

IN THE SUPREME COURT OF THE STATE OF NEVADA

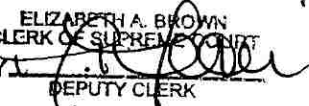
VIRTUS COMMERCIAL, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,
Appellant,
vs.
J.A. KENNEDY REAL ESTATE
COMPANY, A NEVADA
CORPORATION,
Respondent.

VIRTUS COMMERCIAL, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,
Appellant,
vs.
J.A. KENNEDY REAL ESTATE
COMPANY, A NEVADA
CORPORATION,
Respondent.

No. 84040

FILED

APR 21 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

No. 84461

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

These are consolidated appeals from a district court order granting summary judgment and postjudgment order awarding attorney fees. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Appellant Virtus Commercial, LLC (Virtus) is a licensed real estate brokerage. In 2011, one of Virtus's clients, Universal Health Services, Inc. (UHS), sought to purchase land for a hospital in Henderson, Nevada. One location that Virtus presented to UHS was located on St. Rose Parkway and Bermuda Drive in Henderson (the Property). Respondent J.A. Kennedy Real Estate Company (JA) was the real estate brokerage for the owners of the property.

Virtus and JA discussed the property and JA sent a proposed commission agreement to Virtus in 2012. The agreement provided that JA would pay Virtus a commission of five percent upon the sale of the property. The following day, Virtus sent an email seeking a higher rate of commission. JA also alleges that Virtus sought to extend the scope of the agreement to any new parcel numbers assigned to the property. JA did not respond to Virtus's email. After 2013, there were no further communications between JA and Virtus. JA alleges that Virtus did not sign the proposed agreement until 2020.

In 2020, Valley Health System, an affiliate of UHS, entered into an agreement to purchase property for \$36,500,000. After seeing the sale in the newspaper, Virtus filed a complaint against JA, seeking the commission from the sale. In response, JA filed a motion to dismiss, or alternatively, a motion for summary judgment. Virtus opposed the motion, contending that summary judgment was improper because genuine issues of material fact existed. In support of its opposition, Virtus verified its complaint but otherwise did not attach any affidavits or declarations.

The district court denied JA's motion to dismiss but granted JA's motion for summary judgment, concluding that there was no contract between Virtus and JA that would give rise to the payment of a commission and that no genuine issues of material fact existed. After prevailing on summary judgment, JA brought a motion for attorney fees, which the district court granted. Virtus now appeals the order granting summary judgment, contending that a genuine issue of material fact existed. Virtus also appeals the order granting attorney fees, arguing that the district court abused its discretion in awarding fees.

“This court reviews a district court’s grant of summary judgment de novo.” *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is appropriate “when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law.” *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007) (internal quotation marks omitted). Once the movant makes such a showing, the burden shifts to nonmovant to come forward with “specific facts that show a genuine issue of material fact.” *Id.* at 603, 172 P.3d at 134.

Here, Virtus failed to demonstrate that a genuine issue of material fact exists. Indeed, Virtus did not provide any specific facts with citations to the record to demonstrate that material facts are genuinely in dispute. *See* NRCP 56. Virtus could have brought a motion under NRCP 56(d) if it could not “present facts essential to justify its opposition,” but it did not.

Accordingly, we conclude that the district court did not err in granting summary judgment. *See, e.g., Boesiger v. Desert Appraisals, LLC*, 135 Nev. 192, 194, 444 P.3d 436, 439 (2019) (stating that the nonmoving party must “do more than simply show that there is some metaphysical doubt as to the operative facts” and “rely[] upon more than general allegations and conclusions set forth in the pleadings” to survive summary judgment (internal quotation marks omitted)); *see also Schuck v. Signature Flight Support of Nev., Inc.*, 126 Nev. 434, 438, 245 P.3d 542, 545 (2010) (noting that “requiring the district court to search the entire record, even though the adverse party’s response does not set out the specific facts or

disclose where in the record the evidence for them can be found, is unfair.” (quoting *Carmen v. San Francisco Unified Sch. Dist.*, 237 F.3d 1026, 1031 (9th Cir. 2001)).


Next, Virtus contends that the district court abused its discretion in awarding attorney fees. We disagree. The decision to award attorney fees and costs is within the sound discretion of the district court and will not be overturned “absent a manifest abuse of discretion.” *Capanna v. Orth*, 134 Nev. 888, 895, 432 P.3d 726, 734 (2018) (internal quotation marks omitted).

The district court determined that Virtus’s claims were brought without reasonable grounds. We conclude that the district court did not abuse its discretion in this determination, as Virtus was aware of facts that made its claims unreasonable. See *Semenza v. Caughlin Crafted Homes*, 111 Nev. 1089, 1095, 901 P.2d 684, 688 (1995) (noting that this court recognizes that “a claim is groundless if the complaint contains allegations which are not supported by any credible evidence at trial”); *Bergmann v. Boyce*, 109 Nev. 670, 675, 856 P.2d 560, 563 (1993) (explaining that an analysis under NRS 18.010(2)(b) “depends upon the actual circumstances of the case rather than a hypothetical set of facts favoring plaintiff’s averments”), *superseded by statute on other grounds as recognized in In re DISH Network Derivative Litig.*, 133 Nev. 438, 451 n.6, 401 P.3d 1081, 1093 n.6 (2017).

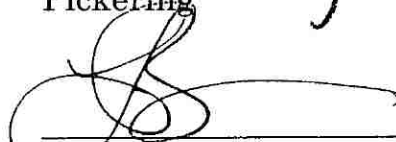
We conclude, however, that the district court abused its discretion in erroneously calculating the fees incurred. In its order awarding attorney fees, the district court stated that JA sought reimbursement for \$43,115. When submitting the motion for attorney fees, JA stated that it incurred a total of \$43,115 in attorney fees, however, JA

only requested "\$33,305, plus the amount that may be incurred on reply and/or at the hearing on the Motion." And while JA sought fees incurred for the reply and the hearing, it does not appear from the record that JA submitted any additional billing records. Because it appears the district court erroneously believed JA was seeking reimbursement for the full \$43,115, we reverse the amount of fees awarded and remand for the district court to calculate the correct amount based on the actual amount requested. Accordingly, we

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


_____, J.
Cadish


_____, J.
Pickering


_____, J.
Bell

cc: Hon. Susan Johnson, District Judge
Paul M. Haire, Settlement Judge
Brownstein Hyatt Farber Schreck, LLP/Las Vegas
Garman Turner Gordon LLP
Eighth Judicial District Court Clerk