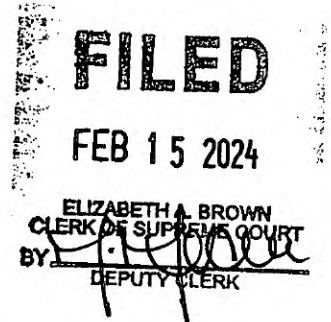


IN THE SUPREME COURT OF THE STATE OF NEVADA

ROYAL ESSEX, LLC, A NEVADA
LIMITED LIABILITY COMPANY; AND
ROYAL UNION PROPERTIES, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,
Appellants,
vs.
MARTHA JANE HOLMAN IN HER
CAPACITY AS THE TRUSTEE OF THE
GFH IRREVOCABLE TRUST; AND
GEORGE F. HOLMAN IN HIS
CAPACITY AS THE TRUSTEE OF THE
MJH IRREVOCABLE TRUST,
Respondents.

No. 85359



ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment in a contract dispute. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.¹

In 2019, the parties entered into a Membership Interest Partnership Agreement (MIPA) whereby appellant Royal Essex, LLC agreed to pay respondents, the GFH Irrevocable Trust and the MJH Irrevocable Trust (collectively, the Holman Trusts), a total of \$3,750,000 to purchase the Holman Trusts' Class A Units in non-party Essex Real Estate Partners, LLC. Under the MIPA, the parties agreed that Royal Essex would split the purchase into two payments, the second of which would be due at the earlier of either the sale of specified real property owned by Essex Real Estate Partners or December 21, 2021. The MIPA also provided that it

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

could only be amended or modified “by an agreement in writing signed by each party.”

Thereafter, Essex Real Estate Partners filed for bankruptcy relief and the property became part of the bankruptcy estate. Royal Essex timely made its initial payment to the Holman Trusts but did not make the final payment, even though the property sold in October 2021. On December 27, 2021, the Holman Trusts issued a notice of default and demand for payment. When Royal Essex still refused to tender the final payment, the Holman Trusts filed a breach-of-contract action against Royal Essex and its guarantor, respondent Royal Union Properties, LLC (collectively, Royal Essex), seeking declaratory relief, damages, and specific performance. Royal Essex moved for summary judgment, arguing that the parties had agreed, in writing, to amend the MIPA’s terms to reduce the amount of the final payment and to change the due date to be contingent upon the bankruptcy court releasing funds to Royal Essex. The Holman Trusts filed a counter-motion for summary judgment, denying that there was any amendment. The district court entered summary judgment for the Holman Trusts and ordered the parties to be restored to their pre-MIPA positions, meaning that Royal Essex would return the Class A Units to the Holman Trusts and the Holman Trusts would refund the initial payment to Royal Essex.

We review the district court’s order granting summary judgment de novo and affirm. *Wood v. Safeway*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005); *see also Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.*, 124 Nev. 1102, 1115, 197 P.3d 1032, 1041 (2008) (providing that the district court’s interpretation of a contract is a question of law we review de novo). The plain language of the MIPA provides that, in the event

of a default and a failure to timely cure, the non-breaching party is entitled to “terminate th[e] Agreement, whereby the parties will be restored to their respective positions prior to the execution of the Agreement.” *See Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 487-88, 117 P.3d 219, 223-24 (2005) (explaining that we generally “construe unambiguous contracts . . . according to their plain language”). We first reject Royal Essex’s argument that there is a genuine issue of material fact as to whether the parties agreed to amend the MIPA to extend the time for Royal Essex to make the final payment, as it failed to produce that writing to the district court. *See Van Cleave v. Kietz-Mill Minit Mart*, 97 Nev. 414, 417, 633 P.2d 1220, 1222 (1981) (explaining that although “inferences will be drawn in favor of a party opposing a motion for summary judgment, ‘the opponent must nevertheless show he can produce evidence at the trial to support his claim’” (quoting *Thomas v. Bokelman*, 86 Nev. 10, 14, 462 P.2d 1020, 1023 (1970))). And although the Holman Trusts produced an email which demonstrates the parties discussed reducing the amount of the final payment, the email does not reflect that the parties agreed to change the due date for the final payment.

We also reject Royal Essex’s argument that the district court abused its discretion by entering summary judgment without first allowing it to conduct discovery. *See* NRCP 56(d) (allowing a district court to grant a continuance to allow a nonmoving party to conduct discovery to oppose summary judgment); *Aviation Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 117-18, 110 P.3d 59, 62 (2005) (reviewing a district court’s refusal to allow a discovery continuance for an abuse of discretion). In support of its request for a continuance, Royal Essex provided a declaration explaining that it needed to conduct discovery, in relevant part, to establish that the


Holman Trusts were George Holman's alter ego such that he had authority to sign an amendment on behalf of both trusts. While this may have created a genuine issue of material fact as to whether the email could bind both of the Holman Trusts, it does not create a genuine issue of material fact as to whether the parties agreed that Royal Essex's final payment obligation would not be triggered until the bankruptcy court released funds to it. Royal Essex also fails to demonstrate that it would be entitled to discovery under NRCP 56 as it did not explain why it failed to provide the alleged written agreement between the parties to amend the due date under the MIPA. See NRCP 56(d) (providing that a district court may allow time to take discovery where "a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition"). Thus, we conclude that the district court did not abuse its discretion by not allowing a discovery continuance. See *Aviation Ventures*, 121 Nev. at 118, 110 P.3d at 62 ("[A] motion for a continuance under NRCP 56(d) is appropriate only when the movant expresses how further discovery will lead to the creation of a genuine issue of material fact.").


Finally, we reject Royal Essex's assertion that the district court erred by granting injunctive relief to the Holman Trusts in its declaratory relief judgment without evaluating the relevant legal standards. Contrary to Royal Essex's assertion, the district court ordered the parties to be restored to their pre-MIPA positions as provided in the MIPA. See *Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 278, 21 P.3d 16, 20 (2001) (providing that contracts will be construed and enforced as written). Thus, the district court's order granted the Holman Trusts' requested remedy of enforcing the MIPA's breach provisions, not injunctive relief. Cf. *Nevada Mgmt. Co. v. Jack*, 75 Nev. 232, 236, 338 P.2d 71, 73 (1959) (holding that the availability

of other remedies “does not defeat [a party’s] right to sue for declaratory judgment” where appropriate).² Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Herndon


_____, J.
Lee


_____, J.
Bell

cc: Hon. Mark R. Denton, District Judge
Lansford W. Levitt, Settlement Judge
Law Offices of Byron Thomas
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Greenberg Traurig, LLP/Las Vegas
Eighth District Court Clerk

²Given our conclusions, we need not reach the parties’ other arguments.