IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFERY REHBERGER, INDIVIDUALLY,
Appellant,
vs.
JASON L. ROWELL, INDIVIDUALLY,
Respondent.

No. 86164

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting a motion for judgment on the pleadings in a civil matter. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Appellant Jeffery Rehberger and respondent Jason Rowell signed a purchase agreement, a lease assignment and assumption, and promissory notes to facilitate Rowell's purchase of Rehberger's 100% interest in Lacey's Place Nevada 4380 Decatur LLC. That LLC operates a convenience store in Las Vegas, offering alcohol and gaming. Allegedly, Rowell was supposed to obtain liquor and gaming licenses as part of the purchase agreement for the LLC—an agreement Rehberger maintains is a valid and enforceable contract. Rowell did not obtain the licenses. And Rehberger asserted Rowell did so in bad faith, apparently making misrepresentations before the Nevada Gaming Control Board to subvert licensure. This lawsuit followed.

Rehberger asserted claims for breach of contract, personal guaranty, promissory notes, the lease assumption agreement, breach of the implied covenant of good faith and fair dealing, and sought damages, specific performance, and declaratory relief. Rowell answered and moved

for judgment on the pleadings under NRCP 12(c). In the NRCP 12(c) motion, Rowell argued Rehberger's claims could not stand because the underlying purchase agreement was not yet effective. Rowell mainly pointed to two provisions in the purchase agreement in support. One provided that the "Promissory Notes and this Agreement and all documents hereunder are not effective until the Effective Date." The other defined the "Effective Date" as the date Rowell obtains a gaming license. Rowell accordingly argued his licensure functioned as a condition precedent to formation of the contract. Rehberger opposed the motion, arguing that other provisions established the agreement was already effective and that he would "never[ ] agree to be held hostage like this."

The district court ultimately granted Rowell's motion, concluding the provision specifying that "this Agreement and all documents hereunder are not effective until the Effective Date" meant the contract had not come into existence. In reaching this decision, the district court observed that there was no dispute that the contract was "true and correct," or that Rowell had not obtained a gaming license. Rehberger appeals.

Primarily, Rehberger argues the district court ignored standards governing NRCP 12 review, factual allegations surrounding intent and contract formation, and explicit language in the documents the parties signed. Relying on principles of contract interpretation, Rowell argues the plain language establishes a clear effective date and mere pre-effective date obligations, making dismissal proper under the circumstances.

We review a district court order granting an NRCP 12(c) motion de novo. *Sadler v. PacifiCare of Nev.*, 130 Nev. 990, 993, 340 P.3d 1264, 1266 (2014). And we, like the district court, must "accept the factual

allegations in the complaint as true and draw all inferences in favor of the nonmoving party" in doing so. *Id.* at 993-94, 340 P.3d at 1266. Courts should therefore grant NRCP 12(c) motions only "when material facts of the case are not in dispute and the movant is entitled to judgment as a matter of law." *Bonicamp v. Vazquez*, 120 Nev. 377, 379, 91 P.3d 584, 585 (2004). It is not appropriate if there are "pleadings that, if proved, would permit recovery." *Duff v. Lewis*, 114 Nev. 564, 568, 958 P.2d 82, 85 (1998) (quoting *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 136, 734 P.2d 1238, 1241 (1987)). Fact questions in breach-of-contract actions informing this inquiry include the "parties' intentions regarding a contractual provision" or whether the parties formed a contract. *Anvui, LLC v. G.L. Dragon, LLC*, 123 Nev. 212, 216, 163 P.3d 405, 407 (2007); *see May v. Anderson*, 121 Nev. 668, 672-73, 119 P.3d 1254, 1257 (2005). Ambiguity, although whether it exists is a legal question, can also preclude dismissal. *See Brass v. Am. Film Techs., Inc.*, 987 F.2d 142, 150 (2d Cir. 1993); *see also Margrave v. Dermody Props., Inc.*, 110 Nev. 824, 827, 878 P.2d 291, 293 (1994) (recognizing that ambiguity necessitating extrinsic evidence to ascertain the meaning of a contract precluded summary judgment).

Through this lens, we conclude the district court erred in granting the motion because it placed too much weight on the "Effective Date" provision. The rest of the contract contains several provisions that could reasonably be read to render the contract nonsensical if we credited Rowell's reading of the effective date provision at this juncture. *See Vegas United Inv. Series 105, Inc. v. Celtic Bank Corp.*, 135 Nev. 456, 459, 453 P.3d 1229, 1231-32 (2019) ("'Contractual provisions should be harmonized whenever possible,' . . . and no provision should be rendered meaningless." (quoting *Eversole v. Sunrise Villas VIII Homeowners Ass'n*, 112 Nev. 1255,

1260, 925 P.2d 505, 509 (1996)). As an example, the agreement also defined the "Closing Date" as November 30, 2018, and then set forth provisions stating that covenants and warranties and representations in the agreement "shall survive the Closing of this Agreement." Another provision set forth a non-compete clause that would only run one year from the Closing Date, as opposed to the Effective Date. Assuming the parties agreed to set the agreement's effectiveness at some future date, the backward-looking language in these provisions does not lend to a harmonious reading of this undisputed "true and correct" contract. Nor are we persuaded that Rowell's attempt to label such provisions as other conditions precedent to formation or pre-effective date obligations can cure this ambiguity at this juncture.

Such ambiguity, on top of the parties' dispute about what they intended the purchase agreement to do, takes this case outside those instances where judgment on the pleadings is proper. *Cf. Brass*, 987 F.2d at 150 ("When what the parties intended cannot be 'definitely and precisely gleaned' from a reading of the contract, . . . they should be afforded an opportunity to present extrinsic evidence to establish their intent." (quoting *Seiden Assocs., Inc. v. ANC Holdings, Inc.*, 959 F.2d 425, 430 (2d Cir. 1992)). Indeed, the provisions discussed above make this case different from those where the contract language clearly established a condition precedent to formation. *See Int'l Bhd. of Teamsters v. NASA Servs., Inc.*, 957 F.3d 1038, 1046 (9th Cir. 2020) (holding the parties to a condition precedent to formation upon "clear formation-contingent language"). Therefore, although nothing in this order precludes Rowell from pursuing his lack-of-formation argument, we cannot say that Rehberger's complaint sets forth no factual allegations that, if proved, would permit recovery. *See Duff*, 114

Nev. at 568, 958 P.2d at 85; *see also Snyder v. Viani*, 110 Nev. 1339, 1344, 885 P.2d 610, 613 (1994) (affirming an order granting an NRCP 12(b)(5) motion where the plaintiff had "not alleged facts necessary to establish contract formation between the [parties]," so the breach of contract claim "necessarily" failed).[1]

Accordingly, we

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

Stiglich, J.
Stiglich

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

cc: Hon. Susan Johnson, District Judge
Dana Jonathon Nitz, Settlement Judge
Lewis Roca Rothgerber Christie LLP/Las Vegas
EPG Law Group
Howard & Howard Attorneys PLLC
Eighth District Court Clerk

[1]The various interpretative maxims Rowell cites to do not eliminate the outstanding fact questions of formation and intent in this case. We have also carefully considered the other arguments not specifically addressed herein and conclude they do not warrant a different outcome.