SUPREME COURT OF NEVADA
OFFICE OF THE CLERK
ELIZABETH A. BROWN, CLERK
201 SOUTH CARSON STREET, SUITE 201
CARSON CITY, NEVADA 89701-4702

Telephone
(775) 684-1600

December 23, 2020

Alexander Falconi
Administrator
Our Nevada Judges
admin@ournevadajudges.com

Dear Mr. Falconi:

I received your letter (by email) dated December 21, 2021, requesting information regarding the names of district court judges related to a number of appellate court cases. The following information is provided in response to your inquiry:

Docket No. 81773 – District Judge Cynthia Lu
Docket No. 78187 – District Judge Mark Denton
Docket No. 73286 – District Judge James Todd Russell
Docket No. 78699 – District Judge Frank Sullivan
Docket No. 78898 – District Judge Jim Shirley
Docket No. 78156 – District Judge Frank Sullivan
Docket No. 73895 – District Judge Cynthia Lu
Docket No. 78880 – District Judge David Gibson, Jr. and District Judge Adriana White

Due to glitch in our case management system, Docket Nos. 81431, 78187, and 73286 are not currently available through the public portal. Copies of those decisions are attached. I note that Docket No. 81431 concerns an original proceeding rather than an appeal from a district court judgment. The remaining Docket Nos. in your request are confidential.

Sincerely,

Elizabeth A. Brown, Esq.
Clerk of Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

KIM BLANDINO,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK,
Respondent,
and
THE HONORABLE STEVE SISOLAK, GOVERNOR OF NEVADA; CHIEF JUDGE LINDA MARIE BELL IN HER JUDICIAL AND ADMINISTRATIVE EXECUTIVE CAPACITY; AND SENIOR JUDGE DAVID BARKER IN HIS JUDICIAL, EXECUTIVE AND ADMINISTRATIVE CAPACITY,
Real Parties in Interest.

No. 81431

FILED

JUL 08 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING MOTION TO FILE PETITION IN EXCESS OF NRAP 21(D) LIMITS

Petitioner has filed a 38-page emergency petition for extraordinary writ relief. Although NRAP 21(d), as amended effective June 8, 2020, limits such petitions to 15 pages or no more than 7000 words absent court-granted leave to file a longer petition, petitioner failed to file a certificate of compliance with this rule, as required by NRAP 21(e), or a separate motion to exceed the page/word limit. Instead, in the petition, petitioner asks this court to "suspend any and all rules," explaining that he is under great strain and cannot keep up with his workload. Petitioner asks that, given the short timeframe and delay, this court take notice of his diligence and good cause and treat his request as a motion to exceed any page limits.

While we agree to treat petitioner's request as a motion to exceed the NRAP 21(d) page/word limit, we conclude that he has failed to demonstrate diligence and good cause to file a petition more than twice the allowable length. As NRAP 32(a)(7)(D)(i) explains, motions to exceed the page/word limit are not routinely granted. *See* NRAP 21(d) (providing that motions to exceed the page/word limit are subject to NRAP 32(a)(7)(D)). Rather, such motions "will be granted only upon a showing of diligence and good cause." NRAP 32(a)(7)(D)(i). Further, petitioner is subject to these rules the same as an attorney. *See Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 659, 428 P.3d 255, 258-59 (2018) (noting that procedural rules cannot be applied differently to pro se litigants). We are not convinced that petitioner has demonstrated "diligence and good cause" to warrant a petition that exceeds the page/word limit because the proposed petition includes extraneous facts and information and a significant amount of impertinent opinion. *Cf.* NRAP 28(j) ("All briefs under this Rule must be concise, presented with accuracy, . . . and free from burdensome, irrelevant, immaterial or scandalous matters."). Accordingly, we deny the motion to exceed the page/word limit and direct the clerk of this court to strike the overlength petition.

It is so ORDERED.

Pickering, C.J.
Pickering

Gibbons, J.
Gibbons

Stiglich, J.
Stiglich

cc: Kim Blandino
Attorney General/Carson City
Adrian S. Viesca
Attorney General/Las Vegas
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT G. REYNOLDS, AN INDIVIDUAL; AND DIAMANTI FINE JEWELERS, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Appellants,
vs.
RAFFI TUFENKJIAN, AN INDIVIDUAL; AND LUXURY HOLDINGS LV, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Respondents.

No. 78187

FILED

NOV 23 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This appeal challenges a district court summary judgment in a breach of contract and tort matter. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Appellant Robert Reynolds purchased Diamanti Fine Jewelers (the jewelry store) through his limited liability company, Diamanti Fine Jewelers, LLC (Diamanti LLC). Diamanti LLC purchased the jewelry store from respondent Raffi Tufenkjian through Tufenkjian's limited liability company, Luxury Holdings LV, LLC (Luxury LLC). Applicable here, Reynolds and Diamanti LLC (collectively, Reynolds) later sued Tufenkjian and Luxury LLC (collectively, Tufenkjian) for intentional misrepresentation and elder abuse.[1] The district court granted summary

[1]We dismissed this appeal as to Reynolds' negligent misrepresentation and breach of contract claims in *Reynolds v. Tufenkjian*, 136 Nev., Adv. Op. 19, 461 P.3d 147, 154 (2020), and, therefore, we do not address those claims here.

judgment in favor of Tufenkjian, finding that non-reliance clauses within the parties' contract barred Reynolds' intentional misrepresentation claims as a matter of law. The district court also found that the lack of any "actionable misrepresentations" caused Reynolds' elder abuse claim to fail. Reynolds now appeals that decision.

We review a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* The interpretation of an unambiguous contract's language is a question of law we review de novo. *See Galardi v. Naples Polaris, LLC*, 129 Nev. 306, 309, 301 P.3d 364, 366 (2013).

Reynolds first argues that non-reliance clauses cannot bar intentional misrepresentation claims as a matter of law under *Blanchard v. Blanchard*, 108 Nev. 908, 839 P.2d 1320 (1992). Tufenkjian disagrees, arguing that *Blanchard* only addresses integration and waiver clauses, not non-reliance clauses. We conclude that we need not reach the merits of Reynolds' argument here because the contract does not contain a non-reliance clause.

The relevant clause[2] states:

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[2]In support of his arguments, Tufenkjian identifies two other clauses, contained in the offer to purchase rather than the contract at issue, but we conclude that these other clauses are irrelevant. The first pertains to representations made by the broker, rather than Tufenkjian, and the second had already expired by its plain language.

> The parties hereto agree that no representations have been made by either party, or agent/broker if any, other than those specifically set forth in this agreement and the sale agreement(s). It is further understood and agreed that the Buyer has made his own independent investigation of the subject business and has satisfied himself with his ability to conduct the same, and is now purchasing said business with the clear and distinct understanding and agreement that all profits are future, to be arrived at from his own resources and labors.

The clause is not titled, and we conclude it is an integration clause. Notably, the first sentence is substantially similar to the integration clause we addressed in *Blanchard*, which, in pertinent part, stated: "Each of the parties expressly certifies that . . . no representations of fact have been made by either party to the other except as herein expressly set forth . . . ." 108 Nev. at 912 n.1, 839 P.2d at 1322 n.1. The words "rely" or "reliance" appear nowhere in the clause, and we conclude it lacks the hallmark language of a non-reliance clause. *See Slack v. James*, 614 S.E.2d 636, 640 (S.C. 2005) (noting that non-reliance clauses generally include one of these words). And, as we stated in *Blanchard*, "integration clauses do not bar claims for [intentional] misrepresentation." 108 Nev. at 912, 839 P.2d at 1322-23; *see also Epperson v. Roloff*, 102 Nev. 206, 211, 719 P.2d 799, 802 (1986) (rejecting the argument that an integration clause barred a misrepresentation claim). Accordingly, the district court erred by finding this clause barred Reynolds' misrepresentation claims.

We will still affirm, however, if the district court reached the correct result, *see Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010), and we therefore consider whether summary judgment was nevertheless appropriate. To prove intentional misrepresentation, Reynolds must show that Tufenkjian made a false

representation, knew the representation was false, and intended to induce Reynolds to act based on the representation. *See Blanchard*, 108 Nev. at 910-11, 839 P.2d at 1322. Reynolds must also show that he justifiably relied on Tufenkjian's representation and that he was damaged as a result of that reliance.[3] *Id.* at 911, 839 P.2d at 1322. To show justifiable reliance, Reynolds must show that the false representation "'*played a material and substantial part in leading [him] to adopt his particular course.*'" *Id.* (emphasis in original) (quoting *Lubbe v. Barba*, 91 Nev. 596, 600, 540 P.2d 115, 118 (1975)).

Reynolds admits that he conducted an independent investigation. "Generally, a plaintiff making 'an independent investigation will be charged with knowledge of facts which reasonable diligence would have disclosed. Such a plaintiff is deemed to have relied on his own judgment and not on the defendant's representations.'" *Blanchard*, 108 Nev. at 912, 839 P.2d at 1323 (quoting *Epperson*, 102 Nev. at 211, 719 P.2d at 803). However, an independent investigation does not preclude finding justifiable reliance "'*where the falsity of the defendant's statements is not apparent from the inspection, where the plaintiff is not competent to judge the facts without expert assistance, or where the defendant has superior knowledge about the matter in issue.*'" *Id.* (emphasis in original) (quoting *Epperson*, 102 Nev. at 211-12, 719 P.2d at 803). And, whether the alleged misrepresentations should have been discovered during a party's independent investigation is a question of fact. *See id.* (recognizing that such a determination "may not be dispensed with as a matter of law").

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[3]The parties do not address the damages element on appeal.

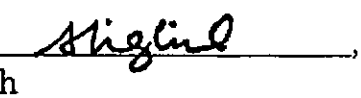
We have carefully reviewed the record and conclude that genuine issues of material fact remain regarding Reynolds' misrepresentation claims. Reynolds first alleged that Tufenkjian misrepresented the amount of revenue the jewelry store earned each year and presented tax returns, internal store records, and deposition testimony tending to show that the store earned less than Tufenkjian claimed. Reynolds next alleged that Tufenkjian misrepresented the price of the jewelry store's inventory "at cost" and presented emails from the sale broker and internal store records suggesting that Tufenkjian inflated the "at cost" price to cover his brokerage fees. Reynolds next alleged that Tufenkjian misrepresented that various store fixtures were included in the sale and presented the store's lease which appears to show that the fixtures belong to the building's lessor and Tufenkjian therefore could not sell them to Reynolds. Reynolds finally alleged that Tufenkjian misrepresented the number of unique customers the jewelry store had and presented internal store records and deposition testimony suggesting the store had far fewer customers than Tufenkjian claimed. Viewed in the light most favorable to Reynolds, *see Wood*, 121 Nev. at 729, 121 P.3d at 1029, these allegations are sufficient to generate a triable question of fact on his misrepresentation claims.

And, while Reynolds conducted an independent investigation, whether he should have discovered Tufenkjian's alleged misrepresentations during that investigation is a question for the trier of fact. *See Blanchard*, 108 Nev. at 912, 839 P.2d at 1323. Therefore, genuine issues of material fact remain as to whether Reynolds justifiably relied on Tufenkjian's representations. As such, we reverse and remand for further proceedings on the intentional misrepresentation claims.

We also conclude, however, that the district court properly granted summary judgment to Tufenkjian on the elder abuse claim. As pertinent here, NRS 41.1395 protects an "older person" against monetary loss "caused by exploitation" by "a person who has the trust and confidence" of the elderly person. *See* NRS 41.1395(1), (4)(b). The undisputed facts here show that Reynolds was purchasing a business from Tufenkjian at arms' length—not that Tufenkjian had a relationship of "trust and confidence" with Reynolds. *Cf. Powers v. United Servs. Auto. Ass'n*, 114 Nev. 690, 701, 962 P.2d 596, 603 (1998) (explaining that a fiduciary has a relationship of trust and confidence); *Greenberg's Estate v. Skurski*, 95 Nev. 736, 739, 602 P.2d 178, 179 (1979) (observing that agency relationships are grounded on the trust and confidence of the principal); *Rush v. Rush*, 85 Nev. 623, 626, 460 P.2d 844, 845 (1969) (noting the relationship of trust and confidence between a husband and wife). Accordingly, we affirm summary judgment as to this claim. Based on the foregoing, we

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

_____, J.
Gibbons



_____, J.
Stiglich

_____, J.
Silver

cc: Hon. Mark R. Denton, District Judge
Lansford W. Levitt, Settlement Judge
Marx Law Firm, PLLC
Marquis Aurbach Coffing
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATE OF THELMA AILENE SARGE.

ESTATE OF THELMA AILENE SARGE; ESTATE OF EDWIN JOHN SARGE; AND BY AND THROUGH THE PROPOSED EXECUTRIX, JILL SARGE,
Appellants,
vs.
QUALITY LOAN SERVICE CORPORATION; AND ROSEHILL, LLC,
Respondents.

No. 73286

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting summary judgment in an action to void a foreclosure sale for lack of notice. First Judicial District Court, Carson City; James Todd Russell, Judge.

The primary issue is the meaning of a "known" address under a pair of notice provisions. NRS 107.080(3) and NRS 107.080(4)(a) (the notice provisions) require a mortgage trustee to notify certain parties of default and foreclosure sale at their respective known addresses, but neither explains what a known address is. A related statute, NRS 107.090(2) (the recording statute), provided that a party may record a request for notice in the county recorder's office.[1]

[1]NRS 107.090 has since been amended. What was subsection (2) when the district court issued the order on appeal is now subsection (1),

Edwin and Thelma Sarge owned the subject property on Sonoma Street in Carson City. In 2006, Champion Mortgage Company (CMC) recorded a deed of trust securing a loan that the Sarges took out on the property. In 2008, the Sarges recorded a deed upon death[2] conveying a future interest in the property to their three children, Jack Sarge, Jill Sarge, and Sharon Hesla.

Edwin died in 2011 and Thelma died in April 2015. Jill contacted CMC to report Thelma's death and a mailing address on Empire Lane in Carson City. CMC sent several letters about the mortgage to "the Estate of Thelma A. Sarge" and "the Estate of Edwin J. Sarge" at that address.

In September 2015, respondent Quality Loan Services Corporation (QLS), CMC's trustee, recorded a notice of default and election to sell the subject property and mailed copies of the notice to the Sonoma Street address. In August 2016, it recorded the notice of sale and mailed copies of the notice to the Sonoma Street address. Neither notice went to the Empire Lane address. At the foreclosure sale in October 2016, respondent Rosehill, LLC, purchased the property.

Later that month, Edwin's and Thelma's respective estates (collectively appellants) filed and recorded a complaint for reentry and

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2019 Nev. Stat., ch. 238, § 15, at 1367, and the former subsection (1), which defined "person with an interest" for that section, now appears in an earlier section of definitions for the entire chapter, 2019 Nev. Stat., ch. 238, § 1, at 1344. The amendments are insignificant to our resolution of this appeal.

[2]A deed upon death "conveys [the grantors'] interest in property to a beneficiary or multiple beneficiaries and . . . becomes effective upon the death of the owner." NRS 111.671.

notices of lis pendens. QLS moved to dismiss the complaint for failure to state a claim and to expunge the notices of lis pendens. Rosehill also moved to dismiss for failure to state a claim. After hearing the motions, the district court issued an order granting dismissal and canceling the notices of lis pendens.

Appellants argue on appeal that the district court effectively granted summary judgment by considering matters outside the pleadings, and erred by granting summary judgment because a genuine issue of material fact exists as to whether QLS notified the titleholders—Jack, Jill, and Sharon—at their known address. They argue that the district court likewise abused its discretion by canceling the notices of lis pendens.

Because the district court granted dismissal but considered matters outside the pleadings, we review the order as if it granted summary judgment. *Schneider v. Cont'l Assurance Co.*, 110 Nev. 1270, 1271, 885 P.2d 572, 573 (1994). We review such orders de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if "the pleadings and [all] other evidence on file demonstrate that no genuine issue as to any material fact [exists] and that the moving party is entitled to . . . judgment as a matter of law." *Id.* (internal quotation marks omitted). "[T]he evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." *Id.* "A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party." *Id.* at 731, 121 P.3d at 1031.

Appellants argue that the district court erred by granting summary judgment because they presented uncontroverted evidence that Jill notified CMC of the Empire Lane address and that CMC began sending

letters there. They reason that notifying CMC, the lender, of the Empire Lane address was sufficient to establish that address as their known address under the notice provisions, and that QLS, the trustee, therefore should have notified them at that address. They argue that recording a request for notice under the recording statute is purely elective. QLS and Rosehill answer that the address at which QLS notified the titleholders, which is recorded in the deed upon death by which they obtained title to the subject property, was their known address because they did not record a request for notice at an alternate address.

So whether summary judgment was proper depends on the meaning of a "known" address under the notice provisions. We recently addressed this issue, explaining that in some instances, a known address may be different from an address in recorded documents. *U.S. Bank, Nat'l Ass'n ND v. Res. Grp., LLC*, 135 Nev., Adv. Op. 26, 444 P.3d 442, 446 (2019) ("A trustee or other person conducting a foreclosure sale must send notice of default to each person entitled to it at the address the recorded documents provide for that person (or in some instances, if different, their known or last known address)."). Those instances include when a trustee has actual or constructive knowledge of an address. *See In re Smith*, 866 F.2d 576, 586 (3d Cir. 1989) (explaining that a foreclosure notice statute requires "a good-faith effort to ascertain the [mortgagor's] current address"); *Wanger v. EMC Mortg. Corp.*, 127 Cal. Rptr. 2d 685, 693 (Ct. App. 2002) (holding that a borrower's known address "shall be determined with reference to the [mortgage loan] servicer's actual and constructive knowledge"); *see also* NRS 107.090(2) (2009) (providing that a party "may" record a request for notice); *State v. Second Judicial Dist. Court*, 134 Nev. 783, 789 n.7, 432 P.3d

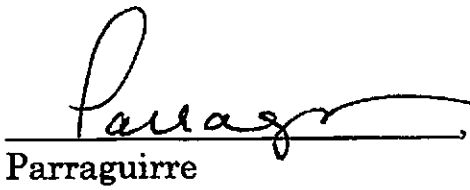
154, 160 n.7 (2018) (explaining that "the word 'may' is generally permissive").

Here, the district court found that because none of the titleholders recorded a request for notice under the recording statute, the Sonoma Street address recorded in the deed upon death was their known address. So it effectively limited the scope of a trustee's knowledge to *record* knowledge, reasoning that because the Sonoma Street address was the only *recorded* address, it was the titleholders' known address.

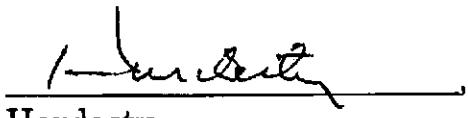
But the evidence shows that Jill notified CMC of the Empire Lane address, and that CMC began sending letters to that address. Viewing that evidence in a light most favorable to appellants, a rational trier of fact could find that QLS, CMC's trustee, had *actual* or *constructive* knowledge of the Empire Lane address despite the titleholders' failure to record it, and thus that the Empire Lane address was the titleholders' known address. So a genuine issue of material fact remains as to whether QLS notified the titleholders at their known address, and the district court thus erred by granting summary judgment.[3] Accordingly, we

[3]Because the district court erred by granting summary judgment, it likewise erred by canceling the notices of lis pendens. *See Hardy Companies, Inc. v. SNMARK, LLC*, 126 Nev. 528, 533, 543, 245 P.3d 1149, 1153, 1159 (2010) (reversing order granting summary judgment and expunging notices of lis pendens). We decline to consider appellants' other arguments because they are unnecessary for us to resolve this case. *See Miller v. Burk*, 124 Nev. 579, 588-89 & n.26, 188 P.3d 1112, 1118-19 & n.26 (2008) (explaining that this court need not address issues that are unnecessary to resolve the case at bar).

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



_____, J.
Parraguirre



_____, J.
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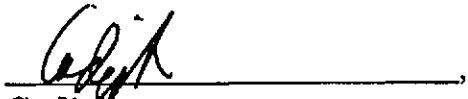

_____, J.
Cadish

cc: Hon. James Todd Russell, District Judge
Janet L. Chubb, Settlement Judge
Tory M. Pankopf, Ltd.
Walsh, Baker & Rosevear, P.C.
McCarthy & Holthus, LLP/Las Vegas
Carson City Clerk