

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL CAFFEJIAN, SR., AND ALICE  
MARIE CAFFEJIAN,  
Appellants,  
vs.  
ARLAMAY ROGERS MANGAPIT  
CHRISTENSEN,  
Respondent.

No. 38133

PAUL CAFFEJIAN, SR., AND ALICE  
MARIE CAFFEJIAN,  
Appellants,  
vs.  
ARLAMAY ROGERS MANGAPIT  
CHRISTENSEN,  
Respondent.

No. 38254

FILED

APR 08 2004

JANETTE M. ELC. M.  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART,  
REVERSING IN PART, AND REMANDING

Docket No. 38133 is an appeal from a district court order granting respondent summary judgment on appellants' claim for specific performance of a real property purchase agreement. Docket No. 38254 is an appeal from an order awarding respondent attorney fees in that case. We consolidated these appeals and later ordered respondent to address whether the district court abused its discretion in awarding attorney fees without stating a basis for the award. On November 6, 2003, respondent filed a response.

Summary judgment is available when there is no genuine dispute over a material fact and the moving party is entitled to judgment

as a matter of law.<sup>1</sup> This court reviews an order granting summary judgment de novo.<sup>2</sup>

“Specific performance is available when the terms of the contract are definite and certain, the remedy at law is inadequate, the plaintiff has tendered performance and the court is willing to order it.”<sup>3</sup> Here, because the parties canceled the real property purchase agreement, there is nothing to enforce through specific performance.<sup>4</sup> Consequently, we affirm the district court’s order granting summary judgment.

But a different result is compelled regarding the district court’s award of attorney fees. “Attorney fees are not recoverable absent a statute, rule, or contract provision to the contrary.”<sup>5</sup> Respondent sought \$73,637 in fees under the terms of the parties’ purchase agreement and under NRS 7.085, NRS 17.115, NRCP 11, and NRCP 68. The district court awarded respondent \$22,000 in fees, to be recovered from appellants, but did not identify the basis for the award.

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<sup>1</sup>NRCP 56.

<sup>2</sup>Lumbermen’s Underwriting v. RCR Plumbing, 114 Nev. 1231, 1234, 969 P.2d 301, 303 (1998).

<sup>3</sup>Stoltz v. Grimm, 100 Nev. 529, 533, 689 P.2d 927, 930 (Nev. 1984) (quotation omitted).


<sup>4</sup>See 81 C.J.S. Specific Performance § 59 (1977) (“A contract which has been rescinded or abandoned with the mutual consent of both parties cannot be specifically enforced.”); e.g., Holloway v. Giddens, 236 S.E.2d 491 (Ga. 1977), overruled on other grounds by Brown v. Frachiseur, 277 S.E.2d 16 (Ga. 1981); Blaise v. Stein, 394 N.E.2d 836 (Ill. App. Ct. 1979); Tolan v. O’Malley, 299 A.2d 229 (Pa. 1973).


<sup>5</sup>Coury v. Robison, 115 Nev. 84, 90, 976 P.2d 518, 521 (1999).

“The failure of a district court to state a basis for the award of attorney fees is an arbitrary and capricious action and, thus, is an abuse of discretion.”<sup>6</sup> Respondent concedes that the record is “fuzzy” regarding the basis for fees. Accordingly, we reverse the district court’s order granting attorney fees, and we remand this matter to the district court for further proceedings consistent with this order.

It is so ORDERED.<sup>7</sup>

  
\_\_\_\_\_, C.J.  
Shearing

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

cc: Hon. Kathy A. Hardcastle, District Judge  
Adams & Adams  
Paul Caffejian Sr.  
Alice Marie Caffejian  
Clark County Clerk

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<sup>6</sup>Henry Prods., Inc. v. Tarmu, 114 Nev. 1017, 1020, 967 P.2d 444, 446 (1998).

<sup>7</sup>Although appellants were not granted leave to file papers in proper person, see NRAP 46(b), we have considered the proper person documents received from appellants.