IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK MCKINNEY, AND W. PRESTON KENNEY,
Appellants,
vs.
FIRST SAVINGS BANK, A BUSINESS ENTITY,
Respondent.

No. 42843

FILED

OCT 18 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment in favor of a lender. [1] Eighth Judicial District Court, Clark County; Michael L. Douglas, Judge.

Mark McKinney and Preston Kenney (collectively McKinney) appeal the order granting summary judgment in favor of First Savings Bank (FSB). We conclude that McKinney's arguments are without merit. The parties are familiar with the facts, and we do not recount them in this order except as is necessary for our disposition.

First, regarding McKinney's argument that summary judgment was improper because there are genuine issues of material fact concerning damages, we conclude that McKinney has failed to meet the

[1]McKinney also appealed the district court's denial of their motion for reconsideration. However, this court lacks jurisdiction to review that decision because "where no statutory authority to appeal is granted, no right to appeal exists." Castillo v. State, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990); Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984). There is no statute or court rule providing for an appeal from an order denying a motion for reconsideration. Alvis v. State, Gaming Control Bd., 99 Nev. 184, 660 P.2d 980 (1983). Thus, this court has not considered McKinney's appeal from the decision denying reconsideration.

burden to overcome summary judgment by not providing the district court with the evidence required to determine if damages existed. Where a party seeks damages, that party bears the burden of proving those damages[2] and must provide the district court with an evidentiary basis upon which it may properly assess the amount of damages.[3] In a real estate transaction, damages are measured by the benefit of the bargain, which is the difference between the fair market value of the property the buyer should have received and the fair market value of the property the buyer actually received.[4]

McKinney was required to provide the district court with an appraisal of the fair market value of the properties as completed to demonstrate that the fair market value was less than the pre-construction appraisal. McKinney never presented this evidence and, in fact, stated at oral argument that McKinney believed no appraisal of fair market value was necessary because McKinney assumed that the affidavits in the opposition to the motion for summary judgment, which stated that the properties were sold for the best price possible, would sufficiently place damages into question. McKinney also stated numerous times that when the properties were sold, they were sold for only the amount of costs and construction loans McKinney incurred in the properties. The properties were sold to McKinney's business associates and never placed on the open

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[2]Mort Wallin v. Commercial Cabinet, 105 Nev. 855, 856-57, 784 P.2d 954, 955 (1989).

[3]Id. at 857, 784 P.2d at 955 (citing Central Bit Supply v. Waldrop Drilling, 102 Nev. 139, 142, 717 P.2d 35, 37 (1986)).

[4]Harris v. Shell Dev. Corp., 95 Nev. 348, 352, 594 P.2d 731, 733-34 (1979).

market, and McKinney did not present any evidence that McKinney sought fair market value when selling the properties. McKinney has failed to meet the evidentiary burden required to overcome summary judgment.

Second, regarding McKinney's assertion that McKinney is entitled to bring a claim against FSB under NRS 627.190, we conclude that McKinney does not fall within the class of claimants permitted to bring suit under this statute. Where a statute "expressly provides a remedy, courts should be cautious in reading other remedies into the statute."[5] A private right of action may be implied in a statutory scheme where the plaintiff is a member of the class for whose "'special benefit the statute was enacted.'"[6] NRS 627.200 clearly indicates that the construction control statutes are designed to protect mechanic's lien claimants. And under NRS 627.190, the Legislature provided relief only for claimants who may file mechanic's liens against the construction project, i.e. aggrieved subcontractors. We conclude that there is no private cause of action under NRS 627.190 because McKinney is not a member of the class of plaintiffs for whose "special benefit the statute was enacted."

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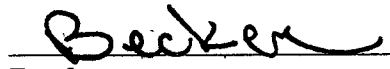
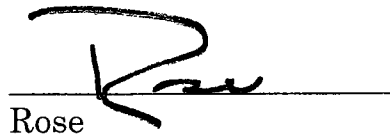
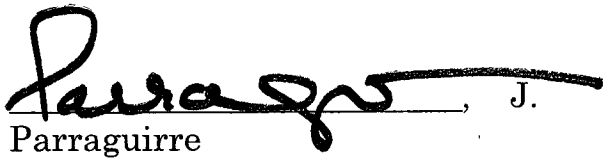
[5]Builders Ass'n v. City of Reno, 105 Nev. 368, 370, 776 P.2d 1234, 1235 (1989).

[6]Sports Form v. Leroy's Horse & Sports, 108 Nev. 37, 39, 829 P.2d 901, 902 (1992) (quoting Cort v. Ash, 422 U.S. 66, 78 (1975)).

Accordingly, we ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Becker


_____, J.
Rose


_____, J.
Parraguirre

cc: Eighth Judicial District Court Dept. 11, District Judge
Berkley, Gordon & Goldstein, LLP
McCullough, Perez & Associates, Ltd.
Clark County Clerk