

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL FREDa and KAREN
GOODWILL-FREDA,
Appellants,
vs.
GOLD STAR REALTY, INC., d.b.a. THE
KILLIAN COMPANY,
Respondent.

No. 54101

FILED

NOV 02 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a real property action. Second Judicial District Court, Washoe County; Robert Perry, Judge.

Christopher White procured two personal loans from appellants Michael Freda and Karen Goodwill-Freda (the Fredas) in the total amount of \$175,000. The loans were secured by two deeds of trust on two residential properties. White defaulted on the loans and disappeared. The Fredas discovered that one of the deeds of trust had never been recorded and that the other deed of trust was in a third priority position, not second as they believed. The Fredas filed a complaint against respondent Gold Star Realty, Inc., d.b.a. the Killian Company (the Killian Company), the company where White worked as a real estate agent and held the title of Vice President of Commercial Sales at the time he procured the personal loans. The Fredas allege that White was acting within the scope of his authority as an agent of the Killian Company when he procured the two personal loans from them and therefore the Killian Company was liable for White's actions. The Killian Company moved for summary judgment on all causes of action. The district court granted summary judgment, finding that the Fredas produced insufficient

evidence to create a genuine issue of material fact regarding whether White was acting with apparent authority as an agent of the Killian Company. The Fredas appeal, arguing that there is sufficient evidence to create a genuine issue of material fact regarding whether White was acting with apparent authority as an agent of the Killian Company and that the district court erred in not addressing whether the Killian Company violated NAC 645.600. We reject the Fredas' arguments and affirm the district court order granting summary judgment.

We review a grant of summary judgment de novo. Ozawa v. Vision Airlines, 125 Nev. ___, ___, 216 P.3d 788, 791 (2009). Under NRCP 56(c), summary judgment is appropriate where the movant has established that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. Generally, whether an agency relationship exists is a question of fact, but whether there is sufficient evidence to support a finding of an agency relationship is a question of law. Schlotfeldt v. Charter Hosp. of Las Vegas, 112 Nev. 42, 47, 910 P.2d 271, 274 (1996). "Apparent authority is '... authority which a principal holds his agent out as possessing or permits him to ... represent himself as possessing.'" Dixon v. Thatcher, 103 Nev. 414, 417, 742 P.2d 1029, 1031 (1987) (quoting Myers v. Jones, 99 Nev. 91, 93, 657 P.2d 1163, 1164 (1983)).

The Fredas argue that because White was working as a real estate agent at the Killian Company, was listed on the Killian Company's website as Vice President of Commercial Sales, and was in possession of materials provided by or featuring the name of the Killian Company, a genuine issue of material fact exists regarding whether White was acting with apparent authority when he procured the two personal loans. We

disagree and conclude that this evidence on its own is insufficient to support a finding that White was acting with apparent authority when he procured the two personal loans from the Fredas. See Tsouras v. Southwest Plumbing & Heating, 94 Nev. 748, 751-52, 587 P.2d 1321, 1323 (1978) (reasoning that a business card with the employer's name printed on it was insufficient evidence to support an inference the employee had authority to enter into contracts on the employer's behalf); Smith v. Hansen, Hansen & Johnson, 818 P.2d 1127, 1134 (Wash. Ct. App. 1991) (reasoning that an employee's possession of materials that were provided by the employer was insufficient evidence to support an inference that the employee was authorized to sell products on the employer's behalf). Similarly, White's title of "Vice President of Commercial Sales" is insufficient evidence to support an inference that he was acting within the scope of his authority to procure personal loans secured by deeds of trust on residential real estate. See Smith, 818 P.2d at 1133 (holding that appointing an employee to a high position in the employer's company does not create apparent authority).

The Fredas further argue that a genuine issue of material fact exists regarding their reasonable belief that White was acting within the scope of his authority as an agent of the Killian Company by conducting a seminar on real estate investing at the Fredas' place of business, which they believed he did with the knowledge of the Killian Company. The Fredas assert that it was after attending this seminar and because of his association with the Killian Company that they made the decision to invest with White.

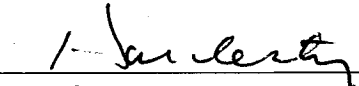
However, our review of the record indicates that the Fredas had no interaction with the Killian Company. They never spoke to anyone

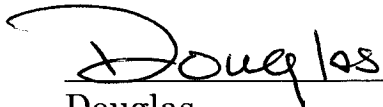
at the Killian Company regarding the seminar, or prior to agreeing to loan White \$175,000, or before accepting two promissory notes on the loans secured by two deeds of trusts on residential property. The Killian Company name does not appear on the loan documents, and the Fredas' checks were both made payable to White only. The Fredas did not enter into any brokerage agreement with the Killian Company, and the Killian Company never made any payments on or received loan proceeds or commissions from the personal loans procured by White. The record further reveals that the Fredas did not contact the Killian Company to pursue payment on the loans after White defaulted. It appears that the Fredas' belief that White was acting with apparent authority is based solely on their knowledge that he was a Vice President of Commercial Sales at the Killian Company.

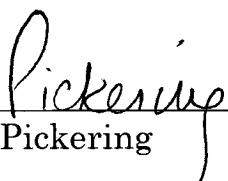
After weighing the totality of the evidence, we conclude that the Fredas have failed to present sufficient evidence to demonstrate the existence of a genuine issue of material fact as to whether White was acting with apparent authority as an agent of the Killian Company when he procured the two personal loans from the Fredas. Therefore, we conclude that the district court order granting summary judgment was proper.¹ Accordingly, we

¹Because we conclude that there is no genuine issue of material fact regarding whether White was acting with apparent authority as an agent of the Killian Company, we need not consider whether the Killian Company violated NAC 645.600. The district court also granted summary judgment on the punitive damages issue; however, the Fredas do not challenge this determination on appeal.

ORDER the judgment of the district court AFFIRMED.

, J.
Hardesty

, J.
Douglas

, J.
Pickering

cc: Hon. Robert Perry, District Judge
Nicholas F. Frey, Settlement Judge
Gunderson Law Firm
Thorndal, Armstrong, Delk, Balkenbush & Eisinger/Las Vegas
Thorndal Armstrong Delk Balkenbush & Eisinger/Reno
Second District Court Clerk