IN THE SUPREME COURT OF THE STATE OF NEVADA

CHUCK LEMOS,
Appellant,
vs.
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,
Respondent.

No. 38851

FILED

JUN 03 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal of a district court order granting summary judgment in a bad faith action filed by Chuck Lemos (Lemos) against his automobile insurance carrier, State Farm.

Lemos argues that summary judgment was inappropriate because genuine issues of material fact remained with respect to whether a cancellation notice was actually sent. State Farm provided the district court with considerable documentation that a notice was, in fact, mailed to Lemos in a timely manner.

Here, Lemos bases his claim that summary judgment was improper on the premise that whether or not State Farm actually sent a cancellation notice is a genuine issue of material fact. State Farm has supplied the district court with sequencing reports and photographic evidence to show that Lemos' cancellation notice was timely prepared and mailed. Lemos counters that because he never actually received the notice, an issue of material fact remains as to whether it was mailed.

NRS 687B.310(6) provides that "[a]ny [cancellation] notice to an insured . . . must be personally delivered to the insured or mailed first class or certified to the insured at his address last known by the insurer." State Farm's photographic evidence submitted to the court displays a time

and date stamp, along with Lemos' address. Since the statute provides that a carrier has met its obligation regarding notice upon mailing the cancellation, rather than upon receipt of the cancellation by the policyholder, Lemos' claim that State Farm failed to provide notice because he never received it is unpersuasive.

Further, Lemos claims that erroneous statements made by State Farm regarding its notice obligation and photographs of other correspondence that State Farm mistakenly represented as the cancellation notice should be considered by the court as proof that genuine issues of material fact remain to be considered at trial. This claim is also unpersuasive.

On April 12, 2001, State Farm provided Lemos with substantial evidence that the cancellation notice had been timely mailed. Lemos received this evidence almost six months before State Farm filed its motion for summary judgment. The record suggests that while State Farm initially failed to provide Lemos with correct information regarding the cancellation, they corrected the inaccuracies in a reasonable period of time. Lemos was not damaged by State Farm's error, as he filed his bad faith complaint on May 29, 2001, more than a month after State Farm provided the correct photograph of the cancellation notice.

Lemos also claims that the court improperly denied his request for additional discovery time when it granted State Farm's motion for summary judgment. NRCP 56(f) provides as follows:

> Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or

> depositions to be taken or discovery to be had or make such other order as is just.

This court has held that a district court can discretionarily deny a request for additional time "[s]hould it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition."[1] The Eighth Circuit Court of Appeals has reached a similar result:

> Rule 56(f) is not a shield that can be raised to block a motion for summary judgment without even the slightest showing by the opposing party that his opposition is meritorious. A party invoking its protections must do so in good faith by affirmatively demonstrating why he cannot respond to a movant's affidavits as otherwise required by Rule 56(e) and how postponement of a ruling on the motion will enable him, by discovery or other means, to rebut the movant's showing of the absence of a genuine issue of fact. Where, as here, a party fails to carry his burden under Rule 56(f), postponement of a ruling on a motion for summary judgment is unjustified.[2]

Here, Lemos claims that the court denied him of his protections under NRCP 56(f) merely because it granted a summary judgment motion filed just five days after the discovery scheduling order was issued. He offered no facts or affidavits to justify his opposition – instead, he merely argued that further discovery was needed to determine if, in fact, the cancellation notice had been mailed.

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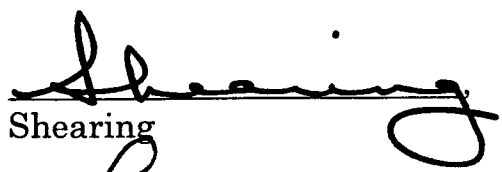
[1]Bakerink v. Orthopaedic Associates, Ltd., 94 Nev. 428, 431, 581 P.2d 9, 11 (1978); see also NRCP 56(f).

[2]Willmar Poultry Co. v. Morton-Norwich Products, 520 F.2d 289, 297 (8th Cir. 1975).

State Farm provided substantial evidence that it complied with statutory provisions regarding cancellation of insurance. Lemos offered nothing but speculation that evidence of bad faith might be unearthed. Thus, the court was within its discretion to determine that additional discovery time was unlikely to reveal facts that would preclude summary judgment for State Farm. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
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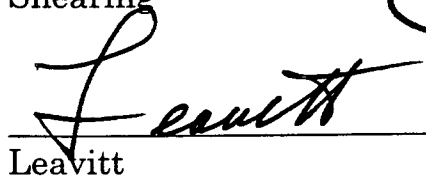

_____, J.
Leavitt

_____, J.
Becker

cc: Hon. Jackie Glass, District Judge
Christensen Law Offices
Broening , Oberg, Woods, Wilson & Cass
Clark County Clerk