

IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA TITLE COMPANY,
Appellant,
vs.
CORCHA, LLC, A NEVADA LIMITED
LIABILITY COMPANY; AND
DOUGLAS C. CLEMETSON,
Respondents.

No. 42396

FILED

JAN 12 2007

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court judgment, upon a jury verdict, in a negligence and breach of contract action and an order denying appellant's motion for a new trial. Eighth Judicial District Court, Clark County; Michael L. Douglas, Judge.

Respondents are a member and a manager, respectively, of Paradise Canyon, LLC (Paradise Canyon), a Nevada limited liability company formed to develop a golf course. They filed a complaint against appellant Nevada Title Company (Nevada Title), together with a lender, a mortgage broker, and respondents' co-member and co-manager to enjoin a foreclosure proceeding upon a deed of trust. Respondents asserted claims of negligence and breach of an escrow agreement against Nevada Title. Paradise Canyon was not a party to the district court lawsuit. It had filed a voluntary Chapter 11 bankruptcy petition. Nevada Title appeals the jury's verdict and judgment finding it liable for negligently misapplying \$1.24 million in proceeds from the construction loan, arguing that Paradise Canyon was an indispensable party under NRCP 19 whose non-joinder was fatal to the judgment. Nevada Title also challenges the denial

of its motion for judgment notwithstanding the verdict (JNOV).¹ We agree that the district court abused its discretion by denying the motion for JNOV for the reasons set forth herein.

DISCUSSION

When reviewing a district court order denying JNOV, we “view the evidence ‘in a light most favorable to the nonmovant, and that party must be given the benefit of every reasonable inference from any substantial evidence supporting the verdict.’”² “[JNOV] should be granted when there is only one reasonable conclusion without weighing the evidence.”³ We will reverse an order denying JNOV “if the final judgment is unwarranted as a matter of law.”⁴ Furthermore, we review the district court’s decision to grant or deny a new trial for an abuse of discretion.⁵

Nevada Title contends that Paradise Canyon is an indispensable party to this action; therefore, the district court lacked jurisdiction to adjudicate this case in the absence of the joinder by Paradise Canyon.

¹Respondents may challenge the district court’s denial of its motion for JNOV within its appeal from the district court’s final judgment. See Uniroyal Goodrich Tire v. Mercer, 111 Nev. 318, 320 n.1, 890 P.2d 785, 787 n.1 (1995).

²Smith’s Food & Drug Cntrs. v. Bellegarde, 114 Nev. 602, 605, 958 P.2d 1208, 1211 (1998) (quoting NEC Corp. v. Benbow, 105 Nev. 287, 290, 774 P.2d 1033, 1035 (1989)).

³Benbow, 105 Nev. at 290, 774 P.2d at 1035-36.

⁴University System v. Farmer, 113 Nev. 90, 95, 930 P.2d 730, 734 (1997).

⁵Pappas v. State, Dep’t Transp., 104 Nev. 572, 574, 763 P.2d 348, 349 (1988).

An indispensable party is a party who is “necessary” to an action but who, for some reason, cannot be made a party to the action. If the necessary party is found to be unavailable, the court must decide whether in equity and good conscience the action should proceed. If in equity and good conscience the action cannot proceed without the necessary party, that party is “indispensable” and the case must be dismissed.⁶

Paradise Canyon was a necessary and indispensable party under NRCPC 19

Paradise Canyon is an indispensable and necessary party. An LLC may “[s]ue and be sued, complain and defend, in its name.”⁷ “A member of a limited-liability company is not a proper party to proceedings by or against the company, except where the object is to enforce the member’s right against or liability to the company.”⁸ A member’s interest in the LLC is personal property⁹ limited to its “share of the economic interests in a limited-liability company, including profits, losses and distribution of assets.”¹⁰

Respondents were not individually entitled to damages from the \$1.24 million land draw proceeds allegedly misapplied by Nevada

⁶Potts v. Vokits, 101 Nev. 90, 92, 692 P.2d 1304, 1306 (1985); NRCPC 19(b).

⁷NRS 86.281(1).

⁸NRS 86.381.

⁹NRS 86.351(1).

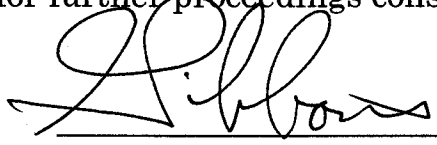
¹⁰NRS 86.091.

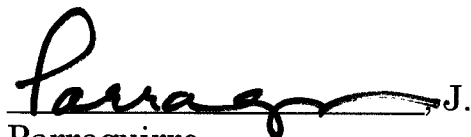
Title. Paradise Canyon was the party to the escrow with Nevada Title. Therefore, those proceeds were the property of Paradise Canyon.

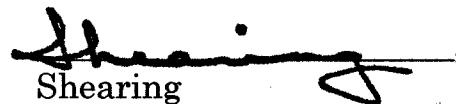
Because Paradise Canyon was not named as a party to the lawsuit, respondents may not circumvent the limited liability form and reap a windfall.¹¹ Since the cause of action belonged to Paradise Canyon and not to respondents, only Paradise Canyon could have asserted the complaint against Nevada Title. Respondents do not have standing to pursue the cause of action against Nevada Title. Thus, Paradise Canyon was a necessary and indispensable party to the action to litigate the terms of the 1999 escrow agreement.

Accordingly, we

ORDER the judgment of the district court REVERSED and REMAND this case for further proceedings consistent with this order.¹²


_____, J.
Gibbons


_____, J.
Parraguirre


_____, Sr. J.
Shearing

¹¹See Trident-Allied Associates v. Cypress Creek Assoc., 317 F. Supp. 2d 752, 754-55 (E.D. Mich. 2004) (construing similar provisions of Michigan's LLC statutes to find the LLC an indispensable party where the harm alleged by the LLC member was harm to the LLC).

¹²In view of our decision, we do not need to reach the other issues raised by appellant in its appeal.

cc: Eighth Judicial District Court Dept. 11, District Judge
Campbell & Williams
Nik Skrinjaric
Cindy Lee Stock
Clark County Clerk