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ELIZABETH A. BROWN
CLERK OF SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROYAL UNION TRUST, A NEVADA TRUST; MARLON STEELE AS TRUSTEE; AND ROYAL UNION PROPERTIES, LLC, A NEVADA DOMESTIC LIMITED-LIABILITY COMPANY, Appellants, vs. VALNER JOHNSON, AN INDIVIDUAL; DAWN JOHNSON, AN INDIVIDUAL; THE ESTATE OF ROBERT GLENNON; JOHN GLENNON AND JULIE SCOTT, AS SPECIAL ADMINISTRATORS FOR THE ESTATE OF ROBERT GLENNON, Respondents.	No. 89324

ORDER OF AFFIRMANCE

This is an appeal from a district court final judgment in an action concerning the sale of membership interests in a Nevada Limited Liability Company. Eighth Judicial District Court, Clark County; Michael Villani, Nancy L. Allf, and Joseph Hardy, Jr., Judges.

Having considered the parties' arguments and the record, we conclude that the district court correctly granted summary judgment for respondents Valner Johnson and Robert Glennon and denied summary judgment for appellants (collectively Royal Union). *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 731 121 P.3d 1026, 1029, 1031 (2005) (reviewing de novo a district court's decision to grant summary judgment and recognizing that "the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party").

Royal Union primarily argues that the district court applied the incorrect standard for voiding a contract based on fraudulent inducement. Royal Union alternatively asserts four other arguments as to why reversal is warranted. We address those arguments in turn.

Standard for fraudulent inducement

A party seeking to void a contract based on fraud in the inducement must establish the following elements:

> (1) a false representation made by [the inducing party], (2) [the inducing party's] knowledge or belief that the representation was false (or knowledge that it had an insufficient basis for making the representation), (3) [the inducing party's] intention to therewith induce [the other party] to consent to the contract's formation, (4) [the induced party's] justifiable reliance upon the misrepresentation, and (5) damage to [the induced party] resulting from such reliance.

J.A. Jones Constr. Co. v. Lehrer McGovern Bovis, Inc., 120 Nev. 277, 290-91, 89 P.3d 1009, 1018 (2004).

Royal Union contends that the Solicitation Letter sent to Johnson and Glennon contained nonactionable opinions regarding the financial viability of nonparty Essex as opposed to actionable statements of fact. Alternatively, even if the Solicitation Letter contained misstatements of fact, Royal Union posits that it had no duty to disclose any additional information. Ultimately, Royal Union appears to contend that if either of these two arguments have merit, the summary judgment must be entered in its favor.

We disagree with both arguments and therefore conclude that Royal Union was not entitled to summary judgment. With respect to the first argument, Royal Union has not identified any particular statement in the Solicitation Letter that it believes was an "opinion" as opposed to a statement of fact. The closest Royal Union comes is the statement that Essex had been "deemed worthless." To this end, Royal Union relies on our decision in *Clark Sanitation, Inc. v. Sun Valley Disposal Co.*, 87 Nev. 338, 487 P.2d 337 (1971). There, we recognized that "an estimate of value is an opinion as to value upon which reasonable and honorable men may hold differing views. This is the basis for the frequently announced rule that a charge of fraud normally may not be based upon representations of value." *Id.* at 341, 487 P.3d at 339.

Here, however, we are not persuaded that the "deemed worthless" statement was a mere estimate of value. To the contrary, the Solicitation Letter stated that "[f]or all intent, the property and investment were deemed worthless (and abandoned)," which implies an objective conclusion by uninterested parties that Essex had no value whatsoever, as opposed to simply Royal Union's opinion regarding Essex's potential value. *See* Restatement (Second) of Contracts § 168, comment a (1981) ("A statement of opinion . . . . implies that [the opining party] does not have such definite information, that he is not certain enough of what he says, to make an assertion of his own knowledge as to that matter. It implies at most that he knows of no facts incompatible with the belief or that he knows of facts that justify him in holding it."). Accordingly, we reject Royal Union's argument that the Solicitation Letter simply contained nonactionable opinions.

Royal Union notes that in the district court's order granting summary judgment against another party, Ms. Dawn Johnson, the district court characterized the Solicitation Letter as providing nonactionable opinions. While we recognize the apparent contradiction between the two orders, Royal Union does not coherently argue that the district court should have been bound by this previous finding in subsequent stages of the litigation. Nor does our contemporaneous disposition in Docket No. 89325 logically contradict our disposition here.

We likewise are not persuaded by Royal Union's second argument regarding the district court's misapplication of the fraudulent-inducement standard. Royal Union contends that even if it misrepresented Essex's value, it had no duty to disclose unfavorable information. *Cf. Epperson v. Roloff*, 102 Nev. 206, 213, 719 P.2d 799, 804 (1986) (recognizing that a party has a duty to disclose material information "where the defendant alone has knowledge of material facts which are not accessible to the plaintiff"). Namely, Royal Union contends that the Solicitation Letter invited Messrs. Johnson and Glennon to inquire further into the proposed transactions' details by providing an email address and phone number, such that they could have learned of Essex's true value through diligent inquiry. *Cf. Land Baron Inv. v. Bonnie Springs Fam. LP*, 131 Nev. 686, 696, 356 P.3d 511, 518 (2015) ("[Liability for n]ondisclosure arises where a [buyer] is aware of materially adverse facts that could not be discovered by the [seller] *after diligent inquiry*." (emphasis added) (internal quotation marks omitted)).

Royal Union, however, ignores the district court's basis for granting summary judgment. Namely, the district court relied on the Restatement (Second) of Contracts § 159 (1981), which provides that "[a] misrepresentation is an assertion that is not in accord with the facts." Specifically, the district court relied on comment b, which addresses "half-truths," and which provides:

> A statement may be true with respect to the facts stated, but may fail to include qualifying matter necessary to prevent the implication of an assertion that is false with respect to other facts. . . . Such a half-truth may be as misleading as an assertion that is wholly false.

Id. Based on comment b, the district court reasoned that Royal Union provided a misleading "half truth" regarding Essex's financial condition (primarily, the "deemed worthless" statement), such that Royal Union had a duty to disclose to Messrs. Johnson and Glennon that Royal Union did not actually perceive the Essex project to be worthless, as evidenced by Royal Union having already purchased another investor's Essex interest for $3.75 million.[1]

Royal Union counters the district court's "half-truths" analysis by relying on comment k to the Restatement (Second) of Torts § 551 (1977), which provides:

> [w]hen the plaintiff has equal opportunity for obtaining information that he may be expected to utilize if he cares to do so, ***or*** *when the defendant has no reason to think that the plaintiff is acting under a misapprehension*, there is no obligation to

[1]This appears to be the gist of the district court's reasoning. Our analysis is hampered by Royal Union's failure to identify the particular portions of the Solicitation Letter that it believes are at issue.

> give aid to a bargaining antagonist by disclosing what the defendant has himself discovered.

(Emphases added). According to Royal Union, Messrs. Johnson and Glennon had an "equal opportunity" to obtain information regarding Essex's financial viability by virtue of the Solicitation Letter giving them the option to further discuss the proposed transaction with Royal Union's representatives.

Royal Union's argument fails to account for the second scenario in section 551, that there is no duty to disclose "when the defendant has no reason to think that the plaintiff is acting under a misapprehension." Here, Royal Union had reason to believe that Messrs. Johnson and Glennon were acting under a misapprehension. In particular, the Solicitation Letter told them that the Essex project was "deemed worthless" even though Royal Union had already purchased another investor's interest in Essex for $3.75 million. Indeed, Royal Union's reason to believe Messrs. Johnson and Glennon were acting under a misapprehension is evidenced by the other investor's own concerns that the Solicitation Letter provided only half-truths and his desire for Royal Union to send a follow-up letter clarifying the true state of Essex's affairs, which Royal Union declined to send to Messrs. Johnson and Glennon. Moreover, the second paragraph of the Solicitation Letter paints a bleak picture of Essex's financial status when, in reality, Royal Union strongly believed its NRS 106.240 legal position would be successful, such that the property would no longer be encumbered by $200 million debt. Accordingly, whether it be under Restatement (Second) of Contracts § 159 (1981), the Restatement (Second) of Torts § 551, or caselaw indirectly applying those rules, we conclude that the district court correctly determined that Royal Union had a duty to disclose materially favorable information once it provided incomplete and misleading unfavorable information. *See, e.g.*, *Thrifty Rent-A-Car Sys., Inc. v. Brown Flight Rental One Corp.*, 24 F.3d 1190, 1195 (10th Cir. 1994) ("A duty to speak may arise from partial disclosure, the speaker being under a duty to say nothing or to tell the whole truth. One conveying a false impression by the disclosure of some facts and the concealment of others is guilty of fraud, even though his statement is true as far as it goes, since such concealment is in effect a false representation that what is disclosed is the whole truth.").

Royal Union alternatively contends that even if summary judgment in its favor was not proper, genuine issues of material fact precluded summary judgment in favor of Messrs. Johnson and Glennon. *Cf. Wood*, 121 Nev. at 731, 121 P.3d at 1031 ("[T]he evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party."). Having reviewed Royal Union's briefing on this argument, we are unable to discern any factual disputes that would be "material" to any issue in this case. *Cf. id.* ("The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant."). Accordingly, we are not persuaded that issues of material fact prevented the district court from granting summary judgment for Messrs. Johnson and Glennon.

Alternative arguments

Royal Union contends that the district court erred by not placing Royal Union back to its pre-contract position and that it is not possible to do so "without undoing the bankruptcy, or by compensating [Royal Union] for value it created after the units were sold in early 2020." But beyond this statement, Royal Union does not explain what compensation it should be entitled to. Nor did Royal Union's NRCP 59(e) motion—which is the first time Royal Union brought this issue to the district court's attention—provide any explanation.[2] Accordingly, we are not persuaded that the district court abused its discretion in denying Royal Union's NRCP 59(e) motion. *See AA Primo Builders*, 126 Nev. at 582, 589, 245 P.3d at 1193, 1197 (2010) (reviewing for an abuse of discretion the district court's denial of an NRCP 59(e) motion); *cf. Kona Enters., Inc. v. Est. of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) ("A Rule 59(e) motion may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation.").

Alternatively, Royal Union contends that Messrs. Johnson and Glennon "missed their opportunity" to argue for rescission of their respective sales agreements because they did not assert those claims in Essex's bankruptcy proceeding. We disagree. The bankruptcy court's January 22, 2021, order confirming Essex's reorganization plan expressly

[2]Royal Union's NRCP 59(e) motion indicates that the summary judgment order in favor of Mr. Glennon does not expressly require Mr. Glennon to return to Royal Union the $5,000 he received from selling his interest in Essex. But the statements from Mr. Glennon's counsel at the July 9, 2024, hearing demonstrate Mr. Glennon's recognition that he is required to return the $5,000 as part of the district court's summary judgment order rescinding his sale.

states that the "composition and rights of the interest of the members in Essex shall not be affected by the Plan and shall be determined in an appropriate forum separately from confirmation of the Plan." This language contemplates that Royal Union must resolve its interest in Essex in separate litigation, which appears to be the impetus behind Royal Union filing the underlying suit.

Royal Union next contends that Messrs. Johnson and Glennon failed to comply with NRS 163.120, which requires a party suing a trust to notify the trust's beneficiaries within certain timeframes. Royal Union appears to be arguing that because Messrs. Johnson and Glennon did not formally get an extension of time to request the beneficiaries' addresses, their request for such information was invalid, such that Royal Union was not required to provide the addresses. But in granting summary judgment for Mr. Glennon, the district court found Royal Union waived its NRS 163.120 argument by not timely raising it. Alternatively, the district court tacitly gave Messrs. Johnson and Glennon an extension of time to request the addresses by virtue of finding that Royal Union made their compliance with the statute impossible. Royal Union does not address either of these bases, so we are not persuaded that reversal is warranted.

Royal Union finally contends that the district court erred in imposing judgment against appellant Royal Union Properties where it was appellant Royal Union Trust that acquired Messrs. Johnson's and Glennon's investments in Essex. We are not persuaded this creates a question of material fact rendering summary judgment improper. Namely, the district court's summary judgment orders merely require the Royal Union entities to return Messrs. Johnson's and Glennon's investments in Essex, regardless of which Royal Union entity held those interests. Thus, to the extent that the district court's orders referenced an incorrect Royal Union party, this improper reference does not constitute reversible error. *See Wood*, 121 Nev. at 731, 121 P.3d at 1031 ("The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant.").

Consistent with the foregoing, we

ORDER the judgments of the district court AFFIRMED.

Herndon, C.J.

Stiglich, J.

Cadish, J.

cc: Hon. Joseph Hardy, Jr., District Judge
Jay Young, Settlement Judge
Law Offices of Byron Thomas
Fox Rothschild, LLP/Las Vegas
Eighth District Court Clerk