

IN THE SUPREME COURT OF THE STATE OF NEVADA

YOUNG HO CHUN AND PYONG SUK
WOOD,
Appellants,
vs.
BOO W. CHOI; SUSAN O. CHOI;
JAMES C. AHN; AND YOUN AHN
D/B/A RANCHO MARKETPLACE LAS
VEGAS, INC.,
Respondents.

No. 38850

FILED

MAR 05 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Appellants Young Ho Chun and Pyong Suk Wood appeal from an order granting partial summary judgment, certified as final under NRCP 54(b). On appeal, appellants argue that the district court's grant of partial summary judgment was improper as genuine issues of material fact remained regarding appellants' claims against respondents. We conclude that the district court erroneously granted respondents partial summary judgment and thus, we reverse the district court's order and remand for the district court to allow jury consideration of appellants' claims.

An order granting summary judgment is reviewed de novo.¹ Summary judgment is appropriate when there are no genuine issues of material fact, and the moving party is entitled to summary judgment as a matter of law.² In determining whether summary judgment is warranted,

¹Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992).

²Posadas v. City of Reno, 109 Nev. 448, 452, 851 P.2d 438, 441-42 (1993); see also NRCP 56(c).

the court must view all evidence and reasonable inferences in the light most favorable to the nonmoving party.³ If there is the slightest doubt as to the operative facts, the parties should not be deprived of a trial on the merits.⁴

The underlying action involved: (1) an agreement for the sale and purchase of a swap meet business; (2) an agreement to lease the premises where the swap meet was located; and (3) a temporary license agreement to operate the swap meet until the lease agreement became effective. Appellants, the purchasers, failed to make certain monthly payments to respondents, the sellers, including certain utility and common area maintenance (CAM) fees, and respondents provided notice revoking the temporary license. Appellants then filed a complaint alleging claims for declaratory and injunctive relief, breach of implied covenant of good faith and fair dealing, breach of contract, fraud, intentional interference with contractual rights and with business practice/operation, and unjust enrichment. In response, respondents filed multiple counterclaims.

Thereafter, respondents filed a motion for an order to show cause why a temporary writ of restitution should not issue and for a temporary restraining order. Appellants responded with an application for preliminary injunction. On December 9, 2000, the district court held a hearing on respondents' motion and appellants' application. This court was not provided with the transcript of the December 9 hearing, and it

³Posadas, 109 Nev. at 452, 851 P.2d at 441-42.

⁴Perez v. Las Vegas Medical Center, 107 Nev. 1, 4, 805 P.2d 589, 590 (1991).

thus is unable to determine precisely what evidence was presented to the district court. However, on January 13, 2000, the district court issued its amended order denying appellants' preliminary injunction and granting respondents' temporary writ of restitution. Thereafter, respondents prepared a judgment, which was entered by the district court on March 10, 2000. The judgment, in most respects, mirrored the district court order. In the judgment, the court declared that respondents' application for a writ of temporary restitution was granted; the district court entered judgment in favor of respondents and against appellants for back rent, utilities, and CAM fees for the months of October through December 1999, with the amount of damages to be determined after its review of a court-ordered accounting; and the district court declared appellants in forfeiture of the parties' temporary license agreement, asset purchase agreement, and sublease agreement.

After appellants received a copy of the notice of entry of the judgment, appellants expressed concern about the wording of the judgment to respondents. By correspondence, respondents acknowledged appellants' concern and indicated a willingness to clarify by motion or stipulation that the judgment was meant to award all relief pursuant to the temporary writ of restitution and did not impair appellants' rights regarding the permanent writ of restitution. Thereafter, respondents prepared a stipulation and order which contained language representing that the March 10 judgment was a final judgment regarding respondents' application for temporary writ of restitution, and that the judgment did not prevent appellants from proceeding with the prosecution or defense of claims regarding the permanent writ of restitution. For reasons unknown to this court, the stipulation and order was not filed.

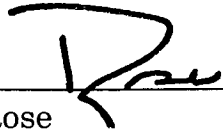
Thereafter, the district court entered an order stating that after its review of the accounting data, the amount of arrearages, credits, and/or offsets was a matter best left to the jury. In September 2001, respondents moved for summary judgment, waiving their entitlement to the CAM fees and utilities. Thus, because the factual dispute had concerned only the amount of CAM fees and utilities, but not back rent, the district court granted respondents' summary judgment motion. Although the transcript of the hearing before the district court on respondents' motion indicates that the district court heard some evidence related to appellants' claims at the December 9, 2000, hearing on respondents' motion for a temporary writ of restitution, the transcript also indicates that the district court relied on its prior decision in granting the motion for summary judgment. The district court concluded that failure to grant the motion for summary judgment would be inconsistent with the orders and determinations that were already made regarding this matter.

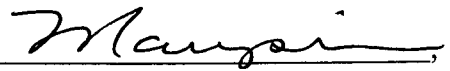
We disagree and conclude that the district court erroneously relied on the judgment and order as a basis to determine that all of appellants' claims had been resolved. The district court's order of January 13 addressed only respondents' motion for a temporary writ of restitution and appellants' application for a temporary restraining order. Likewise, the March 10 judgment was not a final judgment on all the issues; it was a final judgment only with regard to respondents' application for a temporary writ of restitution. Thus, it appears that all the factual issues related to appellants' claims were never fully addressed, and partial summary judgment was improperly granted. Additionally, given that a demand for a jury trial was made, we conclude that the factual issues regarding appellants' claims are more appropriately reserved for the jury.

This order in no way affects the granting of the temporary writ of restitution or the preliminary decision on back rent.

Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.⁵

 _____, J.
Rose

 _____, J.
Maupin

cc: Hon. Nancy M. Saitta, District Judge
Joseph Y. Hong
Schreck Brignone/Las Vegas
Clark County Clerk

⁵This matter was submitted for decision by a panel of this court comprised of Justices Rose, Leavitt, and Maupin. Justice Leavitt having died in office on January 9, 2004, this matter was decided by a two-justice panel.