

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHEPHERD HILLS DEVELOPMENT CORPORATION, A NEVADA NON-PROFIT CORPORATION; AND SHEPHERD HILLS MUTUAL HOUSING ASSOCIATION, INC., A NEVADA NON-PROFIT CORPORATION,

Appellants,

vs.

THE BEDFORD GROUP, A CALIFORNIA CORPORATION; TBG DEVELOPMENT, A NEVADA CORPORATION; AND NEVADA TMC MANAGEMENT, LLC, A LIMITED LIABILITY COMPANY,
Respondents.

No. 41935

FILED

JUN 30 2006

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

ORDER OF REVERSAL AND REMAND WITH INSTRUCTIONS

This is an appeal from a district court judgment in a contract action. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

Appellants Shepherd Hills Development Corporation (SH Development) and Shepherd Hills Mutual Housing Association, Inc. (SH Association) (collectively SH Appellants) are partners in the Shepherd Hills Apartments Limited Partnership with respondents TBG Development (TBG) and Nevada TMC Management, LLC (TMC).¹ TBG and SH Development are the general partners, with TBG as managing partner. The remaining entities are limited partners.

¹Respondent The Bedford Group is not a partner.

Respondents filed suit in district court against SH Appellants alleging several causes of action related to SH Appellants' alleged breach of the partnership agreement and interference with partnership operations to the detriment of the partnership. Soon thereafter, SH Appellants answered respondents' complaint, but did not allege any counterclaims against respondents. Eight months later, SH Appellants sought to amend their answer to include counterclaims against respondents. Respondents sought voluntary dismissal of their own claims because the underlying disputes had been resolved. The district court dismissed respondents' claims. It also concluded that SH Appellants' proposed counterclaims were not compulsory and, therefore, could be brought by SH Appellants in a new action at a later time.

On appeal, SH Appellants contend that the district court erred by denying their motion to amend their answer to assert counterclaims.² We conclude that the district court erred in applying NRCP 13(a) by determining that SH Appellants' proposed counterclaims were not compulsory. Because the district court did not consider whether amendment would be appropriate for compulsory counterclaims, we remand this case for the district court to make that determination. Remand is necessary because the propriety of amending SH Appellants'

²SH Appellants also argue on appeal that the district court erred in an earlier order by finding that TMC was properly appointed to manage the Shepherd Hills Apartments. Because this issue was not finally litigated and may arise again if the district court allows SH Appellants to amend their answer to assert counterclaims, we do not address this issue at this time.

answer to assert compulsory counterclaims will involve fact-finding. Only the district court, not this court, can engage in such fact-finding.³

A counterclaim is compulsory when “it arises out of the transaction or occurrence that is the subject matter of the opposing party’s claim.”⁴ TBG and TMC’s original claims were based on breach of the partnership agreement and on SH Appellants’ alleged interference with the management of the Shepherd Hills Apartments. Similarly, SH Appellants’ proposed counterclaims derive from an alleged breach of the partnership agreement and from TBG and TMC’s alleged mismanagement of the apartment complex. SH Appellants’ proposed counterclaims are compulsory because they arise out of the same transaction or occurrence as TBG and TMC’s claims—namely, which entity breached the partnership agreement, and which entity caused mismanagement of the apartment complex resulting in loss.⁵

SH Appellants rely on NRCP 13(f) to argue that they should be permitted to assert their proposed counterclaims. Under NRCP 13(f), “[w]hen a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment.” SH Appellants contend that justice requires that they be permitted to assert their counterclaims.

³See Hosier v. State, 121 Nev. ___, ___, 117 P.3d 212, 213 (2005).

⁴NRCP 13(a).

⁵See Executive Mgmt. v. Ticor Title Ins. Co., 114 Nev. 823, 842-43, 963 P.2d 465, 477-78 (1998).

In determining whether amendment is appropriate, the district court will have to carefully balance the interests of the parties. In doing so, the district court should focus on (1) the prejudice to the opposing party if the motion to amend were granted,⁶ and (2) the prejudice to the movant that would result if the motion were denied.⁷ Some factors the district court should consider are (a) whether the counterclaims are compulsory, (b) whether the movant has acted in good faith and has not unduly delayed filing the counterclaims, and (c) whether the counterclaims are meritorious.⁸

Additionally, SH Appellants sought to join additional parties to their counterclaims under NRCP 13(h). Again, because the district court did not make its determination in light of the counterclaims being compulsory, if the district court concludes that amendment is appropriate, it will also have to determine whether joinder is likewise appropriate.

Because SH Appellants' counterclaims are compulsory, we reverse that portion of the district court's order denying SH Appellants' motion to amend and remand to the district court to determine whether amendment of SH Appellants' answer is appropriate.

⁶See Nev. Bank Commerce v. Edgewater, Inc., 84 Nev. 651, 653, 446 P.2d 990, 992 (1968).

⁷See Baker v. Gold Seal Liquors, Inc., 417 U.S. 467, 469 n.1 (1974) (stating, "A counterclaim which is compulsory but is not brought is thereafter barred."); Moll v. Nevada Young Am. Homes, Inc., 93 Nev. 68, 69, 560 P.2d 152, 152-53 (1977) (concluding that a motion to amend should have been granted because the counterclaim sought was compulsory).

⁸See Bigda v. Fischbach Corp., 849 F. Supp. 895, 906 (S.D.N.Y. 1994).

IT IS SO ORDERED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Sally L. Loehrer, District Judge
Jones Vargas/Las Vegas
Hutchison & Steffen, Ltd.
Clark County Clerk