for extension of time to seek new counsel and "cancel previously scheduled court appearance on March 8, 2000." These motions were designed to stop the entry of summary judgment, but this gambit was unsuccessful.¹

The district court signed the order granting Courtesy's motion for summary judgment on the fraud claims on March 16, 2000, and the

¹On rehearing, Mr. Ladner also claims that his "motion to supplement the record on appeal" was granted at the "court hearing," that he submitted an order granting this motion, but that the district court signed a competing order denying the motion submitted by Courtesy. We see nothing in the motion to supplement that compelled revival of the claim against Americredit. Likewise, nothing in the separate motion for additional time to hire new counsel demonstrates any error justifying reversal of the judgment below in favor of either Courtesy or Americredit. In any event, Mr. Ladner expressly indicated his non-opposition to entry of judgment in favor of Americredit prior to the January 24, 2000, hearing on that application.

order was filed March 20, 2000. The order noted the original hearing of December 6, 1999, and the sixty-day grace period for Mr. Ladner to conduct discovery in support of his fraud claim. However, the district court order also notes that:

The parties having appeared on January 24, 2000, for a status check on discovery at which point it was determined that Plaintiff had elicited no further discovery. Defendant's motion for summary judgment having been restated in open court at the hearing on January 24, 2000, and the court determining that as matters then stood, Plaintiff had failed to present any competent items necessary to defeat said summary judgment motion. Upon Plaintiff's request, the Plaintiff was granted thirty days from January 24, 2000, in which, again, to undertake discovery to attempt to elicit facts in support of his second and/or third cause of action. As of the date hereof [March 16, 2000], no further discovery having been undertaken by Plaintiff, and the court being otherwise fully advised in the premises,

....

IT IS HEREBY ORDERED AND ADJUDGED:

1. Plaintiff's second and third cause [sic] of action, and therefore Plaintiff's Complaint, is dismissed in its entirety with prejudice, and Defendant [Courtesy] is granted a summary judgment thereon
2. Defendant may tax costs.

(Emphasis added.)

On March 21, 2000, Courtesy filed its memorandum claiming costs, as the prevailing party, in the amount of \$501.38. On March 27, 2000, Mr. Ladner's counsel was allowed to withdraw, and on April 17, 2000, the district court denied Courtesy's motion for attorney fees.

Mr. Ladner appeals entry of summary judgment in appeal no. 35955 and the award of costs in appeal no. 36321. We have consolidated both of these appeals for decision.

CONTENTIONS ON REHEARING

Mr. Ladner primarily complains that summary judgment was entered in favor of Courtesy without any ruling on the summary judgment motion by the district court. Omitted from his petition on rehearing is the fact that all of the claims, except the claims for fraud, were explicitly dismissed in open court per Courtesy's original application. He correctly notes, however, that the final order granting summary judgment erroneously recites the procedural history of the matter.² Mr. Ladner also contends on rehearing that the district court committed error in its award of costs because of the erroneous order granting summary judgment in favor of Courtesy. He also argues that Courtesy's costs were improperly awarded in the absence of a formal motion.

DISCUSSION

Contrary to the March 20, 2000, order granting summary judgment to Courtesy, the January 24, 2000, hearing did not at all relate to Courtesy's summary judgment application. The status conference to which this order refers actually took place on February 7, 2000, at which time the extension of thirty days to conduct more discovery was granted until another status check could be conducted on March 6, 2000. The

²Mr. Ladner also takes issue with the twenty-eight rather than thirty-day time period between the two status conferences. The use of the thirty-day extension was to give him approximately one month to perform discovery on the fraud claims. The two-day variance is not grounds for attacking the judgment on appeal.

district court minutes reflect that no one appeared on that date and the matter was taken off calendar.

The record confirms that there never was a ruling in open court on the remainder of Courtesy's motion for summary judgment. However, the record contains a motion to supplement record filed by Courtesy on May 17, 2000. The supplement accurately notes that the original motion was heard and partially granted on December 6, 1999, that Mr. Ladner was given sixty days to conduct discovery on the remaining fraud claims, that a status conference took place on February 7, 2000, at which time no discovery had been undertaken, that an additional thirty days for that purpose was granted, and that no discovery was undertaken during the additional thirty-day discovery period. Courtesy's motion to supplement notes that the final summary judgment in favor of Courtesy was actually granted on March 16, 2000, after counsel for Courtesy sent a letter dated March 15, 2000, to the district court inquiring whether a new motion would be required. It thus appears that Mr. Ladner never performed the discovery in aid of his opposition to the unresolved fraud claims³ within the time frames set by the district court (by either February 7, 2000, or March 6, 2000, after being granted additional time to perform the discovery).

Although Mr. Ladner correctly notes that Courtesy's summary judgment motion was not granted in January 2000, it is evident that the district court intended to grant the motion in March 2000, because of Mr. Ladner's failure to perfect his opposition. The transcript of the February

³As noted, the formal order granting Courtesy partial summary judgment was filed on December 21, 1999.

7, 2000, hearing recites that no further proceedings would be necessary if Mr. Ladner failed to conduct the discovery on the claims of fraud.⁴


Courtesy's motion to supplement the record along with the February 7, 2000, transcript clears up the discrepancies identified by Mr. Mr. Ladner. We therefore conclude that summary judgment was properly entered, albeit with an inaccurate recitation of the procedural history of the case.


CONCLUSION

We hereby deny rehearing in appeal no. 35955, but clarify our prior order of affirmance as set forth above. In light of our disposition of appeal no. 35955, the petition for rehearing is denied as it relates to appeal no. 36321.⁵

It is so ORDERED.


_____, J.
Maupin


_____, J.
Agosti


_____, J.
Leavitt

⁴The written order filed December 21, 1999, granting partial summary judgment in favor of Courtesy indicated that Courtesy could renew its motion on the remaining fraud claims after the discovery period was concluded. However, the district court orally requested at the February 7, 2000, status check that a written order in connection with that proceeding be submitted reflecting that no further briefing would be required if the discovery accorded Mr. Ladner was not accomplished. This request was sufficient to alert the parties to the fact that no further briefing would be necessary if Mr. Ladner failed to conduct the discovery.

⁵A formal motion for costs was unnecessary because such awards are mandatory to the prevailing party. See NRS 18.020.

cc: Hon. Nancy M. Saitta, District Judge
Michael Mr. Ladner
Kummer Kaempfer Bonner & Renshaw
Nersesian & Sankiewicz
Clark County Clerk