

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MALCO ENTERPRISES OF NEVADA,
INC.,
Appellant,
vs.
CENTURY TOWING, INC.; STEVE
DALE JANOVITCH; AND LINDA
MICHELLE JANOVITCH,
Respondents.

No. 73934

FILED

JUL 27 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

Malco Enterprises of Nevada, Inc., appeals from an order granting summary judgment. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Malco Enterprises of Nevada, Inc., doing business as Budget Rent A Car & Sales (Malco),¹ sued Century Towing, Inc. (Century) and Steve and Linda Janovitch after Century towed and stored Malco's rental car, subsequently sold the car to itself at public auction, and thereafter sold the car to the Janovitches. Century towed the car at the request of Nellis Air Force Base police, who believed the car had been abandoned. Century obtained Malco's name and address from the Department of Motor Vehicles (DMV) and mailed Malco notice of Century's towing and storage lien and its intent to sell the car at auction. Century sent the notice by certified mail; Malco did not sign any of the return receipts and one letter was returned undeliverable. Century then published notice of the auction in the Nevada Legal News. Thereafter, Century held the auction and purchased the car

¹Chase Bank was also a plaintiff in the lawsuit below, but is not a party on appeal.

for the price of its lien, \$2,360. Century then sold the car to the Janovitches for \$13,512.50.

Malco sued in district court, asserting causes of action against Century and the Janovitches for conversion, interference with prospective economic advantage, negligence, replevin, and unjust enrichment. Century moved for partial summary judgment, arguing it provided Malco with notice and followed the proper procedure to sell the car at auction and thereafter sell the car to the Janovitches. Malco countered that Century sent the notice to the wrong street addresses and that under NRS 108.272(1) Malco never received notice of the tow, Century's lien, or the public auction. More specifically, Malco argued that Century and/or the DMV knew or should have known Malco's current physical business location was different from those addresses provided by the DMV. Malco also requested additional time to conduct discovery under NRCP 56(f). Malco argued that Century had towed other rental vehicles to Malco's correct physical address and therefore, Century had actual knowledge that Malco's last known address was not at the physical location given by the DMV, so Century should have sent the notice to that known address. Century argued in reply that even if the DMV supplied inaccurate street addresses, Century also sent the notice to Malco's P.O. Box, which was a valid mailing address for Malco. The district court agreed with Century and granted summary judgment, dismissing the claims against Century and entering judgment for the Janovitches as bona fide purchasers. The court also denied Malco's NRCP 56(f) request for additional discovery time.²

²We do not recount the facts except as necessary to our disposition.

On appeal, Malco argues the district court erred by granting summary judgment.³ Malco primarily contends that summary judgment was improper because questions of fact remain as to whether Century provided reasonable notice pursuant to NRS 108.272(1).⁴ As set forth below, we agree summary judgment was inappropriate as to Century. But, we conclude the district court properly granted summary judgment in favor of the Janovitches, as they are “innocent third part[ies]” under NRS 108.350 and entitled to keep the car.

We review a district court’s order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence “must be viewed in a light most favorable to the nonmoving party.” *Id.*

³Malco further argues the district court abused its discretion by denying Malco’s NRCP 56(f) request for additional discovery. In light of our disposition, we need not address this argument.

⁴Malco further argues that the car’s sale to Century is void because Century failed to provide the DMV with prior notice of the auction, Century failed to specify the address of the auction in its newspaper notice, and Century’s purchase price was grossly inadequate. In light of our disposition, we need not address these issues. However, we note that NRS 108.310(1)(b); NAC 108.100; *National Tow & Road Service, Inc. v. Integrity Insurance Co.*, 102 Nev. 189, 717 P.2d 581 (1986), and the DMV’s own instructions, require a towing company who asserts a towing and storage lien to follow certain procedures before selling the car at auction. The record on appeal does not show that Century complied with those procedural requirements.


We agree under these facts that Century is not entitled to summary judgment as a matter of law on the claims asserted in Malco's complaint. NRS 108.272(1) requires a lien claimant to give notice of the lien to the property owner "by registered or certified letter addressed to the last known place of business." The evidence viewed most favorably to Malco demonstrates that a genuine issue of material fact remains as to whether Century knew or should have known of Malco's current physical address and, by extension, whether Century provided reasonable notice by mailing its notice to the addresses supplied by the DMV. Importantly, Malco presented evidence that the DMV was aware of its current address and had been corresponding with Malco at that address. The certified mail receipts were returned unsigned and, in one case, undeliverable. Malco is a rental car company, and Malco's current physical address is readily available to anyone who searched for the business. Under these facts, in the light most favorable to Malco, it is not clear that as a matter of law Century sent notice to Malco's "last known place of business" pursuant to NRS 108.272(1).⁵ This question of whether the notice here was reasonable is more properly left to the trier of fact. Therefore, the district court erred by granting summary judgment as to Century.

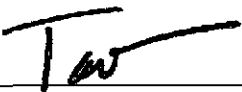
We next address whether the district court properly concluded the Janovitches are entitled to summary judgment on all claims against them. NRS 108.350 states that nothing in "NRS 108.270 to 108.367, inclusive" prevents an interested person from contesting the validity of a

⁵Although facts show Century mailed notice to Malco's P.O. Box, which Malco listed as its mailing address, questions of fact remain as to whether Century knew or should have known that this was Malco's last known address as it is an ongoing rent-a-car business. Thus, whether the notice was reasonable is a question for the trier of fact.

lien, but "after a sale has been made to an innocent third party, the lien claimant is solely responsible for loss or damage occasioned the owner . . . by reason of failure of the lien claimant to proceed in the manner provided in those sections." Malco argues that the Janovitches are not protected as bona fide purchasers because Century's title was void. We disagree. Malco does not show why the Janovitches, who paid \$13,512.50 for the car, are not innocent third parties under NRS 108.350, where no facts suggest they engaged in any wrongdoing.⁶ We therefore conclude that, pursuant to NRS 108.350, the district court correctly determined that the Janovitches are entitled to keep the car as bona fide purchasers even if the sale to Century is void. Accordingly, we

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


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

⁶We note, however, that this case is distinguishable from both *Alamo Rent-A-Car, Inc. v. Mendenhall*, 113 Nev. 445, 937 P.2d 69 (1997) and *National Tow & Road Service, Inc. v. Integrity Insurance Co.*, 102 Nev. 189, 717 P.2d 581 (1986). Neither of those cases addressed the effect of NRS 108.350 where the plaintiff challenges the validity of the lien sale on the basis that the lien claimant did not comply with the relevant provisions of NRS Chapter 108, and the lien claimant sells the car to an innocent third party before the plaintiff claims any right to the car.

cc: Hon. Joseph Hardy, Jr., District Judge
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