

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD J. MATHIAS,
Appellant,
vs.
STEWART TITLE COMPANY, A TEXAS
CORPORATION,
Respondent.

No. 84637-COA

FILED

SEP 13 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY: *[Signature]*
DEPUTY CLERK

No. 84899-COA

RICHARD J. MATHIAS,
Appellant,
vs.
STEWART TITLE COMPANY, A TEXAS
CORPORATION,
Respondent.

ORDER OF AFFIRMANCE

Richard J. Mathias appeals from an order dismissing a real property action and an order awarding attorney fees to respondent Stewart Title Company. These cases are consolidated on appeal. NRAP 3(b). Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge; Michael A. Cherry, Senior Judge.¹

Mathias filed a complaint alleging that he was entitled to monetary damages based on multiple causes of action stemming from

¹Judge Kierny granted respondent's motion to dismiss (Docket No. 84636). Senior Judge Cherry issued the order awarding attorney fees to respondent (Docket No. 84899).

Stewart Title's alleged violation of contractual obligations arising from its role in the attempted sale of Mathias' real property. Mathias alleged that he entered into an agreement with a potential purchaser of a property. In furtherance of that agreement, both parties agreed to have Stewart Title provide escrow services to facilitate the sale of the property. Mathias attached the Residential Purchase Agreement (RPA), containing the terms and obligations for Stewart Title's performance as the escrow agent for the sale of the relevant property to his complaint. Specifically, the RPA provides the conditions under which Stewart Title would provide title insurance concerning the property and facilitate the sale of the property from Mathias to the potential purchaser. The RPA specifically stated that performance under that agreement was contingent upon Mathias' ability to deliver good and marketable title or the potential purchaser's acceptance of any encumbrances on the title.

Mathias alleged that the potential purchaser deposited \$2,000 into the escrow account as required by the RPA. Stewart Title subsequently issued a preliminary title report (PTR), and the PTR noted a deed of trust that encumbered title to the property. Neither party objected to the PTR. Mathias later explained the encumbrance to the potential purchaser and requested an extension of time to clear that issue from the title. However, the potential purchaser informed Mathias and Stewart Title that he did not wish to move forward with the sale in recognition of the encumbrance on the title. The potential purchaser therefore directed Stewart Title to cancel the escrow, and the sale of the property was not completed.

In response to Mathias' complaint, Stewart Title filed a motion to dismiss. Stewart Title argued that a review of Mathias' allegations, as

contained within the complaint, and the information contained within the RPA, demonstrated that Mathias failed to state a claim for which relief could be granted. Mathias opposed the motion and Stewart Title filed a reply in support of the motion to dismiss. The district court ultimately granted Stewart Title's motion to dismiss.

Stewart Title subsequently moved for attorney fees, arguing that it was entitled to such fees pursuant to NRS 18.010(2)(b) because Mathias' claims were brought without reasonable grounds. Mathias opposed the motion for attorney fees but the district court ultimately granted Stewart Title's motion. The district court found that Mathias' claims were brought without reasonable grounds and that attorney fees were warranted after addressing the appropriate factors under *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969). The district court accordingly awarded Stewart Title attorney fees in the amount of \$15,347.50. These appeals followed.

Motion to dismiss

Mathias argues the district court erred by dismissing his complaint. An order granting an NRCP 12(b)(5) motion to dismiss is reviewed de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). A decision to dismiss a complaint under NRCP 12(b)(5) is rigorously reviewed on appeal, with all alleged facts in the complaint and the attached documents presumed true and all inferences drawn in favor of the plaintiff. *Id.* A district court may consider both the complaint and any exhibits attached thereto when ruling on a motion to dismiss. *See Baxter v. Dignity Health*, 131 Nev. 759, 764, 357 P.3d 927, 930 (2015); *see also* NRCP 10(c) ("A copy of a written instrument that is an

exhibit to a pleading is a part of the pleading for all purposes.”). Dismissing a complaint is appropriate “only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief.” *Buzz Stew, LLC*, 124 Nev. at 228, 181 P.3d at 672.

Breach of contract

First, Mathias argues that the district court erred by dismissing his claim that Stewart Title was liable for breach of contract. Mathias contends that Stewart Title breached its obligations under the RPA by failing to issue title insurance for the relevant property and by failing to complete the sale of the property to the potential purchaser.

“To prevail on a claim for breach of contract, the plaintiff must establish (1) the existence of a valid contract, (2) that the plaintiff performed, (3) that the defendant breached, and (4) that the breach caused the plaintiff damages.” *Iliescu v. Reg’l Transp. Comm’n of Washoe Cty.*, 138 Nev., Adv. Op. 72, 522 P.3d 453, 458 (Ct. App. 2022). Breach of contract is the material failure to perform “a duty arising under or imposed by agreement.” *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135, 734 P.2d 1238, 1240 (1987) (internal quotation marks omitted). Relevant to the claims at issue here, escrow instructions define the duties of an escrow agent. *Mark Props., Inc. v. Nat’l Title Co.*, 117 Nev. 941, 946, 34 P.3d 587, 591 (2001).

The instructions contained within the RPA explained the duties of Stewart Title with respect to the escrow in this matter. The RPA explicitly states that Stewart Title’s performance was contingent upon Mathias’ ability to deliver good and marketable title. And Mathias acknowledges that the property was encumbered by a deed of trust that he was unable to remove prior to the agreed-upon date to complete the sale.

Thus, Mathias was unable to deliver good and marketable title as required by the RPA. *See Land Res. Dev. v. Kaiser Aetna*, 100 Nev. 29, 36, 676 P.2d 235, 239 (1984) (stating that, in general, the test as to whether a seller has delivered marketable title is “whether there was a reasonable probability that a reasonably meritorious claim existed against the property”).

Because Mathias was unable to deliver good and marketable title, Stewart Title had no duty under the RPA to provide title insurance or complete the sale of the property. Mathias’ allegations thus fail to demonstrate that Stewart Title breached the contractual duties imposed by the RPA. As a result, Mathias failed to state a claim for breach of contract, and we therefore conclude the district court did not err by dismissing this cause of action.

Negligence

Second, Mathias argues that the district court erred by dismissing his claim that Stewart Title was liable because it acted negligently by failing to provide title insurance and by declining to complete the sale of Mathias’ property. To establish a negligence claim, Mathias needed to prove the following four elements: “(1) the existence of a duty of care, (2) breach of that duty, (3) legal causation, and (4) damages.” *Sanchez ex rel. Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 824, 221 P.3d 1276, 1280 (2009). “[T]he question of whether the defendant owes the plaintiff a duty of care is a question of law.” *Sparks v. Alpha Tau Omega Fraternity, Inc.*, 127 Nev. 287, 296, 255 P.3d 238, 244 (2011) (internal quotation marks omitted).

Mathias’ negligence allegations implicate Stewart Title’s duties based upon the contractual obligations provided for in the RPA. And, as

explained previously, Stewart Title had no duty under the RPA to provide title insurance or complete the sale of the property because Mathias was unable to deliver marketable title. Thus, Mathias' allegations fail to establish a duty that Stewart Title breached, and therefore, Mathias' allegations were insufficient to state a claim for negligence. *See Bernard*, 103 Nev. at 135, 734 P.2d at 1240 ("A breach of contract may be said to be a material failure of performance of a duty arising under or imposed by agreement. A tort, on the other hand, is a violation of a duty imposed by law, a wrong independent of contract. Torts can, of course, be committed by parties to a contract. The question to be determined here is whether the actions or omissions complained of constitute a violation of duties imposed by law, or of duties arising by virtue of the alleged express agreement between the parties." (quoting *Malone v. Univ. of Kansas Med. Ctr.*, 552 P.2d 885, 888 (Kan. 1976))). Accordingly, we conclude the district court did not err by dismissing this cause of action.

Breach of fiduciary duty

Third, Mathias argues that the district court erred by dismissing his claim that Stewart Title was liable for breach of fiduciary duties when it failed to provide title insurance and declined to complete the sale of the property. "[A] breach of fiduciary duty claim seeks damages for injuries that result from the tortious conduct of one who owes a duty to another by virtue of the fiduciary relationship." *Stalk v. Mushkin*, 125 Nev. 21, 28, 199 P.3d 838, 843 (2009). There are three elements in a claim for breach of fiduciary duty: (1) the existence of a fiduciary duty; (2) breach of that duty; and (3) the breach proximately caused the damages. *See id.* Relevant to this claim against Stewart Title, an escrow agent "is required

to conduct his affairs with scrupulous honesty, skill, and diligence” and “must strictly comply with the terms of the escrow agreement.” *Broussard v. Hill*, 100 Nev. 325, 329, 682 P.2d 1376, 1378 (1984).

As previously explained, Stewart Title had no duty under the RPA to provide title insurance or complete the sale of the property because Mathias was unable to deliver marketable title. Thus, Mathias’ allegations were insufficient to establish that Stewart Title breached a duty owed to Mathias. As a result, Mathias’ allegations failed to state a claim against Stewart Title based on breach of fiduciary duties. Accordingly, we conclude the district court did not err by dismissing this cause of action.

Breach of the implied covenant of good faith and fair dealing

Fourth, Mathias argues that the district court erred by dismissing his claim that Stewart Title was liable for breach of the implied covenant of good faith and fair dealing when it failed to provide title insurance and declined to complete the sale of the property. “Even if a defendant does not breach the express terms of a contract, a plaintiff may still be able to recover damages for breach of the implied covenant of good faith and fair dealing.” *State Dep’t of Transp. v. Eighth Judicial Dist. Court*, 133 Nev. 549, 555, 402 P.3d 677, 683 (2017) (internal quotation marks omitted). A party to a contract breaches the implied covenant of good faith and fair dealing where it performs “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 Prods., Inc.*, 107 Nev. 226, 234, 808 P.2d 919, 923 (1991). Whether a party’s performance denies another of their reasonable expectations under a contract “is determined by

the various factors and special circumstances that shape these expectations.” *See id.* at 234, 808 P.2d at 923-24.

As explained previously, the RPA explicitly stated that Stewart Title’s obligations to provide title insurance and complete the sale of the property were contingent upon Mathias’ delivery of marketable title. Mathias’ inability to deliver marketable title relieved Stewart Title of its obligation to perform under the RPA. Thus, the allegations contained within the complaint and the attached RPA were insufficient to establish that Stewart Title acted in a manner that was unfaithful to the purpose of the contract and any justified expectations of Mathias. Therefore, Mathias failed to state a claim for breach of implied covenant of good faith and fair dealing. Accordingly, we conclude the district court did not err by dismissing this cause of action.

Intentional Interference with contractual relations

Fifth, Mathias argues that the district court erred by dismissing his claim that Stewart Title was liable for intentional interference with contractual relations. Mathias contends that Stewart Title interfered with his contractual relationship with the potential purchaser by failing to issue title insurance on the relevant property and by failing to take appropriate action to complete the sale of the property. Mathias also appears to allege that Stewart Title should not have shared information with the potential purchaser concerning the encumbrance and Mathias’ inability to remove the encumbrance from the title.

To establish a valid claim of tortious interference with contractual relations, a plaintiff must establish: “(1) a valid and existing contract; (2) the defendant’s knowledge of the contract; (3) intentional acts

intended or designed to disrupt the contractual relationship; (4) actual disruption of the contract; and (5) resulting damage.” *J.J. Indus., LLC v. Bennett*, 119 Nev. 269, 274, 71 P.3d 1264, 1267 (2003). “[T]he plaintiff must inquire into the defendant’s motive” and show that the defendant “had a specific motive or purpose to injure by his interference.” *Id.* at 275-76, 71 P.3d at 1268. Moreover, “the plaintiff must demonstrate that the defendant intended to induce the other party to breach the contract with the plaintiff.” *Id.* at 276, 71 P.3d at 1268.

Performance under the RPA was contingent upon Mathias’ delivery of marketable title. Because Mathias was unable to deliver marketable title, Stewart Title had no obligation to perform additional duties under the RPA. Moreover, Mathias’ allegations concerning Stewart Title’s communications with the potential purchaser concerning the encumbrance were insufficient to show that Stewart Title acted with a motive or purpose to injure or were done to induce the potential purchaser to breach the contract with Mathias.

The allegations raised in the complaint were therefore insufficient to demonstrate that Stewart Title committed intentional acts designed to disrupt the contract between Mathias and the potential purchaser or that any disruption of the sale agreement was caused by Stewart Title’s conduct. Thus, Mathias’ allegations failed to state a claim for intentional interference with contractual relations.

Accordingly, for the reasons detailed above, we conclude the district court did not err by dismissing this cause of action.²

Attorney fees

Mathias argues that the district court erred by awarding attorney fees to Stewart Title pursuant to NRS 18.010(2)(b). Specifically, he contends that the district court abused its discretion by finding that his claims were brought without reasonable grounds.

“An award of attorney’s fees lies within the trial court’s discretion and will not be overturned absent a manifest abuse of discretion.” *Chowdhry v. NLVH, Inc.*, 109 Nev. 478, 485, 851 P.2d 459, 464 (1993) (internal quotation marks omitted). When a district court awards attorney fees pursuant to NRS 18.010(2)(b), there must be evidence in the record supporting the proposition “that the claim or defense was brought [or maintained] without reasonable ground or to harass the prevailing party.” *Id.* at 485, 851 P.2d at 463-64 (emphasis omitted).

Here, the district court found that Stewart Title was the prevailing party. The district court also found that Stewart Title could not have performed pursuant to the RPA in the manner sought by Mathias without violating its obligations to both Mathias and the potential purchaser. And based on this finding, which is supported by evidence in the

²In his complaint, Mathias also alleged he was entitled to relief based upon slander of title and abuse of process. On appeal, Mathias states he has abandoned those causes of action, and he raises no arguments concerning the district court’s decision to dismiss them.

record, the district court found that Mathias' claims were brought without reasonable grounds.

The district court also reviewed the appropriate factors pursuant to *Brunzell*, 85 Nev. at 349-50, 455 P.2d at 33, and found that Stewart Title's attorneys had extensive experience in commercial litigation, that the billing records demonstrated that the attorneys actually performed the work on this matter and did so with time and skill given to each task, and that the attorneys were successful because this matter was dismissed. Accordingly, the district court awarded attorney fees to Stewart Title pursuant to NRS 18.010(2)(b) in the amount of \$15,347.50.

The evidence in the record supports the district court's decision to award attorney fees pursuant to NRS 18.010(2)(b), and Mathias fails to demonstrate that the district court manifestly abused its discretion in so doing. Accordingly, we conclude that Mathias is not entitled to relief on his challenge to the award of attorney fees.

For the foregoing reasons, we

ORDER the judgments of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Carli Lynn Kierny, District Judge
Hon. Michael A. Cherry, Senior Judge
Richard J. Mathias
Maurice Wood
Eighth District Court Clerk