


IN THE SUPREME COURT OF THE STATE OF NEVADA

C & A INVESTMENTS, L.L.C.,
Appellant,
vs.
JIANGSON DUKE, LLC; BANK OF
UTAH, NOT INDIVIDUALLY, BUT
SOLELY AS REMAINDERMAN
TRUSTEE UNDER REMAINDERMAN
TRUST AGREEMENT (1995-2), DATED
AS OF JUNE 13, 1995, AS SUCCESSOR
TRUSTEE TO WELLS FARGO TRUST
COMPANY, N.A. (FORMERLY KNOWN
AS WELLS FARGO BANK
NORTHWEST, N.A., FORMERLY
KNOWN AS FIRST SECURITY BANK
OF UTAH, N.A.); AND NORTHERN
NEVADA COMSTOCK INVESTMENTS,
LLC,
Respondents.

No. 87287

FILED

JAN 22 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a motion for relief from judgment under NRCP 60(b). First Judicial District Court, Carson City; William A. Maddox, Judge.

Nonparty Kmart entered into a Reciprocal Easement and Operation Agreement (REOA) that placed restrictive covenants on Northtown Plaza, which traditionally leased spaces to retail businesses. Appellant C & A Investments, LLC, sought to invalidate the restrictions. After a bench trial, the district court entered a final judgment in favor of respondents Jiangson Duke, LLC and Northern Nevada Comstock Investments, LLC (Comstock). It also denied C & A's motion for NRCP

60(b) relief from the judgment. On appeal, we affirmed the final judgment but reversed the order denying C & A's NRCP 60(b) motion, concluding that the district court applied the wrong standards in analyzing the motion. *See C & A Invs., LLC v. Jiangson Duke, LLC*, Nos. 79881 and No. 83279, 2022 WL 6881816, at *5 (Nev. Oct. 11, 2022) (Order Affirming (Docket No. 79881), and Affirming in Part, Reversing in Part, and Remanding (Docket No. 83279)). We directed the district court to address on remand “whether the judgment is prospective in nature” and if so, whether the facts warrant relief from the judgment under NRCP 60(b)(5).” *Id.* at *8. We also directed the district court to “conduct a fact-intensive inquiry” as to NRCP 60(b)(6) relief, and “to conduct an evidentiary hearing if necessary.” *Id.* at *9. On remand, after a hearing, the district court again denied C & A's NRCP 60(b) motion.

On appeal, C & A argues that the district court again applied the incorrect standard in denying its motion under NRCP 60(b)(5) and (6). We review *de novo* whether the district court has complied with our mandate on remand. *Wheeler Springs Plaza, LLC v. Beemon*, 119 Nev. 260, 263, 71 P.3d 1258, 1260 (2003). “The district court commits error if its subsequent order contradicts the appellate court's directions.” *State Eng'r v. Eureka Cnty.*, 133 Nev. 557, 559, 402 P.3d 1249, 1251 (2017).

As to NRCP 60(b)(5), the district court concluded that the final judgment was not “prospective” and therefore NRCP 60(b)(5) did not apply. That decision is not erroneous as the final judgment dismissed C & A's claims entirely and did not require continued district court supervision. *Cf. Willard v. Berry-Hinckley Indus.*, 139 Nev., Adv. Op. 52, 539 P.3d 250, 258 (2023) (clarifying “that orders of dismissal are not prospective within the meaning of NRCP 60(b)(5)”); *Executory Judgment*, Black's Law Dictionary

(11th ed. 2019) (defining an “executory judgment” as one “that has not been carried out, such as a yet-to-be-fulfilled order for the defendant to pay plaintiff”).

As to NRCP 60(b)(6), we conclude that the district court made an appropriate fact-intensive inquiry consistent with the remand order. The district court addressed C & A’s factual assertions, including harm from K-Mart vacating the premises,” deteriorating conditions at the Northwest Plaza, and global economy implications on business in general, but also observed that the REOA “still benefitted the other parties to the agreement” and further acknowledged the findings it made in the final judgment. While it could have more clearly analyzed how these facts supported its ultimate decision, we nevertheless conclude that it did not contradict our instruction that it “conduct a fact-intensive inquiry” to determine whether the case warranted NRCP 60(b)(6) relief. *C & A Invs.*, No. 79881 and No. 83279, 2022 WL 6881816 at *9. And while it analyzed whether NRCP 60(b)(6) relief was warranted under *Gladstone v. Gregory*, 95 Nev. 474, 596 P.2d 491 (1979), instead of *Blue Diamond Coalition Co. v. Trustees of UMWA Combined Benefit Fund*, 249 F.3d 519 (6th Cir. 2011), as instructed in our order, several factors lead us to conclude that any error in that respect was harmless, *see* NRCP 61 (defining harmless error).

First, *Gladstone* addresses the equitable doctrine of changed conditions, under which courts may strike otherwise valid restrictive real estate covenants if changed conditions have so thwarted the purpose of the restrictions that there is “no appreciable value to other property owners and it would be inequitable or oppressive to enforce the restriction.” 95 Nev. at 478, 596 P.2d at 494. Because C & A’s NRCP 60(b)(6) motion addressed restrictive real estate covenants, many equitable considerations relevant to

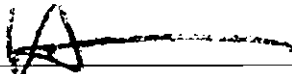
Gladstone overlap with the open-ended inquiry under NRCP 60(b)(6), such as “the risk of injustice to the parties in the particular case.” *See Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 864 (1988) (explaining relevant factors to consider under NRCP 60(b)(6)).

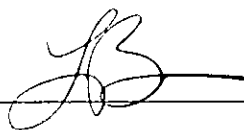
Second, in affirming the final judgment, we concluded that the record reflected that continued enforcement of “the REOA restrictions would not be inequitable or oppressive” because C & A was aware of several factors adversely affecting Northtown Plaza when it acquired its interest in Northtown Plaza and was also aware of the REOA’s restrictions. *C & A Invs.*, 2022 WL 6881816, at *5. C & A submitted two affidavits with its NRCP 60(b) motion, attesting to the continued deterioration of the area and problems with retaining and finding tenants. Neither affidavit, however, addresses our conclusions in affirming the final judgment. Additionally, while C & A submitted two affidavits supporting its position, Comstock filed three competing affidavits with its opposition to C & A’s NRCP 60(b) motion, all of which supported that the area was not deteriorating and, instead, was improving.

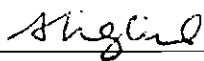
Third, C & A failed to further develop its arguments and the record on remand. In our order, we directed the district court “to conduct an evidentiary hearing if necessary.” *C & A Invs.*, 2022 WL 6881816, at *9. On remand, C & A moved for a status conference and stipulated that an evidentiary hearing was not necessary. We perceive no abuse of discretion in the district court’s conclusion that the facts in C & A’s NRCP 60(b) motion and affidavits do not warrant relief from the judgment under NRCP 60(b)(6), in light of the competing affidavits, our conclusions in affirming the final judgment, and the very limited nature of NRCP 60(b)(6) relief. *See Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 656, 428 P.3d 255, 257 (2018)

(observing that this court reviews a district court's decision to deny a motion for NRCP 60(b) relief for an abuse of discretion); *Kahn v. Orme*, 108 Nev. 510, 513-14, 835 P.2d 790, 793 (1992) (holding that the party moving for NRCP 60(b) relief bears the burden of proof), *overruled on other grounds by Epstein v. Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 773 (1997); *see also United States v. Alpine Land & Reservoir Co.*, 984 F.2d 1047, 1049 (9th Cir. 1993) (holding that the federal analog to NRCP 60(b)(6) "has been used sparingly as an equitable remedy to prevent manifest injustice," and that "[t]he rule is to be utilized only where extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment"); *Blue Diamond Coal Co.*, 249 F.3d at 524 (holding that "courts must apply Rule 60(b)(6) relief only in unusual and extreme situations where principles of equity *mandate* relief" (internal citations omitted)). Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Herndon


_____, J.
Bell


_____, J.
Stiglich

cc: Chief Judge, The First Judicial District Court
Hon. William A. Maddox, Senior Judge
David Wasick, Settlement Judge
Lemons, Grundy & Eisenberg
Allison MacKenzie, Ltd.
Mahe Law, Ltd.
Guild, Gallagher & Fuller, Ltd.
Midtown Law
Carson City Clerk