

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

INAM LALEKA, AN INDIVIDUAL; AND
NATURE'S BLESSING, LLC, A
NEVADA DOMESTIC LIMITED
LIABILITY COMPANY,
Appellants,
vs.
SERENE CENTER, LLC, A NEVADA
DOMESTIC LIMITED LIABILITY
COMPANY,
Respondent.

No. 86183-COA

FILED

JUL 31 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

INAM LALEKA, AN INDIVIDUAL; AND
NATURE'S BLESSING, LLC, A
NEVADA DOMESTIC LIMITED
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Appellants,
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DOMESTIC LIMITED LIABILITY
COMPANY,
Respondent.

No. 86496-COA

ORDER OF AFFIRMANCE

Appellants Inam Laleka and Nature's Blessing, LLC, appeal from a district court order granting summary judgment (Docket No. 86183) and a post-judgment order awarding respondent Serene Center, LLC, attorney fees (Docket No. 86496) in a contract action. These cases are consolidated on appeal. NRAP 3(b). Eighth Judicial District Court, Clark County; Veronica Barisich, Judge.

Serene Center filed a complaint alleging that Nature's Blessing had previously entered into a lease agreement to rent space in a shopping

24-26757

center. Pursuant to the lease, Nature's Blessing agreed to pay rent and to be responsible for additional payments for use of the commercial property's common areas. Serene Center subsequently purchased the commercial property and asserted that it had assumed Nature's Blessing's lease agreement as part of that purchase. Serene Center also alleged that Nature's Blessing did not pay rent or meet its additional obligations under the lease agreement. Moreover, Serene Center alleged that Laleka unconditionally, absolutely, and irrevocably guaranteed the complete payment owed by Nature's Blessing under the lease agreement. Based on those allegations, Serene Center asserted that Nature's Blessing was liable for money damages for breach of the lease and that Laleka was liable for money damages based on breach of guaranty.

Nature's Blessing and Laleka (appellants) answered and the parties filed a joint case conference report. Appellants thereafter filed a motion to dismiss for failure to prosecute, arguing that dismissal was warranted as Serene Center failed to make discovery requests and it therefore failed to prosecute its case. Serene Center opposed and filed a countermotion for summary judgment. The district court subsequently entered an order denying appellants' motion to dismiss and also denying Serene Center's countermotion for summary judgment as it concluded Serene Center's request for summary judgment was premature.

Serene Center thereafter filed the renewed motion for summary judgment and, in support of that motion, filed the written lease agreement and an affidavit of Jack Yermian, the principal representative of Serene Center. Serene Center contended the information contained within the written lease agreement and Yermian's affidavit showed Nature's Blessing

agreed to become the tenant of the commercial property, owing rent of \$3,407.50 per month plus \$613.50 in monthly payments for use of the property's common areas. In addition, the lease agreement called for late charges in the amount of \$350 per month for each missed payment. Yermian also attested that Serene Center purchased the property on or about March 31, 2021, and Serene Center became landlord for the property following that purchase. Yermian further attested that Nature's Blessing failed to pay rent or make payments for use of the common areas since the commencement of the lease on June 11, 2021. Yermian attested that those outstanding amounts, taken together with the late charges through January 2023, meant that Nature's Blessing owed \$87,397 under the lease agreement. Serene Center also contended that the lease agreement demonstrated that Laleka agreed to fully guarantee Nature's Blessing's financial obligations under the lease agreement and, as such, Laleka was responsible for the outstanding amounts Nature's Blessing owed under that agreement. In addition, Yermian attested that Serene Center attempted to find a new tenant for the property by utilizing a real estate agent and marketing the property, including marketing the new property at a substantially reduced rate. However, Yermian attested that Serene Center was still unable to find a new tenant.

Appellants opposed the motion and offered Laleka's declaration and additional financial information in support of its opposition. In his declaration, Laleka acknowledged that he signed a lease agreement on behalf of Nature's Blessing but stated that the agreement was made with Serene Center's predecessor in interest and not with Serene Center. Laleka also stated his belief that Serene Center could find a new tenant for the

property but acknowledged that he himself had been unable to find an acceptable replacement tenant to assume Nature's Blessing's lease. In addition, appellants filed financial documents demonstrating that they provided a rental deposit for the property in the amount of \$7,428.

Serene Center replied and filed additional documents with its reply concerning the purchase of the property, including information regarding the assignment of rents from the predecessor in interest.

The district court subsequently entered a written order granting Serene Center's motion for summary judgment. The court found the undisputed facts demonstrated that Serene Center was the landlord for the relevant property and had been assigned the relevant lease agreement entered into by Nature's Blessing. The court also found the undisputed facts demonstrated that Nature's Blessing was a party to the lease agreement and Laleka agreed to guarantee Nature's Blessing's financial obligations under the lease agreement. The court further found that the undisputed facts demonstrated that Nature's Blessing and Laleka did not meet their financial obligations under the lease agreement, and they were thus liable to Serene Center for monetary damages. The court also found that Serene Center proved undisputed facts demonstrating that it attempted to mitigate its damages by finding a new tenant but, despite its marketing efforts which included reducing the asking rental price, it was unable to find a new tenant. In addition, the court found that the information both parties submitted concerning rents and appellants' payments demonstrated that appellants owed \$79,969 to Serene Center. The court accordingly found that there were no genuine disputes of material fact, that Serene Center was entitled to judgment in its favor, and that

Serene Center was entitled to an award of monetary damages in the amount of \$79,969.

Serene Center then moved for an award of attorney fees. Serene Center contended that it was entitled to attorney fees pursuant to the lease agreement and the appropriate factors under *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349-50, 455 P.2d 31, 33 (1969). Appellants opposed and Serene Center filed a reply. The district court subsequently entered a written order granting Serene Center's motion and awarding it attorney fees in the amount of \$16,407. These consolidated appeals followed.

Summary judgment (Docket No. 86183)

Appellants argue that the district court erred by granting Serene Center's motion for summary judgment because genuine disputes of material fact remain. This court reviews 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 dispute 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.* General allegations and conclusory statements do not create genuine disputes of fact. *Id.* at 731, 121 P.3d at 1030-31. The party moving for summary judgment must meet its initial burden of production to show there exist no genuine disputes of material fact. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). The nonmoving party must then "transcend the pleadings and, by affidavit or other admissible

evidence, introduce specific facts that show a genuine [dispute] of material fact.” *Id.* at 603, 172 P.3d at 134.

First, appellants contend that Serene Center improperly utilized an affidavit in support of its motion for summary judgment. Appellants contend that statements made via an affidavit are not subject to cross-examination, may contain inadmissible information, and are often incorrect or incomplete.

However, the Nevada Supreme Court has previously stated “that 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.” *Id.* at 602, 172 P.3d at 134 (internal quotation marks omitted and emphasis added); *see also* NRCPC 56(c)(1)(A) (providing that “[a] party asserting that a fact cannot be or is genuinely disputed must support the assertion” by use of certain materials including “affidavits or declarations”). “When affidavits are offered in support of a motion for summary judgment, they must present admissible evidence, and must not only be made on the personal knowledge of the affiant, but must show that the affiant possesses the knowledge asserted.” *Daugherty v. Wabash Life Ins. Co.*, 87 Nev. 32, 38, 482 P.2d 814, 818 (1971).

Here, appellants do not allege that Yermian’s affidavit contained inadmissible evidence or that Yermian did not possess the knowledge asserted in the affidavit. Under these circumstances, appellants fail to demonstrate that Serene Center’s use of Yermian’s affidavit in support of its motion for summary judgment was improper or that the

district court erred by considering that affidavit and the information contained within it when evaluating the motion. Accordingly, appellants are not entitled to relief based on this claim.

Second, appellants argue that the district court erred by finding Serene Center was entitled to judgment in its favor based on breach of contract and guaranty. Appellants contend that they did not sign an agreement with Serene Center. Appellants also contend that Laleka did not agree to be personally liable for Nature's Blessing's obligations under the lease agreement and that the lease agreement identified another person as the guarantor of the lease.

A breach of guaranty cause of action is governed by contract law, *see, e.g., Tri-Pacific Com. Brokerage v. Boretta*, 113 Nev. 203, 205-06, 931 P.2d 726, 728-29 (1997), and “[t]o 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 Cnty.*, 138 Nev., Adv. Op. 72, 522 P.3d 453, 458 (Ct. App. 2022).

Here, there was no genuine dispute of fact that Serene Center purchased the property and that both the lease agreement and the guaranty agreement permitted assignment to different parties and appellants agreed that they would be bound to the terms of the agreements after such assignments. Moreover, there was no genuine dispute that Serene Center assumed the leases, such that it became a party to Nature Blessing's lease and guaranty signed by Laleka. *See Easton Bus. Opportunities, Inc. v. Town Exec. Suites-E. Marketplace, LLC*, 126 Nev. 119, 125, 230 P.3d 827, 831 (2010) (stating “an assignment does not modify the terms of the underlying

contract. It is a separate agreement between the assignor and assignee which merely transfers the assignor's contract rights, leaving them in full force and effect as to the party charged" (internal quotation marks and brackets omitted)).

Moreover, there was no genuine dispute of fact that Laleka signed the lease agreement and, in that agreement, he agreed to act as the guarantor of Nature's Blessing's obligations under the lease such that he "unconditionally, absolutely, and irrevocably guarantee[d] and promise[d] to [Serene Center] full and complete payment" that Nature's Blessing was required to make under the lease agreement. While the lease agreement did contain a provision stating that a person identified as Saima Khalid would act as guarantor, in the portion of the agreement containing the guaranty language, Inam Laleka is listed as the guarantor. Importantly, Laleka personally signed the guaranty portion of the agreement as the guarantor. To the extent Laleka contends that he simply signed the guaranty in his capacity as an employee of Nature's Blessing, that argument is belied by the express language of the guaranty portion of the agreement, which—after identifying Laleka as the guarantor—states that Laleka "is financially interested in [Nature's Blessing] and in order to induce Landlord to enter into the . . . lease . . . Guarantor is willing to enter into this Guaranty."

Based on the plain meaning of the terms of the lease agreement, Laleka agreed to guarantee the full and complete payment owed by Nature's Blessing. *See Ringle v. Bruton*, 120 Nev. 82, 93, 86 P.3d 1032, 1039 (2004) (stating "when a contract is clear, unambiguous, and complete, its terms must be given their plain meaning and the contract must be enforced as

written”). Moreover, it was undisputed that Nature’s Blessing did not provide the full amount of payments owed under the lease agreement, which activated the guaranty provision of the agreement.

Thus, there was no genuine dispute as to whether Serene Center was a party to the lease agreement or whether Laleka agreed to guarantee the full payment Nature’s Blessing owed under the lease agreement. And there was no genuine dispute that Nature’s Blessing and Laleka breached the lease agreement and guaranty agreement by failing to pay the amounts owed under that agreement. *See Iliescu*, 138 Nev., Adv. Op. 72, 522 P.3d at 458. Based on the foregoing, we conclude the district court did not err by granting judgment in favor of Serene Center as no genuine disputes of material fact exist as to these issues. *See Cuzze*, 123 Nev. at 603, 172 P.3d at 134.

Third, appellants argue that the district court erred by awarding damages in the amount of \$79,969 to Serene Center. Appellants contend that Serene Center did not mitigate its damages or provide sufficient proof of its actual damages. “If a tenant of real property abandons the property, the landlord shall make reasonable efforts to rent it at a fair rental” but if the landlord is unable to find a replacement tenant despite reasonable efforts “the former tenant is liable for any actual damages of the landlord which may result from the abandonment.” NRS 118.175. Moreover, “as a general rule, a party cannot recover damages for loss that he could have avoided by reasonable efforts.” *Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 492, 117 P.3d 219, 226 (2005) (internal quotation marks and brackets omitted). However, “the burden is upon the party whose wrongful act caused the damages complained of to

prove . . . that the damages might have been lessened by reasonable diligence on the part of the aggrieved party.” *Id.* (internal quotation marks omitted).

As stated previously, Serene Center filed the lease agreement and Yermian’s affidavit, which together explained Nature’s Blessing’s financial obligations under the lease agreement and provided breakdowns of the outstanding amounts owed by appellants. Yermian further attested to Nature’s Blessing’s failure to provide the payments required under the lease agreement and to Serene Center’s unsuccessful attempts to find a replacement tenant for the commercial property. Laleka also attested that he was unable to find a suitable replacement tenant. In addition, appellants provided documentation showing they made a rental deposit in the amount of \$7,428. The district court utilized the figures provided by the parties to ascertain the damages owed to Serene Center and concluded that appellants owed damages to Serene Center in the amount of \$79,969.

On appeal, appellants argue that there was a genuine dispute as to whether Serene Center actually attempted to find a new tenant and satisfy its mitigation requirement. However, Serene Center produced information in support of its assertion that it tried to mitigate its damages by finding a new tenant and that those efforts were not successful, which was sufficient to meet its burden of production. *See Cuzze*, 123 Nev. at 602, 172 P.3d at 134. Appellants failed to introduce specific facts that show that genuine disputes existed concerning Serene Center’s mitigation efforts. *See id.* at 602-03, 172 P.3d at 134; *see also Sheehan & Sheehan*, 121 Nev. at 492, 117 P.3d at 226 (noting the appellant “failed to produce any evidence that [respondent] could have mitigated its damages”). Therefore, the district

court did not err by finding the undisputed facts showed Serene Center was unable to find a replacement tenant for the relevant property. Based on the foregoing, we conclude the district court did not err by granting judgment in favor of Serene Center. *See Cuzze*, 123 Nev. at 603, 172 P.3d at 134.

Fourth, appellants argue that the district court abused its discretion in declining to grant additional discovery under NRCP 56(d) as the parties had conducted little discovery and additional discovery concerning damages was necessary to allow them to adequately oppose the motion for summary judgment.¹

We review the denial of a request to continue a motion for summary judgment to permit additional discovery for abuse of discretion. *Aviation Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 117-18, 110 P.3d 59, 62 (2005). NRCP 56(d) provides that a district court may allow additional time to conduct discovery if the nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition to a motion for summary judgment. *Choy v. Ameristar Casinos, Inc.*, 127 Nev. 870, 873, 265 P.3d 698, 700 (2011). However, a request for a continuance to conduct further discovery contained within an

¹Appellants also argue that Serene Center should have been subject to discovery sanctions, including barring their use of evidence related to damages, based on its failure to provide initial disclosures concerning its requested damages as required by NRCP 16.1. However, appellants have not argued or otherwise demonstrated that they first sought such sanctions before the district court. Thus, appellants have waived this issue. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (“A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.”).

opposition to a motion for summary judgment is not sufficient to meet the “unequivocal” requirement for an affidavit. *Id.* In addition, such a request is only appropriate when the movant expresses how further discovery will create a genuine dispute of material fact. *Aviation Ventures*, 121 Nev. at 118, 110 P.3d at 62.

Here, appellants do not allege that they attempted to show by affidavit or declaration that they needed additional time to conduct discovery after Serene Center moved for summary judgment, and their discussion of discovery-related issues in their opposition to Serene Center’s motion for summary judgment was insufficient to meet NRCP 56(d)’s affidavit requirement. *See Choy*, 127 Nev. at 873, 265 P.3d at 700. Moreover, appellants do not specifically allege that they explained to the district court why they could not present sufficient facts to defeat Serene Center’s motion for summary judgment without additional discovery, or how the additional information they hoped to obtain through discovery would create genuine disputes of material fact. Based on the foregoing, appellants fail to demonstrate the district court abused its discretion by denying their request for a continuance of the motion under NRCP 56(d) to complete additional discovery. *See Aviation Ventures*, 121 Nev. at 117-18, 110 P.3d at 62.

Attorney fees (Docket No. 86496)

Appellants argue that the district court abused its discretion by awarding Serene Center attorney fees in the amount of \$16,407. Appellants contend that the fee award was excessive, the district court did not make proper findings concerning the *Brunzell* factors, and the fee award was not permitted by a statute or court rule.

The district court may only award attorney fees where a statute, rule, or contract allows it, and we review such an award for an abuse of discretion. *Albios v. Horizon Cmties., Inc.*, 122 Nev. 409, 417, 132 P.3d 1022, 1027-28 (2006). An abuse of discretion occurs when the court's decision is not supported by substantial evidence, *Otak Nev., LLC v. Eighth Jud. Dist. Ct.*, 129 Nev. 799, 805, 312 P.3d 491, 496 (2013), "which is evidence that a reasonable person may accept as adequate to sustain a judgment," *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007).

"In determining the amount of fees to award, the district court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount, so long as the requested amount is reviewed in light of the *Brunzell* factors." *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015) (internal quotation marks and brackets omitted). "While it is preferable for a district court to expressly analyze each factor relating to an award of attorney fees, express findings on each factor are not necessary for a district court to properly exercise its discretion." *Id.* In addition, "[t]he objective in interpreting an attorney fees provision, as with all contracts, is to discern the intent of the contracting parties" and that "the contract will be enforced as written" if its language is "clear and unambiguous." *Barbara Ann Hollier Trust v. Shack*, 131 Nev. 582, 593, 356 P.3d 1085, 1092 (2015) (quoting *Davis v. Beling*, 128 Nev. 301, 321, 278 P.3d 501, 515 (2012)).

Here, Serene Center moved for attorney fees pursuant to the attorney fees clause in the lease agreement. This clause provided for an award of attorney fees to the prevailing party "[i]f either Landlord or Tenant should bring suit against the other with respect to this Lease." Serene

Center also addressed the appropriate factors under *Brunzell*, 85 Nev. at 349-50, 455 P.2d at 33, contending that Serene Center's counsel had extensive experience and the requisite skill for this matter, the work was performed in a competent manner, the billing records submitted with the motion proved the work was necessary and was actually performed, and counsel obtained a favorable result for Serene Center as this matter was resolved via summary judgment in its favor. Serene Center accordingly requested attorney fees in the amount of \$16,407.

Appellants opposed the motion and Serene Center replied and filed additional billing records in support of its request for attorney fees, supplementing what it provided with its motion. The district court ultimately granted the motion. In so doing, the district court found that Serene Center was the prevailing party and that it was entitled to an award of attorney fees pursuant to the lease agreement. The district court also specifically stated that it had "reviewed all of the papers and pleadings" filed concerning the issue and, based on those filings, found that Serene Center was entitled to an award of attorney fees. The court further found that an award of \$16,407 was appropriate.

The plain language of the lease agreement clearly and unambiguously provided for an award of attorney fees to the prevailing party, which was Serene Center. Moreover, Serene Center submitted its billing records in support of its motion. It is preferable for the district court to discuss and analyze the *Brunzell* factors in its order when awarding attorney fees, *see Logan*, 131 Nev. at 266, 350 P.3d at 1143, and we note that here the district court did not specifically discuss those factors in its order. Nevertheless, because the district court specifically stated that it

reviewed and considered Serene Center's motion and the documents filed in support of the motion, and that motion contained discussion of the appropriate *Brunzell* factors, the record demonstrates that the court considered Serene Center's billing records and the appropriate *Brunzell* factors when reaching its decision.

Thus, the record supports the district court's decision to award Serene Center attorney fees in the amount of \$16,407 pursuant to the lease agreement, and appellants fail to demonstrate the district court abused its discretion in so doing. *See Logan*, 131 Nev. at 266 350 P.3d at 1143. Accordingly, we conclude that appellants are not entitled to relief.

For the foregoing reasons, we

ORDER the judgments of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Veronica Barisich, District Judge
Law Office of Malik W. Ahmad
Fennemore Craig, P.C./Las Vegas
Eighth District Court Clerk

²Insofar as appellants raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.