IN THE SUPREME COURT OF THE STATE OF NEVADA

V2 HOLDINGS, LLC, A NEVADA LIMITED LIABILTY COMPANY, F/K/A V2 ENERGY SOLUTIONS HI LLC,
Appellant,
vs.
FREDERICK WINTERS, AN INDIVIDUAL,
Respondent.

No. 84876

FILED

SEP 26 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a motion for summary judgment in a breach-of-contract action. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.[1]

Respondent Frederick Winters entered into an agreement with appellant V2 Holdings, LLC (V2H). Under that agreement, Winters would provide intellectual property in exchange for quarterly payments of $37,500, totaling $2.5 million. The agreement further provided Winters with a 20% membership interest in V2H, and if V2H failed to pay Winters, all intellectual property rights would revert to and become the sole property of Winters. V2H defaulted on its quarterly payments and Winters filed a complaint for, as relevant here, breach of contract and declaratory relief as to the ownership of the intellectual property. V2H counterclaimed for, as relevant here, fraud and breach of fiduciary duty. The parties filed competing summary judgment motions, and the district court granted

[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

summary judgment in Winters' favor on his claims and against V2H on its counterclaims. V2H appeals.

We review orders granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper where the pleadings and evidence presented pose "no genuine issue of material fact . . . and the moving party is entitled to a judgment as a matter of law." *Mardian v. Greenberg Family Tr.*, 131 Nev. 730, 733, 359 P.3d 109, 111 (2015).

V2H first argues that the district court erred in concluding that it failed to provide Winters notice of its theory of fraud based on the intellectual property's functionality. NRCP 9(b) requires a party asserting a fraud claim to "state with particularity the circumstances constituting fraud or mistake" in the party's pleading. The circumstances that must be detailed in a complaint alleging fraud "include averments as to the time, the place, and the identity of the parties involved, and the nature of the fraud or mistake." *Brown v. Kellar*, 97 Nev. 582, 583-84, 636 P.2d 874, 874 (1981).

In its counterclaim for fraud, V2H alleged that Winters misrepresented that he was the sole owner of the intellectual property he provided to V2H pursuant to the contract. But in its summary judgment motion, V2H asserted a new fraud allegation—that Winters misrepresented that the intellectual property was functional. V2H, however, did not seek leave to amend its pleadings to incorporate its new theory of fraud. And its summary judgment motion alleging the new fraud theory was filed after discovery closed and more than one year after the parties' deadline to amend the pleadings. The district court correctly found that V2H had not sought leave to amend its pleadings and did not meet its burden to show

good cause for amending its pleading. *See Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 281, 357 P.3d 966, 968 (Ct. App. 2015) (providing that when a motion seeking leave to amend a pleading is filed past the deadline for doing so, the district court must first determine whether "good cause" existed for missing the deadline before considering the merits of the motion); *see also id.* at 293, 357 P.3d at 976 (observing that a motion to amend cannot be used as a "last-ditch effort to avoid summary judgment that otherwise might have been imminently granted"). Therefore, the district court did not err in concluding that V2H failed to provide Winters notice of its fraud theory and did not err in granting Winters summary judgment on V2H's fraud claim.[2]

V2H next argues the district court erred by failing to consider its unclean hands affirmative defense. However, the record reflects that although V2H made a conclusory allegation of unclean hands in its answer to Winters' complaint, it failed to properly invoke and support this affirmative defense in opposing Winters' motion for partial summary judgment. Even in its appellate briefing, V2H cites only one time it mentioned unclean hands at the summary judgment hearing but it did so without providing any facts or legal authority to support that the doctrine applied here. *See Wood*, 121 Nev. at 731, 121 P.3d at 1030-31 (recognizing that, in order to make summary judgment improper, "the non-moving party

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[2]To the extent V2H asserts the district court failed to consider relevant material evidence in denying its motion for summary judgment, V2H fails to specify what evidence the district court overlooked and fails to provide cogent argument supported by the record as to how the court erred in this regard. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider issues that are not supported by cogent argument).

may not rest upon general allegations and conclusions, but must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine factual issue" (internal quotation marks omitted)); *see also Nev. Ass'n Servs., Inc. v. Eighth Judicial Dist. Court*, 130 Nev. 949, 955, 338 P.3d 1250, 1254 (2014) (noting that the party asserting an affirmative defense bears the burden of proving each element of that defense). Further, because V2H failed to adequately invoke and support this affirmative defense at the summary judgment phase, the district court did not err in implicitly rejecting the conclusory unclean hands affirmative defense.[3] *Cf. Schuck v. Signature Flight Support of Nev., Inc.*, 126 Nev. 434, 437, 245 P.3d 542, 544 (2010) (declining to consider an appellate argument not meaningfully raised in opposing summary judgment before the district court). Accordingly, based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.

Stiglich, C.J.

Lee, J.

Bell, J.

cc: Hon. Susan Johnson, District Judge
Eleissa C. Lavelle, Settlement Judge
Maier Gutierrez & Associates
LBC Law Group
Eighth District Court Clerk

[3]In granting Winters' motion for summary judgment on his breach-of-contract and declaratory relief claims outright, the district court necessarily rejected V2H's unsupported affirmative defense despite its failure to address unclean hands in its disposition. *See Bd. of Gallery of History, Inc. v. Datecs Corp.*, 116 Nev. 286, 289, 994 P.2d 1149, 1150 (2000) ("The absence of a ruling awarding the requested [relief] constitutes a denial of the [request].").