

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUNSHINE RANCH, INC.; DESERT
MOUNTAIN OIL, INC.; RONDO DANE
SIMMONS; AND MARY W. SIMMONS,
Appellants,

vs.

BRYAN COLODNY AND BARNARD
AND VOGLER,
Respondents.

No. 38991

FILED

FEB 18 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting respondents Bryan Colodny's and Barnard and Vogler's (Barnard Vogler) motion for summary judgment. We conclude that the district court properly granted summary judgment for Barnard Vogler because the claims filed by the appellants, Sunshine Ranch, Inc., Desert Mountain Oil, Inc., Rondo Simmons, and Mary Simmons (Sunshine Ranch) are barred by the statute of limitations in NRS 11.2075, Malpractice Actions Against Accountants.

This court reviews an order granting summary judgment de novo.¹ Summary judgment is appropriate if there are "no genuine issues as to any material fact and that the moving party is entitled to a judgment as a matter of law."² "In determining whether summary judgment is proper, the non-moving party is entitled to have the evidence and all

¹Ortega v. Reyna, 114 Nev. 55, 58, 953 P.2d 18, 20 (1998).

²NRCP 56(c).

reasonable inferences accepted as true.”³ “However, conclusory statements along with general allegations do not create an issue of material fact.”⁴

In 1992, Sunshine Ranch hired Bryan Colodny, a certified public accountant, and Barnard and Vogler, the professional corporation of which Colodny was a shareholder, to help with Sunshine Ranch’s Internal Revenue Service (IRS) audit. The IRS audit was completed in 1993, and Barnard Vogler provided services to Sunshine Ranch until approximately September 1994. On September 30, 1999, Sunshine Ranch brought seven causes of action against Barnard Vogler, which included: breach of contract, breach of the covenant of good faith and fair dealing, negligence, negligent misrepresentation, unfair business practices, breach of fiduciary duty, and negligent malpractice.

Barnard Vogler filed a motion for summary judgment, alleging that the statute of limitations under NRS 11.2075 barred all of Sunshine Ranch’s claims. The district court denied that motion. Barnard Vogler later filed a second motion for summary judgment.⁵ On November 19, 2001, the district court granted Barnard Vogler’s second motion for summary judgment. The court held that Sunshine Ranch’s claims for breach of contract, negligence, and negligent misrepresentation are all

³State, Dep’t Transp. v. Central Telephone, 107 Nev. 898, 901, 822 P.2d 1108, 1109 (1991) (quoting Wiltsie v. Baby Grand Corp., 105 Nev. 291, 292, 774 P.2d 432, 433 (1989)).

⁴Michaels v. Sudeck, 107 Nev. 332, 334, 810 P.2d 1212, 1213 (1991).

⁵This motion did not allege that the statute of limitations had run under NRS 11.2075.

claims of professional negligence, which are barred under NRS 11.2075.⁶ The court held that the remaining claims, which include breach of the covenant of good faith and fair dealing, unfair business practices, and breach of fiduciary duty, do not fall under NRS 11.2075, but concern Barnard Vogler's relationship with the IRS auditor, Phillip Valenzuela, and Sunshine Ranch produced no evidence showing a conspiracy between the accountant and the IRS auditor.

⁶NRS 11.2075 provides the statute of limitations for malpractice actions brought against accountants and provides, in pertinent part:

1. An action against an accountant or accounting firm to recover damages for malpractice must be commenced within:

(a) Two years after the date on which the alleged act, error or omission is discovered or should have been discovered through the use of reasonable diligence;

(b) Four years after completion of performance of the service for which the action is brought; or

(c) Four years after the date of the initial issuance of the report prepared by the accountant or accounting firm regarding the financial statements or other information, whichever occurs earlier.

2. The time limitation set forth in subsection 1 is tolled for any period during which the accountant or accounting firm conceals the act, error or omission upon which the action is founded and which is known or through the use of reasonable diligence should have been known to him or the firm.

Sunshine Ranch asserts that summary judgment is inappropriate in this case because there is an issue of fact regarding whether Barnard Vogler actively concealed its relationship with Valenzuela under NRS 11.2075(2). We disagree.

Sunshine Ranch has not raised any genuine issues of material fact to show that the statute of limitations under NRS 11.2075(2) should be tolled. Sunshine Ranch does not dispute that the audit was completed in 1993 and all work for Sunshine Ranch by September 1994.⁷ Sunshine Ranch brought this action on September 30, 1999, which is six years after the audit was completed and five years after the connection ended. Under either NRS 11.2075(1)(a) or (b), the statute of limitations has run. Sunshine Ranch provides no facts supporting its claim that Barnard Vogler concealed its relationship with the IRS agent or that there was a conspiratorial relationship. Therefore, we conclude that the district court did not err in granting summary judgment on the basis of NRS 11.2075.

We also conclude that Sunshine Ranch's remaining claims of the breach of the covenant of good faith and fair dealing, breach of fiduciary duty, and unfair business practices can also be dismissed under NRS 11.2075. We have held that "[t]he term 'action' in [the] NRS . . . refers to the nature or subject matter [of the complaint] and not to what the pleader says it is."⁸ In determining whether the statute of limitations

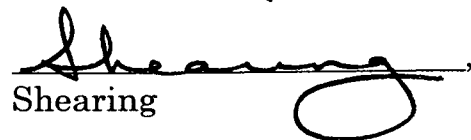
⁷See Ortega, 114 Nev. at 58, 953 P.2d at 20 (noting "[i]f the facts set forth in support of a motion for summary judgment are not controverted by the opposing party, then those facts are presumed to be true" (quoting Tamsen v. Weber, 802 P.2d 1063, 1067 (Ariz. Ct. App. 1990))).

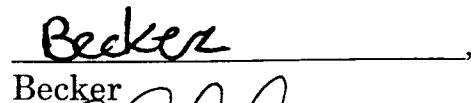
⁸Hartford Ins. v. Statewide Appliances, 87 Nev. 195, 197, 484 P.2d 569, 571 (1971).

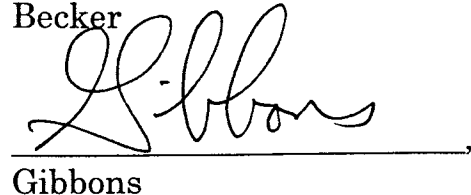
applies in this case, we “look to the real purpose of the complaint.”⁹ The causes of action alleged by Sunshine Ranch are all basically charges of malpractice against Barnard Vogler. Therefore, all claims can be dismissed under NRS 11.2075.

We have reviewed Sunshine Ranch’s remaining arguments and conclude that they lack merit. Therefore, we

ORDER the judgment of the district court AFFIRMED.

 _____, C. J.
Shearing

 _____, J.
Becker

 _____, J.
Gibbons

cc: Hon. Steven R. Kosach, District Judge
Mirch & Mirch
Keith L. Lee
Mariscal Weeks McIntyre & Friedlander, P.A.
Washoe District Court Clerk

⁹Id.