

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LARRY TURNER, AN INDIVIDUAL,  
Appellant,  
vs.  
SBSS HOLDINGS, LLC, A NEVADA  
LIMITED LIABILITY COMPANY,  
Respondent.

No. 67315

**FILED**

**MAY 09 2016**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court judgment awarding damages in a breach of contract action. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Respondent SBSS Holdings, LLC asserted claims against its former tenant and two lease guarantors arising from the tenant's failure to pay rent for three office suites. One of the guarantors—appellant Larry Turner—appeared and participated in the action, whereas defaults were entered against the tenant and the second guarantor. In accordance with NRCP 16.1, SBSS disclosed a list of individuals likely to have discoverable information, a list of relevant documents, and copies of the documents listed; SBSS did not, however, include a computation of damages in the text of its disclosures. Among the documents produced were tenant ledgers detailing amounts SBSS claimed were due under the lease agreement. Turner filed a motion for summary judgment in which he argued that, as a sanction for SBSS's failure to provide a computation of damages as required by NRCP 16.1(a)(1)(C), SBSS should not be permitted to introduce evidence of its damages and thus SBSS's claims must fail. SBSS maintained that although there was "technical non-compliance in the initial disclosures," the failure was harmless as

damages in a breach of lease case are readily ascertained and the tenant ledgers set forth the amounts SBSS claimed were due. At the combined hearing on Turner's motion and SBSS's competing motion for summary judgment, the district court concluded that there were genuine issues of material fact and the matter would proceed to trial.<sup>1</sup> At trial, Turner stipulated to the admission of SBSS's exhibits, and the district court heard testimony regarding SBSS's damages over Turner's objection. After trial, the district court entered judgment in favor of SBSS and against all three defendants on SBSS's breach of contract claim in the principal amount of \$183,816.58.<sup>2</sup>

On appeal, Turner argues the district court erred by declining to exclude evidence of SBSS's damages because SBSS's failure to comply with NRC 16.1(a)(1)(C) was not harmless and sanctions were appropriate.<sup>3</sup> This court reviews a district court's order regarding sanctions for an abuse of discretion. *See Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 243, 249, 235 P.3d 592, 596 (2010).

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<sup>1</sup>Because the district court's written order is not included in the record, we presume the order supports the district court's decision not to sanction SBSS. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007).

<sup>2</sup>We do not recount the facts except as necessary to our disposition.

<sup>3</sup>Turner also argues that the district court erred as a matter of law by concluding that SBSS complied with NRC 16.1(a)(1)(C); however, there is no indication in the record that the district court so concluded, particularly in light of SBSS's concession that there was "technical non-compliance" with the rule. Accordingly, we consider only whether the district court abused its discretion when it declined to sanction SBSS.

Under NRCP 16.1(a)(1)(C), a party must, without awaiting a discovery request, provide “[a] computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary matter . . . on which such computation is based, including materials bearing on the nature and extent of injuries suffered . . . .” “If an attorney fails to reasonably comply with any provision of [NRCP 16.1] . . . the court, upon motion or upon its own initiative, shall impose upon a party or a party’s attorney, or both, appropriate sanctions in regard to the failure(s) as are just . . . .” NRCP 16.1(e)(3). NRCP 37(c)(1) further provides that “[a] party that without substantial justification fails to disclose information required by Rule 16.1 . . . is not, unless such failure is harmless, permitted to use as evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed.”


Here, SBSS conceded that it failed to provide a computation of damages in the text of its NRCP 16.1 disclosures. However, Turner was on notice from the outset of the case that SBSS sought to recover amounts due under the lease and guaranty agreements, and SBSS disclosed tenant ledgers setting forth the amounts SBSS believed were owed. In addition, SBSS included a damages calculation in its request for exemption from arbitration, and SBSS conducted discovery regarding the amounts due under the lease and the information set forth in the tenant ledgers. Given these facts, we cannot conclude that the district court abused its discretion


when it declined to exclude evidence of SBSS's damages as a sanction.

We therefore,

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Susan Johnson, District Judge  
Craig A. Hoppe, Settlement Judge  
Chasey Law Offices  
Garg Golden Law Firm  
Eighth District Court Clerk