

IN THE SUPREME COURT OF THE STATE OF NEVADA

SOUBHI KATTAN, AN INDIVIDUAL,
Appellant,
vs.
BANKERS TRUST COMPANY OF
CALIFORNIA, N.A., A CALIFORNIA
ENTITY; ADVANTA FINANCE
RESIDENTIAL MORTGAGE CORP., A
NEVADA CORPORATION; AND BUCKLEY
& ASSOCIATES, INC., A CALIFORNIA
CORPORATION,
Respondents.

No. 41465

FILED

JUL 05 2006

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing the action, with prejudice, for discovery violations. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

A district court's decision to dismiss a complaint as a sanction for discovery abuses is reviewed for abuse of discretion.¹ But when the sanction imposed is dismissal with prejudice, a heightened standard of review applies.² Sanctions for discovery abuses must be just and should be only imposed after thoughtful consideration of all of the factors involved

¹Hamlett v. Reynolds, 114 Nev. 863, 865, 963 P.2d 457, 458 (1998).

²Id. (citing Young v. Johnny Ribeiro Building, 106 Nev. 88, 787 P.2d 777 (1990)).

in a particular case.³ In particular, care should be exercised in dismissing an action with prejudice and the district court must consider pertinent factors, which may include:

[T]he degree of willfulness of the offending party, the extent to which the non-offending party would be prejudiced by a lesser sanction, the severity of the sanction of dismissal relative to the severity of the discovery abuse, whether any evidence has been irreparably lost, the feasibility and fairness of alternative, less severe sanctions, such as an order deeming facts relating to improperly withheld or destroyed evidence to be admitted by the offending party, the policy favoring adjudication on the merits, whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney, and the need to deter both the parties and future litigants from similar abuses.⁴

Moreover, we have recognized that the ultimate sanction of dismissal is appropriate when a litigant demonstrates willful noncompliance with the court's discovery orders.⁵

Our review of the record on appeal demonstrates that the district court properly considered all factors involved in this case, and that


³Young v. Johnny Ribeiro Building, 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990).

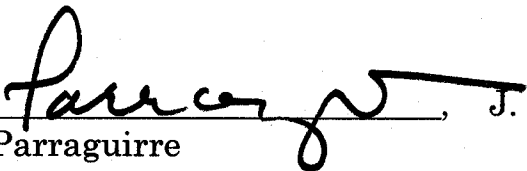
⁴Id. at 93, 787 P.2d at 780.

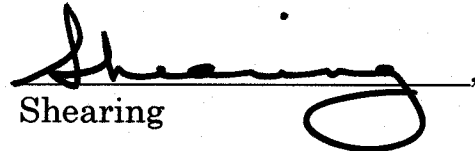
⁵See NRCP 37(b)(2)(c); Young, 106 Nev. at 92, 787 P.2d at 779 (1990).

it did not abuse its discretion in dismissing the action with prejudice. Accordingly, we affirm the district court's order.⁶

IT IS SO ORDERED.⁷


_____, J.
Becker


_____, J.
Parraguirre


_____, Sr.J.
Shearing

cc: Hon. Valerie Adair, District Judge
Soubhi Kattan
Earley Savage
Miles, Bauer, Bergstrom & Winters, LLP
Clark County Clerk

⁶Although appellant was not granted leave to file documents in proper person, see NRAP 46(b), we have received and considered the proper person "Response and Statement" submitted by appellant.

⁷The Honorable Miriam Shearing, Senior Justice, participated in the decision of this matter under a general order of assignment entered January 6, 2006.