

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALIMAMA SENIOR HAPPINESS
CENTER, INC., A NEVADA
CORPORATION; WEN LING LI, AN
INDIVIDUAL; AIMIN WANG, AN
INDIVIDUAL; AND BRUCE KLINE, AN
INDIVIDUAL,
Appellants,
vs.
6600 WEST CHARLESTON, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,
Respondent.

No. 86529-COA

FILED

FEB 05 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Alimama Senior Happiness Center, Inc., and its agents and owners, Wen Ling Li, Aimin Wang, and Bruce Kline (collectively appellants) appeal from an order granting summary judgment in a commercial lease dispute. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

Alimama filed the operative complaint against respondent 6600 West Charleston, LLC, in July 2019 alleging causes of action for breach of contract, breach of the covenant of good faith and fair dealing, and fraud and misrepresentation stemming from a lease dispute between the parties. Alimama alleged, in relevant part, that two of its agents and owners, Wang and Li, communicated with West Charleston's agent and owner, Sophie Ideker, to lease a commercial space to operate an adult day care facility, and Ideker represented that the premises at issue was ideally suited for their intended use. Based on that representation, Alimama entered into a five-year lease agreement for the premises and subsequently spent over

\$100,000 remodeling the property. Shortly thereafter, the City of Las Vegas informed Alimama that the premises lacked a fire suppression system, which was required to obtain a certificate of occupancy and the necessary business licenses to operate the adult day care facility. Alimama informed West Charleston of the deficiency, but West Charleston refused to remedy, repair, or resolve the issue. Alimama alleged that Ideker falsely and materially misrepresented that the property was in full compliance with the necessary codes and regulations, and that West Charleston willfully, intentionally, and fraudulently misrepresented the legal compliance of the property. Given those misrepresentations and property deficiencies, Alimama was unable to obtain the necessary licensing with the city and state for its facility. Alimama alleged that it had detrimentally relied on Ideker's and West Charleston's false representations regarding the property in entering into the lease agreement.

West Charleston filed an answer, counterclaim, and third-party complaint, naming Li, Wang, and Kline as third-party defendants and asserting various causes of action, including breach of contract and breach of personal guaranty based on Alimama's failure to pay rent in accordance with the lease agreement and personal guaranties signed by Wang, Li, and Kline, making them personally liable for the damages resulting from the breached lease. West Charleston argued that appellants' description of their anticipated business was insufficient for West Charleston to provide an opinion regarding applicable zoning requirements; that the lease placed the burden on Alimama to comply with applicable laws, codes, and regulations at its own expense; and that, rather than work with an architect provided by West Charleston to acquire necessary permits and licenses, appellants stopped paying rent and filed their complaint.

West Charleston thereafter filed a motion for summary judgment asserting that the lease provided that it was Alimama's responsibility to comply with all applicable laws and regulations, and that the failure to obtain the necessary licenses was the result of appellants' own mistakes and failure to conduct due diligence regarding the suitability of the property. West Charleston argued that appellants could not show that West Charleston intentionally made false representations, acted in bad faith, or breached the lease agreement. To the contrary, West Charleston asserted that it was entitled to judgment as a matter of law with respect to its own breach of contract claim because it was undisputed that Alimama had stopped paying rent and Wang, Li, and Kline were personally liable for Alimama's failure to do so. West Charleston further sought attorney fees based on a provision in the lease that provided for reasonable attorney fees for the prevailing party of a lease dispute.

Appellants opposed the motion, contending that genuine disputes of material fact precluded summary judgment. Appellants asserted that a dispute of material fact existed regarding Ideker's motivations to have Alimama sign a five-year lease and her lack of good faith in negotiating the lease. To support their contention, appellants attached a transcript of Ideker's deposition to their opposition. As reflected therein, Ideker had testified that the bank that held her loan on the property requested that she obtain a tenant with a years-long lease, that she knew the property did not have a fire suppression system, that the property had been grandfathered in by the city and did not require such a system when she purchased it, and that if a fire suppression system was required for a new tenant, then it was that tenant's responsibility to address that issue. She also testified that she did not know the licensing

requirements for an adult day care business, although she knew that Alimama was planning to offer that type of service.

Following a hearing, the district court entered a written order granting West Charleston's motion for summary judgment. The court concluded that there was no genuine dispute of material of fact (1) regarding whether there was any intent from Ideker to make a false representation or whether any false representations were made, which were required to prove Alimama's claim for fraud and misrepresentation, (2) to support Alimama's breach of implied covenant of good faith and fair dealing claim, and (3) to support Alimama's breach of contract claim. It also concluded that Alimama failed to show a genuine dispute of material fact existed regarding West Charleston's counterclaim for breach of contract and breach of personal guaranty. Accordingly, the district court granted summary judgment to West Charleston on Alimama's claims against it, granted summary judgment in favor of West Charleston on its claim of breach of contract, and awarded West Charleston \$217,576.89, which included damages for West Charleston's breach of contract and personal guaranty claim and an award of attorney fees. This appeal followed.¹

On appeal, appellants challenge the district court's grant of summary judgment in favor of West Charleston. This court reviews a district court's decision with respect to a motion for summary judgment de

¹Appellants filed a motion to reconsider the order granting summary judgment. However, before the district court could rule on that motion, they filed their notice of appeal from the order granting summary judgment. The court subsequently denied the motion with respect to summary judgment but essentially determined that the attorney fee award from the summary judgment order would be revisited after supplemental briefing. Following briefing, the court entered an order awarding West Charleston additional attorney fees.

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.

First, appellants contend that the district court erred by granting summary judgment on their fraud and misrepresentation claim.²

Fraudulent misrepresentation is proved by showing:

- (1) A false representation made by the defendant;
- (2) defendant's knowledge or belief that its representation was false or that defendant has an insufficient basis of information for making the representation;
- (3) defendant intended to induce plaintiff to act or refrain from acting upon the misrepresentation; and
- (4) damage to the plaintiff as a result of relying on the misrepresentation.

Barmettler v. Reno Air, Inc., 114 Nev. 441, 447, 956 P.2d 1382, 1386 (1998).

A claim for fraud in the inducement includes all the aforementioned elements of fraudulent misrepresentation and the additional element of

²Appellants' complaint asserted a claim for "fraud and misrepresentation" and, in so doing, pled the elements for both fraudulent misrepresentation and fraud in the inducement. In their opposition to the motion for summary judgment and their brief on appeal, appellants list the elements for fraudulent misrepresentation but cite to separate cases discussing both that claim and fraud in the inducement and appear to treat these claims as being interchangeable. Under these circumstances, we address fraudulent misrepresentation and fraud in the inducement together as one claim.

justifiable reliance upon the misrepresentation. *J.A. Jones Constr. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev.:277, 290, 89 P.3d 1009, 1018 (2004). Appellants argue that Ideker's misrepresentation that the property was suitable for its business induced them into signing a five-year lease, and that her deposition testimony revealed the motivation behind the inducement. Specifically, she testified that her bank had requested that she have a tenant sign a years-long lease rather than month-to-month lease, like the one held by the previous tenant. Appellants also assert that Ideker knew both Alimama's intended use for the premises and that her building did not have a sprinkler system, yet she did not advise them that the lack of a sprinkler system would be detrimental to its licensing efforts.

In response, West Charleston asserts that there was no genuine dispute of material fact as to this issue because Alimama could not establish any intent to make false representations because the terms of the lease put the burden on Alimama to meet code and regulatory compliance at its own expense and conduct due diligence on the property before signing the lease. Moreover, West Charleston emphasizes that it attempted to cooperate with Alimama to resolve the code issues by offering viable solutions from their architect, but Alimama ignored such solutions and failed to mitigate its damages.

Here, appellants presented sufficient evidence to survive summary judgment on their fraud and misrepresentation claim. Ideker's deposition revealed that she knew the premises did not have a fire suppression system and was not aware of the licensing requirements for Alimama's business. She further indicated that she had never encountered an issue with the absence of a fire suppression system with any other tenant in her 17 years of running West Charleston. And when asked during her

deposition whether appellants would have had “a belief from [her]” that the property would be suitable or “a good location” for their business, Ideker did not dispute that this was the case. Instead, she responded, “I assume, yeah.” Despite this exchange, Ideker also stated she did not believe she had misrepresented whether the property was acceptable for the appellants’ business.

Given the above noted testimony, and Ideker’s acknowledgment that her lender requested that she obtain a tenant to sign a years-long lease, we conclude that appellants presented sufficient evidence to demonstrate the existence of a genuine dispute of material fact with respect to Ideker’s knowledge—or insufficient knowledge—regarding the suitability of the premises and her intention to induce appellants to sign a multi-year lease agreement because of pressure from the lender. *See Barmettler*, 114 Nev. at 447, 956 P.2d at 1386; *J.A. Jones Constr. Co.*, 120 Nev. at 290, 89 P.3d at 1018; *Wood*, 121 Nev. at 729, 121 P.3d at 1029. Further, we note that, in granting summary judgment to West Charleston on appellants’ fraud and misrepresentation claim, the district court only addressed the intent element of appellants’ claim and did not address the other elements of this claim. Thus, in light of the above, we conclude that the district court erred by granting summary judgment on the fraud and misrepresentation claim, and we therefore reverse summary judgment on that claim.

In light of that determination, we also reverse the district court’s grant of summary judgment on appellants’ breach of contract and breach of the covenant of good faith and fair dealing claims for further consideration based on the property’s lack of a fire suppression system.

“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 Cnty.*, 138 Nev. 741, 746, 522 P.3d 453, 458 (Ct. App. 2022). And “[e]ven 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 Jud. Dist. Ct.*, 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 when 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).

Here, a review of the lease agreement reflects certain obligations that West Charleston had as landlord, and in particular, potential responsibilities with regard to common areas of the building and compliance with applicable laws, regulations, and ordinances. Based on appellants’ allegations, it is unclear if those responsibilities were met and whether West Charleston acted in good faith in entering the lease agreement knowing the building did not have a fire suppression system. Consequently, we conclude that summary judgment was inappropriate at this stage of the proceedings because genuine disputes of material fact exist. Therefore, we also reverse the district court’s grant of summary judgment on appellants’ claims for breach of contract and breach of the covenant of good faith and fair dealing.


Finally, because we reverse the district court’s grant of summary judgment on appellants’ claims, we must also reverse the grant of summary judgment on West Charleston’s breach of contract counterclaim


because, should appellants prevail on their claims, that will impact the validity of the contract and negate West Charleston's breach of contract claim. *See Havas v. Alger*, 85 Nev. 627, 631, 461 P.2d 859 (1969) (explaining that a person defrauded into entering a contract may rescind the contract); *see also Awada v. Shuffle Master, Inc.*, 123 Nev. 613, 623, 173 P.3d 707, 713 (2007) ("Where there has been a valid rescission of the contract, there is no longer any contract to enforce and, therefore, no longer a cause of action for breach." (brackets and internal quotation marks omitted)). We also necessarily reverse the court's award of attorney fees to West Charleston. *See Roe v. Roe*, 139 Nev., Adv. Op. 21, 535 P.3d 274, 293 (Ct. App. 2023) ("An award of attorney fees and costs is appropriately vacated when a portion of the underlying order is reversed.").

In sum, we reverse the district court's grant of summary judgment in favor of West Charleston on both appellants' and West Charleston's claims, vacate the award of attorney fees, and remand this matter for further proceedings in accordance with this decision.³

It is so ORDERED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

³In reaching this conclusion, we emphasize only that summary judgment was improper at this stage in the proceedings. We do not express any opinion on the ultimate merits of the parties' respective claims.

cc: Hon. Timothy C. Williams, District Judge
Kirk T. Kennedy
Harper Law Office
Eighth District Court Clerk