

IN THE SUPREME COURT OF THE STATE OF NEVADA

OPHTHALMIC ASSOCIATES, LLP; KEVIN
N. MILLER, M.D.; EMILY L. FANT, M.D.;
AND TUSHINA A. REDDY, M.D.,

Appellants,

vs.

TRIPLE NET PROPERTIES, LLC; NNN
REALTY INVESTORS, LLC, F/K/A GRUBB
& ELLIS REALTY INVESTORS, LLC, F/K/A
TRIPLE NET PROPERTIES, LLC; AND
DAYMARK REALTY ADVISORS, INC., AS
JUDGMENT DEBTOR,
Respondents.

No. 66448

FILED

JUN 10 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a final order striking a confession of judgment. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

The parties settled a previous appeal by agreeing to enter into a confession of judgment. The confession of judgment required respondents to make five payments on specific dates. If a payment was not made, appellants could demand the delinquent payment be made within 30 days of its original due date. Respondents consented that if the payments were not made as required, the confession of judgment would be entered against them. Respondents did not make the final payment on its due date, but did make it within 30 days after its due date. Nonetheless, appellants filed the confession of judgment and respondents moved to set it aside and strike it. The district court granted respondents' motion.

As an initial matter, while another district court had previously considered respondents' motion and made some oral rulings before the case was reassigned, because that court never entered a written

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order resolving the motion, the district court here was not precluded from considering the motion anew and resolving it. We further conclude that as the district court's factual findings are supported by substantial evidence, the district court properly granted respondents' motion to strike the confession of judgment. *See Sowers v. Forest Hills Subdivision*, 129 Nev., Adv. Op. 9, 294 P.3d 427, 432 (2013) (explaining that this court will uphold the district court's factual findings as long as they are not clearly erroneous and are supported by substantial evidence). While respondents' last payment was timely tendered but returned for insufficient funds, respondents then cured that payment by making it with sufficient funds within 30 days of the payment's original due date as provided for in the confession of judgment. Because respondents' last payment was not more than 30 days delinquent, under the provisions of the confession of judgment, they did not consent to the filing of the confession of judgment. *See Redrock Valley Ranch, LLC v. Washoe Cty.*, 127 Nev. 451, 460, 254 P.3d 641, 647-48 (2011) (providing that contract interpretation is a question of law that this court reviews de novo). Thus, the district court properly struck the confession of judgment. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

J. Hardesty, J.
Hardesty

Saitta, J.
Saitta

Pickering, J.
Pickering

cc: Hon. Carolyn Ellsworth, District Judge
Lansford W. Levitt, Settlement Judge
The Law Offices of Robert D. Martin, P.C.
Lemons, Grundy & Eisenberg
Holley, Driggs, Walch, Fine Wray Puzey & Thompson/Las Vegas
Eighth District Court Clerk