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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

E. ALAN TIRAS, a professional
corporation; and E. ALAN TIRAS, an
individual,

Case No.: CV11-02360

Dept. No.: 7

Plaintiffs,

vs.

SCOTT DAVIS, an individual;
OCEANWATER CONSULTANTS, LLC, a
Nevada Limited Liability Company;
CANADIAN MINING RESOURCES, a
Canadian Company; STAN PASYK, an
individual; US BANK, N.A., a foreign
corporation; WELLS FARGO BANK, N.A.,
a foreign corporation; SANDRA
RAMIREZ; DOES 1 through 10; and DOE
CORPORATIONS 1 through 10,

Defendants.

ORDER

Currently before this Court is Plaintiffs E. ALAN TIRAS et al.'s (collectively "Tiras")
Motion for Partial Summary Judgment on Tiras' Claim for Fraudulent Misrepresentation;
Request for Hearing filed on May 30, 2012. Defendants OCEANWATER CONSULTANTS,
LLC ("Oceanwater"), SCOTT DAVIS ("Davis") and SANDRA RAMIREZ ("Ramirez")
(collectively "Oceanwater Defendants") filed an *Opposition to Motion for Partial Summary*
Judgment on Tiras' Claim for Fraudulent Misrepresentation on June 18, 2012. Tiras filed a
Reply in Support of Motion for Partial Summary Judgment on Tiras' Claim for Fraudulent
Misrepresentation; Request for Hearing on July 6, 2012. This Order now follows.

1 **SUMMARY JUDGMENT STANDARDS**

2 Summary judgment is proper only if no genuine issue of material fact exists and the
3 moving party is entitled to judgment as a matter of law. NEV. R. CIV. P. 56(c); see Wood v.
4 Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). The moving party bears the
5 initial burden of proving there is no genuine issue of material fact. Maine v. Stewart, 109 Nev.
6 721, 726-27, 857 P.2d 755, 758 (1993). Once the moving party satisfies this burden, however,
7 the burden shifts to the nonmoving party to show the existence of a genuine issue of material
8 fact. Id. at 727. While the pleadings and the record must be construed in the light most
9 favorable to the nonmoving party, the party must do more than simply show there is some
10 metaphysical doubt as to the operative facts. Wood, 121 Nev. at 729. To avoid having summary
11 judgment entered against it, the party must, by affidavit or otherwise, set forth *specific facts*
12 demonstrating the existence of a genuine issue for trial. Id. (Emphasis added.)

13 **DISCUSSION**

14 This Court will not recount the facts of this case. The parties are familiar with them and
15 this Court has previously recounted them on two occasions. Here, Tiras seeks summary
16 adjudication on his Fourth Claim for Relief contained in his *Second Amended Complaint*, a claim
17 for fraudulent misrepresentation. Tiras avers no genuine issue of material fact exists regarding
18 whether Oceanwater Defendants, particularly Davis, intentionally misrepresented to Tiras that
19 Tiras transfer funds to Davis. Tiras avers Davis knew the funds were unavailable but
20 intentionally concealed this fact from Tiras. In addition, Tiras requests punitive damages and a
21 hearing to determine the proper amount of those damages. For the reasons stated below, this
22 Court finds summary judgment is appropriate but that a hearing on punitive damages is
23 improper.

24 Legal Standards

25 To state a claim for fraudulent misrepresentation, a plaintiff must allege: (1) the
26 defendant made a misrepresentation; (2) the defendant knew or believed the representation was
27 false; (3) the defendant intended to induce the plaintiff to act or to refrain from acting in reliance
28 on the misrepresentation; (4) the plaintiff justifiably relied upon the misrepresentation; and (5)

1 the plaintiff suffered damages from such reliance. Bulbman, Inc. v. Nevada Bell, 108 Nev. 105,
2 111, 825 P.2d 588, 592 (1992) (per curiam) (citation omitted).

3 A plaintiff bears the burden of proving each element of a fraud claim by “clear and
4 convincing evidence.” Id. at 110-111, 825 P.2d at 592. This is because fraud has a stricter
5 pleading standard under NRCP 9(b), which requires a party alleging fraud to state “the
6 circumstances constituting fraud . . . with particularity.” NEV. R. CIV. P. 9(b); see Ivory Ranch,
7 Inc. v. Quinn River Ranch, Inc., 101 Nev. 471, 472-73, 705 P.2d 673, 675 (1985) (explaining
8 NRCP 9(b)’s stricter pleading standard exists “in order to afford adequate notice to the opposing
9 party”). To plead with particularity, the movant must aver ““the time, the place, the identity of
10 the parties involved, and the nature of the fraud.”” Rocker v. KPMG LLP, 112 Nev. 1185, 1192,
11 148 P.3d 703, 708 (2006), abrogated on other grounds by Buzz Stew, supra, 124 Nev. at 228,
12 181 P.3d at 672 (quoting Brown v. Kellar, 97 Nev. 582, 583-84, 636 P.2d 874, 874 (1981)).

13 Legal Analysis

14 In this case, this Court has previously concluded “Tiras has clearly shown Davis knew he
15 had no right to the \$200,000.00 before he authorized Tiras to execute the transfer to his bank
16 account in San Francisco.” (See Tiras v. Davis, CV11-02360 at p. 8 (May 25, 2012)). This
17 Court reached this conclusion after finding plain evidence in the record that Davis received a
18 check from A4 Diamond (“A4”) and then drafted a check in the amount of \$200,000.00
19 (Canadian Dollars) made payable to Tiras and drawn on A4’s account. Tiras then deposited this
20 check in a Client Trust Account. In the meantime, A4 placed a stop payment on the check it sent
21 to Davis and notified Davis of that stop payment. Nevertheless, knowing of the stop payment
22 and concealing the information from Tiras, Davis directed Tiras to electronically transfer
23 \$202,000.00 in Tiras’s Client Trust Account to Oceanwater’s Wells Fargo account in San
24 Francisco.¹

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27 ¹ In their *Opposition*, Oceanwater Defendants take issue with this Court’s previous factual findings in an attempt to
28 conduct parallel litigation on several pending motions they have filed seeking reconsideration, or a setting aside, of
previous judgments. Aside from improperly conducting parallel litigation on issues immaterial to the instant matter,
Oceanwater Defendants’ assertions regarding the factual record are belied by the actual record, which this Court has
closely reviewed, considered and entered judgment upon.

1 These previous findings of fact have been decided and they are further bolstered by the
2 evidence Tiras has presented here. Davis misrepresented the propriety—or intentionally
3 concealed the impropriety—of the source of funds from which Tiras transferred the \$202,000.00.
4 Davis knew the representation was false because A4 advised him to “return the cheque to [A4’s
5 representative, Mr. Pasyk]” Davis clearly intended to induce Tiras to act in reliance on the
6 misrepresentation because Davis directed Tiras to execute the transfer from Tiras’s Client Trust
7 Account into Oceanwater’s account, despite knowing A4 had placed a stop payment on the
8 check. Of course, Tiras justifiably relied upon this misrepresentation in executing the transfer,
9 and he clearly suffered damages from such reliance.

10 Tiras has met the elements of fraudulent misrepresentation by clear and convincing
11 evidence against Davis and Oceanwater and has demonstrated that no genuine issue of material
12 fact exists regarding their liability. Tiras, however, fails to present clear and convincing
13 evidence that Ramirez made any fraudulent misrepresentations. As a result, summary judgment
14 is improper against her. With the burden shifting to Davis and Oceanwater, this Court finds they
15 fail to set forth any specific facts demonstrating the existence of a genuine issue of material fact
16 as to their liability for fraudulent misrepresentation. See Bank of Las Vegas v. Hoopes, 84 Nev.
17 585, 586, 445 P.2d 937, 938 (1968) (“conflicting statements . . . do not create a genuine issue of
18 material fact, since Rule 56 expects the conflict to be created by adversaries.”)

19 Finally, this Court finds punitive damages are improper and therefore denies Tiras’s
20 request for a hearing.

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CONCLUSION

Accordingly, this Court orders:

1. Tiras's *Motion for Partial Summary Judgment on Tiras' Claim for Fraudulent Misrepresentation; Request for Hearing* is **GRANTED** in part and **DENIED** in part;
2. Tiras's *Motion* is **GRANTED** as to Davis and Oceanwater;
3. Tiras's *Motion* is **DENIED** as to Ramirez;
4. Tiras's *Request for Hearing* on punitive damages is **DENIED**.

IT IS SO ORDERED.

DATED this 23 day of August, 2012.


PATRICK FLANAGAN
District Judge

1 CERTIFICATE OF SERVICE

2 Pursuant to NRC 5(b), I hereby certify that I am an employee of the Second Judicial
3 District Court of the State of Nevada, County of Washoe; that on this 23 day of August,
4 2012, I electronically filed the following with the Clerk of the Court by using the ECF system
5 which will send a notice of electronic filing to the following:

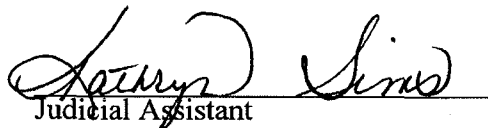
6 Catherine Reichenberg, Esq. and Mark Gunderson, Esq. for Tiras;

7 Ryan Loosvelt, Esq. for U.S. Bank, N.A.;

8 Tara Zimmerman, Esq., Scott Hoffmann, Esq. and Paul Matteoni, Esq. for Wells Fargo
9 Bank, N.A. and Kevin McDonald; and

10 Steven Bennion, Jr., Esq. for Oceanwater Consultants, LLC, Scott Davis, and Sandra
11 Ramirez

12 I deposited in the Washoe County mailing system for postage and mailing with the
13 United States Postal Service in Reno, Nevada, a true copy of the attached document addressed
14 to:

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17 Judicial Assistant
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