

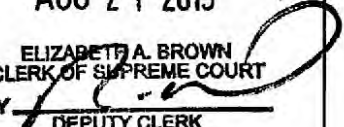
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RONALD HILLMAN,
Appellant,
vs.
SANTA BARBARA HOMEOWNERS
ASSOCIATION, A DOMESTIC NON-
PROFIT COOP CORPORATION,
Respondent.

No. 75390-COA

FILED

AUG 21 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Ronald Hillman appeals from a judgment entered following a jury verdict, certified as final under NRCP 54(b). Eighth Judicial District Court, Clark County; Joanna Kishner, Judge.

This case arises from respondent Santa Barbara Homeowners Association's foreclosure sale of Hillman's residential property.¹ Years after Hillman purchased the property at issue, he fell behind on his HOA dues to Santa Barbara. Santa Barbara then began foreclosure proceedings on the property, but it eventually reached a payment plan with Hillman. Later, when Hillman failed to satisfy the amount due under the payment plan, Santa Barbara, through its collections agency Alessi & Koenig, sent Hillman a notice of the foreclosure sale with a date by which he would need to make a payment to avoid the foreclosure.

During trial, the parties disputed the contents of the notice-of-sale letter that was sent to Hillman, and this was the central issue in the case. Hillman alleged that Alessi sent him a letter stating that October 10, 2012, was the last payment date. Santa Barbara contested the authenticity of that letter and presented testimony that Alessi had no record of it and that

¹We do not recount the facts except as necessary to our disposition.

it would have been against Alessi's policy to list such a date given the earlier date of the foreclosure sale. Santa Barbara testified that the actual letter that was sent identified October 2, 2012, as the final payment date and presented testimony that Alessi had a note in its files stating as much.

Ultimately, the sale went forward on October 3, 2012, and Alessi informed Hillman that the sale was final. The dispositive issue at trial was, therefore, whether the jury believed that the October 3 sale was conducted before or after the deadline (either October 2 or October 10) identified for final payment.

Hillman alleged that, following the sale, he had a mental breakdown which resulted in him being admitted to a medical center for three days. Then, Hillman returned to Las Vegas and brought a check to Alessi's office for the amount of the final payment, which it accepted but later returned to him. Thereafter, the Trustee's Deed Upon Sale was recorded conveying the property to the Canalino Drive Trust. Eventually, Hillman brought an action against Santa Barbara, and during trial the district court granted Santa Barbara's motion for directed verdict on Hillman's negligent misrepresentation claim. On the remaining claims, the jury rendered a verdict in Santa Barbara's favor.

On appeal, Hillman argues that the district court erred when it granted Santa Barbara's motion for directed verdict, and that he presented uncontroverted evidence supporting his claims for breach of fiduciary duty, negligence, and negligent infliction of emotional distress claims, such that the jury's verdict is necessarily contrary to the evidence.

At the close of Hillman's case-in-chief, the district court entered a directed verdict on the negligent misrepresentation claim on the grounds that Hillman's payment plan with Santa Barbara did not qualify as the kind

of “business transaction” required for the tort. We need not consider whether the district court was correct that no “business transaction” occurred between Hillman and Santa Barbara because any such mistake was harmless. To warrant reversal, an error must be prejudicial and not merely harmless. See *Khoury v. Seastrand*, 132 Nev. 520, 539, 377 P.3d 81, 94 (2016); NRCP 61. “To establish that an error is prejudicial, the movant must show that the error affects the party’s substantial rights so that, but for the alleged error, a different result might reasonably have been reached.” *Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010).


Here, the theory that Hillman advanced for his negligent misrepresentation claim was the same as that submitted to the jury for his negligence and breach of fiduciary duty claims—that Santa Barbara failed to exercise reasonable care by misrepresenting the final payment date. Moreover, Hillman relied on the same evidence of competing letters that was submitted to the jury. Because the jury found in favor of Santa Barbara on Hillman’s negligence and breach of fiduciary duty claims, and his negligent misrepresentation claim would have advanced the same theory and the same evidence, he cannot show that a different result might have reasonably been reached. See *Yoshida’s Inc. v. Dunn Carney Allen Higgins & Tongue LLP*, 356 P.3d 121, 135 (Or. App. 2015) (recognizing that the erroneous grant of a directed verdict does not require reversal when “the verdict on claims that were submitted to the jury demonstrates that the jury necessarily would have rejected one or more elements of the claim that was taken away from it”). Therefore, even if there was error, it was harmless.


Next, we consider whether there was sufficient evidence to support the jury’s verdict. While Hillman now challenges the sufficiency of the evidence underlying the jury’s verdict, we note that he did not move for


a directed verdict below. When a party fails to move for a directed verdict or to renew the motion after the jury returns a verdict, we generally will not review sufficiency-of-the-evidence arguments. *Price v. Sinnott*, 85 Nev. 600, 607, 460 P.2d 837, 841 (1969). The exception to this general rule is when there is plain error or a showing of manifest injustice. *Id.* Under this standard, this court will reverse only when there is “no substantial conflict in the evidence upon any material point, and the verdict or decision [is] against such evidence upon such point, or where the verdict or decision strikes the mind, at first blush, as manifestly and palpably contrary to the evidence.” *Id.* at 608, 460 P.2d at 842. Here, there was a serious conflict on the central issue in the case—the differing accounts between the parties regarding what letter Santa Barbara sent to Hillman. When competing accounts of what happened exist, like in this case, the jury is left to weigh the evidence. *See Fox v. Cusick*, 91 Nev. 218, 221, 533 P.2d 466, 468 (1975). Accordingly, Hillman cannot show that the jury’s verdict was in plain error or resulted in a manifest injustice.

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Tao


_____, C.J.
Gibbons


_____, J.
Bulla

cc: Hon. Joanna Kishner, District Judge
The Law Office of Mike Beede, PLLC
Boyack Orme & Anthony
Eighth District Court Clerk