

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GARY L. ST. JOHN,
Appellant,
vs.
JACK M. FOX,
Respondent.

No. 67907

FILED

MAR 21 2016

TRACIE K. LINDEMAN
CLERK OF APPEALS COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a grant of summary judgment in favor of the defendant. Second Judicial District Court, Washoe County; Lidia Stiglich, Judge.

On appeal, we consider whether the district court erred by granting summary judgment in favor of respondent Jack M. Fox on Gary St. John's claim for breach of the implied covenant of good faith and fair dealing,¹ and by denying St. John's NRCP 56(f) request for further discovery regarding the reasonableness of respondent Jack M. Fox's legal fee.² We conclude the district court did not err.³

We review the grant of summary judgment de novo, considering the evidence in the light most favorable to the nonmoving party. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029

¹St. John's complaint included several causes of action, all of which the district court disposed of through summary judgment. On appeal, St. John contests only the dismissal of this particular claim.

²We have carefully considered St. John's remaining arguments and conclude they are without merit.

³We do not recount the facts except as necessary to our disposition.

(2005). Summary judgment is proper where no genuine issue of material fact exists. *Id.* A breach of the implied covenant of good faith and fair dealing occurs “[w]hen one party performs a contract in a manner that is unfaithful to the purpose of the contract and the justified expectations of the other party are thus denied.” *Hilton Hotels Corp. v Butch Lewis Prod., Inc.*, 107 Nev. 226, 234, 808 P.2d 919, 923 (1991). Thus, the parties must not “do anything to destroy or injure the right of the other [party] to receive the benefits of the contract” or prevent or hinder the other party’s ability to perform the contract. *Id.* at 234, 808 P.2d at 9223.


Here, St. John argues Fox’s legal fee involving criminal representation is excessive. St. John does not and has never argued Fox interfered with the contract, did not deliver the benefits St. John expected, or was unfaithful to the purpose of the contract. To the contrary, the record reflects that Fox fully performed his duties under the contract. As agreed to in the contract, Fox represented St. John “at the trial level” in the criminal cases pending against him in both Nevada and California, and was able to get all but one charge dismissed; and the charge was reduced to a lesser charge ultimately. Fox further negotiated a plea agreement for St. John, by which St. John received the minimum sentence for his negotiated plea. Because St. John did not show how, under these facts, Fox breached the implied covenant of good faith and fair dealing, the district court did not err in granting summary judgment.


Neither did the district court err by refusing St. John’s NRCP 56(f) request for further discovery. We review a district court’s refusal of an NRCP 56(f) continuance for an abuse of discretion. *See Francis v. Wynn Las Vegas, LLC*, 127 Nev. ___, ___, 262 P.3d 705, 715 (2011). A continuance under Rule 56(f) is appropriate where further discovery will

enable the party opposing summary judgment to show a genuine issue of material fact exists. *Id.*, at ___, 262 P.3d at 714; *Bakerink v. Orthopaedic Assocs. Ltd.* 94 Nev. 428, 431, 581 P.2d 9, 11 (1978). Here, however, St. John wishes to conduct further discovery on the reasonableness of Fox's legal fee. But, the reasonableness of Fox's fee is irrelevant to the issue of whether Fox breached the implied covenant of good faith and fair dealing. Because further discovery regarding the basis of Fox's fee would not uncover a genuine issue of material fact, the district court did not err by refusing to grant a continuance for further discovery. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Lidia Stiglich, District Judge
Wm. Patterson Cashill, Settlement Judge
Carl M. Hebert
Lemons, Grundy & Eisenberg
Washoe District Court Clerk