

IN THE SUPREME COURT OF THE STATE OF NEVADA

HERBERT PASTOR, D/B/A HERB  
PASTOR CASINO ENTERPRISES,  
Appellant,

vs.

FREMONT STREET EXPERIENCE  
LIMITED LIABILITY COMPANY, A  
NEVADA LIMITED LIABILITY  
COMPANY,  
Respondent.

No. 37272

FILED

JUN 03 2003

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Reese*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Herbert Pastor d/b/a Herb Pastor Casino Enterprises appeals the district court's issuance of a permanent injunction enjoining him from projecting amplified sound into the Fremont Street Experience, a pedestrian mall, from the two casinos he owns on Fremont Street in Las Vegas. The injunction was sought by the private entity that operates the pedestrian mall, the respondent Fremont Street Experience Limited Liability Company, after employees at Pastor's casinos continued to project amplified sound into the pedestrian mall despite a uniform mall policy to the contrary. We conclude that the district court did not abuse its discretion when it issued the permanent injunction against Pastor, and accordingly, we affirm the decision of the district court.

When reviewing a district court's decision to grant a permanent injunction, this court will apply the standard of review that applies to the proceeding upon which the district court's decision was

based.<sup>1</sup> Here, since the district court held a hearing on the merits of the injunction, the district court's decision will not be overturned absent an abuse of discretion.<sup>2</sup> Nonetheless, questions of law are subject to de novo review.<sup>3</sup>

First, while Pastor argues that Fremont Street Experience's complaint did not put him on notice of his alleged breach of contract, there were specific factual allegations in the complaint that Pastor and Fremont Street Experience had exchanged mutual promises to prohibit the projection of amplified sound and that, after making this agreement, Pastor had continued to project amplified sound into the Fremont Street Experience. A party is not required to give notice of the precise legal theory upon which its claim for relief is premised,<sup>4</sup> and accordingly, we conclude that Fremont Street Experience's complaint provided adequate notice of the underlying facts establishing the elements of a breach of contract action.<sup>5</sup> Moreover, Pastor may not complain of the consolidation of the permanent injunction hearing into the preliminary injunction hearing because he stipulated to this consolidation in open court after a specific inquiry by the district court.

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<sup>1</sup>A.L.M.N., Inc. v. Rosoff, 104 Nev. 274, 277, 757 P.2d 1319, 1321 (1988).

<sup>2</sup>See id.

<sup>3</sup>Associated Bldrs. v. So. Nev. Water Auth., 115 Nev. 151, 156, 979 P.2d 224, 227 (1999).

<sup>4</sup>Swartz v. Adams, 93 Nev. 240, 245, 563 P.2d 74, 77 (1977).

<sup>5</sup>Hay v. Hay, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984); see also NRCP 8.

Second, the district court did not err when it concluded that Pastor was bound by this contract. While Pastor argues that there was no meeting of minds between him and Fremont Street Experience, the record demonstrates that Pastor agreed to cease projecting amplified sound into the pedestrian mall in exchange for Fremont Street Experience's promise that its members would do the same. Moreover, Fremont Street Experience's promise to adopt a uniform policy prohibiting the projection of amplified sound created a bargained-for legal detriment on behalf of Fremont Street Experience, which served as consideration for the contract.<sup>6</sup>

Third, the district court did not err when it concluded that Fremont Street Experience had the authority to enact a uniform policy prohibiting the projection of amplified sound into the Fremont Street Experience. The plain language of LVMC 11.68.070(B) grants Fremont Street Experience the authority to regulate and prohibit uses of the mall by abutting property owners.<sup>7</sup> Pastor's contention that the City of Las Vegas's express prohibition of certain activities by ordinance indicates an intent to retain exclusive control over the regulation of mall activities is

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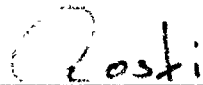
<sup>6</sup>See County of Clark v. Bonanza No. 1, 96 Nev. 643, 650, 615 P.2d 939, 944 (1980).

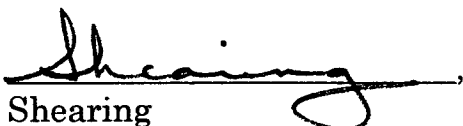
<sup>7</sup>See Matter of Estate of Friedman, 116 Nev. 682, 684-85, 6 P.3d 473, 475 (2000) (holding that "[i]t is well established that words in a statute should be given their plain meaning unless this violates the spirit of the act" and "[w]hen the language of a statute is plain and unambiguous, there is no room for construction, and the courts are not permitted to search for meaning beyond the statute itself").


without merit because Pastor's interpretation would render most of the provisions under LVMC 11.68.060 and LVMC 11.68.070 meaningless.<sup>8</sup>

Finally, after reviewing Pastor's remaining arguments, we conclude that they are without merit.<sup>9</sup> Accordingly, we

ORDER the decision of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Agosti

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Becker

cc: Eighth Judicial District Court Department 12, District Judge  
Jimmerson Hansen  
Hale Lane Peek Dennison Howard & Anderson/Las Vegas  
Clark County Clerk

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<sup>8</sup>See Matter of Estate of Thomas, 116 Nev. 492, 495, 998 P.2d 560, 562 (2000) (holding that "no provision of a statute should be rendered nugatory by this court's construction, nor should any language be made mere surplusage, if such a result can be avoided").

<sup>9</sup>Despite a specific query by this court during oral argument, the parties did not raise the issue of whether the State could constitutionally delegate authority to Fremont Street Experience, a private entity. Accordingly, we do not reach this issue.