

IN THE SUPREME COURT OF THE STATE OF NEVADA

OWENS PLASTERING CO., A NEVADA
CORPORATION,
Appellant,

vs.

SOLIEL L.V., A NEVADA
CORPORATION; ARTIE SPECTOR, AN
INDIVIDUAL; MICHAEL KAPLAN, AN
INDIVIDUAL; AND UNITED PACIFIC
INSURANCE COMPANY,
Respondents.

No. 40767

FILED

DEC 01 2004

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting a motion for summary judgment. Eighth Judicial District Court, Clark County; Michael L. Douglas, Judge.

The parties in this matter are Soliel, American Framing Systems (AFS), and Owens Plastering Co. (Owens). Soliel is the owner of the apartment complex Club de Soliel. Soliel contracted with AFS as a general contractor on the project at Club de Soliel. AFS sub-contracted with Owens to provide "materials and labor for furnishing and installing lath and plaster, gypsum boards, textured ceilings and painting" for the project. After Owens completed its work, Owens filed a complaint against AFS and Robert Jones, alleging that AFS breached its contract to Owens by failing to pay Owens for the work Owens completed on the Club de Soliel project.

Owens and AFS entered into a settlement agreement, but since Owens had not been paid, the case was not dismissed. This settlement agreement provided that Owens and AFS would jointly

attempt to collect compensation outstanding from Soliel. The Owens-AFS agreement provides, in pertinent part:

AFS agrees prior to the payment in full to Owens that it will not attempt to settle any such litigation or claim him [sic] without the full consent of Owens, and its attorney McKnight. AFS agrees to cooperate in all phases of the litigation and to provide information relating thereto upon request of McKnight & Hendrix.

....

AFS agrees that from the proceeds of the settlement or judgment it shall pay Owens the sum of \$234,956.86 or whatever amount the court awards to Owens plus a proportionate share of the interest recovered and to reimburse Owens for any attorneys fees or costs expended during the course of the litigation.

AFS filed a separate suit against Soliel to collect the amount owed by Soliel. Owens was to pay all the fees and costs associated with the suit. Owens also testified that AFS's president, Jack Pattee, informed Owens that Soliel offered to pay AFS in full if AFS would "throw Owens off the bus and go its own way." The day before AFS's trial against Soliel, AFS, without contacting Owens, reached a settlement agreement with Soliel. The settlement agreement between AFS and Soliel was for \$71,980, the amount Soliel owed AFS alone. AFS agreed in the mutual release agreement that it, and its affiliates, would drop the case against Soliel by AFS, and would not bring any further claims against Soliel.

After AFS and Soliel settled, Owens filed a supplemental complaint in its original lawsuit against AFS, adding Soliel as a defendant to the complaint. The complaint alleged that AFS "breached its fiduciary

duties to Owens” by entering into a secret settlement agreement with Soliel. Owens alleged that Soliel had knowledge of the settlement agreement between Owens and AFS. The complaint alleged that Soliel intentionally interfered with the Owens-AFS settlement agreement by intentionally engaging “in concerted action with the unlawful objectives of defrauding and harming Owens.”

Soliel filed a motion with the district court for summary judgment. Soliel contends that its decision to reach an agreement with AFS is privileged. The district court noted that

looking at the salient facts that are here and . . . how the obligations run, even though as counsel points out there might have been a slight [sic] of hand, but I don’t think that slight [sic] of hand is going to set aside the settlement that took place or the obligation that [AFS] has to pay Owens and put this other party in its place.

Based on those findings, the district court granted Soliel’s motion for summary judgment. Owens appeals.

Owens contends that the district court erred in granting summary judgment because Owens demonstrated a genuine issue of material fact regarding a claim against Soliel for intentional interference with a contract. We agree.

“An order granting summary judgment is reviewed by this court using a de novo standard of review.”¹ We have held that

¹Pressler v. City of Reno, 118 Nev. 506, 509, 50 P.3d 1096, 1098 (2002).

Summary judgment should be granted only when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. If there is the slightest doubt as to any material issue of fact, the litigant has a right to trial by a jury.²

We have held that to establish intentional interference with contractual relations, the plaintiff has the burden to prove five elements: “(1) a valid and existing contract; (2) the defendant’s knowledge of the contract; (3) intentional acts intended or designed to disrupt the contractual relationship; (4) actual disruption of the contract; and (5) resulting damage.”³ We have also held that: ““At the heart of [an intentional interference] action is whether Plaintiff has proved intentional acts by Defendant intended or designed to disrupt Plaintiff’s contractual relations.””⁴

In this case, there is an issue of material fact regarding whether Soliel intended to induce AFS to breach its settlement agreement with Owens. While Soliel may have been motivated to protect its financial interests, Soliel admitted that it was aware of Owens’ and AFS’s settlement agreement. Willard Owens also testified in an affidavit that he

²Id. at 509-10, 50 P.3d at 1098 (citations omitted).

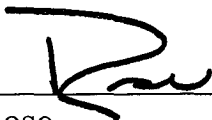
³Sutherland v. Gross, 105 Nev. 192, 196, 772 P.2d 1287, 1290 (1989).

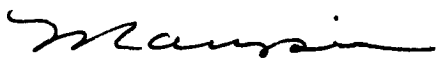
⁴J.J. Indus., LLC v. Bennett, 119 Nev. ___, ___, 71 P.3d 1264, 1268 (2003) (quoting Las Vegas Investors v. Pacific Malibu Dev. Corp., 867 F. Supp. 920, 925 (D. Nev. 1994) (alteration and emphasis added) (quoting Nat. Right to Life P.A. Com. v. Friends of Bryan, 741 F. Supp. 807, 814 (D. Nev. 1990)).

was aware of an offer by Michael Kaplan of Soliel to settle with AFS so long as AFS would "throw Owens off the bus and go its own way." We conclude that this evidence creates genuine issues of material fact, and therefore, the district court erred in granting Soliel's summary judgment motion. Accordingly, we

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

 _____, C.J.
Shearing

 _____, J.
Rose

 _____, J.
Maupin

cc: Eighth Judicial District Court Dept. 11, District Judge
Law Offices of Richard McKnight, P.C.
Jones Vargas/Las Vegas
Clark County Clerk