


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ARVINDRPAUL SINGH SARAI,  
Appellant,  
vs.  
RESORTS WORLD LAS VEGAS, LLC,  
Respondent.

No. 88599-COA

FILED

FEB 19 2025

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

Arvindrpaul Singh Sarai appeals from a district court order granting a motion to dismiss. Eighth Judicial District Court, Clark County; Michael A. Cherry, Senior Judge.<sup>1</sup>

Sarai filed a civil complaint naming Resorts World Las Vegas. Shortly thereafter, Resorts World informed Sarai via letter that its proper name was Resorts World Las Vegas, LLC, and requested he amend his complaint to identify its proper name. On June 20, 2023, Resorts World filed a demand for security costs pursuant to NRS 18.130. Sarai did not initially post the security costs but instead brought a motion for default judgment based on Resorts World's failure to file a response. Resorts World opposed the motion and filed a countermotion to dismiss, arguing the matter should be dismissed for failing to post the security costs pursuant to

---

<sup>1</sup>We note that Senior Judge Michael Cherry oversaw the motion hearing and made oral pronouncements, but the written order was signed by then Senior Judge Abbi Silver.

NRS 18.130 and for failing to name the proper party. Sarai did not file an opposition, nor did he file a reply in support of his motion for default judgment.

On December 14, 2023, the district court held a hearing on the competing motions, but Sarai did not appear. The district court denied the motion for default judgment but continued the hearing on the motion to dismiss to a later date. On February 6, 2024, the parties filed a stipulation allowing Sarai to amend the complaint and identify Resorts World's proper name. Sarai then filed an opposition to the motion to dismiss and argued he had now paid the security costs pursuant to NRS 18.130 and had properly amended his complaint. Resorts World filed a reply that generally argued the opposition was untimely and should be stricken, but if the district court considered it, it should nevertheless dismiss the complaint because the statute of limitations expired before the amendment.

The district court granted the motion to dismiss pursuant to *Nurenberger Hercules-Werke GMBH v. Virostek*, 107 Nev. 873, 822 P.2d 1100 (1991), *abrogated on other grounds by Castello v. Cosier*, 127 Nev. 436, 440 n.4, 254 P.3d 631, 634 n.4 (2011). The district court found that NRCP 10(a) governed Sarai's amended complaint and that, for the amendment to relate back under NRCP 10(a), it must satisfy the three-part test identified in *Nurenberger*. *Id.* at 881, 822 P.2d at 1105-06 (identifying the requirements for utilizing NRCP 10(a)). Because the complaint did not include a Doe defendant, the court ruled it could not satisfy the relation back test under NRCP 10(a), and thus it was untimely. *See id.* Sarai now appeals.

An order granting a motion to dismiss is reviewed de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). A decision to dismiss a complaint under NRCP 12(b)(5) is rigorously reviewed on appeal, with all alleged facts in the complaint and the attached documents presumed true and all inferences drawn in favor of the plaintiff. *Id.* Dismissing a complaint is appropriate “only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief. *Id.* at 228, 181 P.3d at 672.

On appeal, Sarai argues the district court committed legal error by applying the *Nurenberger* test when evaluating whether the amendment relates back to the original complaint. Resorts World argues *Nurenberger* applies, and that Sarai failed to diligently move to amend the complaint once he learned of its proper name.

We conclude the district court committed legal error by applying the *Nurenberger* test. Prior to *Nurenberger*, Nevada courts applied the three-part test identified in *Servatius v. United Resort Hotels, Inc.*, when determining whether an amendment sought to add a new party or “merely correctly identif[y] a party defendant already before the court.” 85 Nev. 371, 373-74, 455 P.2d 621, 622-23 (1969), *holding modified on other grounds by Bender v. Clark Equipment Co.*, 111 Nev. 844, 846, 897 P.2d 208, 209 (1995). In *Servatius*, the supreme court established a three-part test to determine when a “proper defendant” could be added through an amendment after the statute of limitations expired. *See id.* at 373, 455 P.2d at 622-23. There, the supreme court held the proper defendant could be added, even after the statute of limitations expired, when the proper defendant: (1) had actual


notice of the complaint, (2) knew it was the proper party, and (3) was not misled to its prejudice. *Id.*

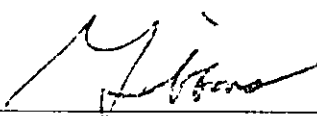
However, in *Nurenberger*, the supreme court limited *Servatius*' holding by stating it is "not applicable to cases governed by Rule 10(a)." *Nurenberger*, 107 Nev. at 882, 822 P.2d at 1106. The supreme court created a new three-part test to evaluate amendments that sought to utilize Rule 10(a). *Id.* at 881, 882 P.2d at 1106. Under the *Nurenberger* test, a pleading must identify a fictitious or Doe defendant to utilize Rule 10(a)'s substitution of a party after the expiration of the statute of limitations. *Id.* Importantly, the supreme court held the *Nurenberger* test "is applicable only where a plaintiff has utilized the pleading latitude afforded by Rule 10(a)." *Id.* at 881, 882 P.2d at 1105. The supreme court reaffirmed that *Servatius* would continue to apply to cases "where the true defendant, although unnamed, had actual knowledge of the institution of the action, knew that it was the proper defendant and was not in any way misled to its prejudice." *Id.* at 878, 822 P.2d at 1103-1104. Thus, "*Servatius* remains applicable to cases where the plaintiff has not named 'Doe' defendants." *Bender v. Clark Equip. Co.*, 111 Nev. 884, 845, 897 P.2d 208, 209 (1995).

In light of the foregoing analysis, the district court committed legal error by evaluating the amendment to Sarai's complaint under *Nurenberger* because Sarai did not seek to substitute a previously unknown or unidentified party pursuant to NRCP 10. Instead, under the circumstances presented here, the district court should have evaluated the amendment to the complaint pursuant to the *Servatius* rule. Accordingly, we reverse and remand this case for the district court to reevaluate whether

Sarai could properly amend the complaint to identify Resorts World by its correct name even though the statute of limitations had expired.<sup>2</sup>

It is so ORDERED.

  
\_\_\_\_\_, C.J.  
Bulla

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Westbrook

cc: Chief Judge, Eighth Judicial District Court  
Hon. Michael A. Cherry, Senior Judge  
Arvindrpaul Singh Sarai  
Royal & Miles, LLP  
Eighth District Court Clerk

---

<sup>2</sup>In light of our disposition, we do not address the parties' remaining arguments.