IN THE SUPREME COURT OF THE STATE OF NEVADA

26 RANCH, INC., A COLORADO CORPORATION; AND WESTERN STATES MINERALS CORPORATION, A UTAH CORPORATION,
Appellants,
vs.
MAYNARD ALVES,
Respondent.

No. 43368

FILED

MAR 27 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART, AND REMANDING

This is an appeal from a district court judgment on a jury verdict in a contract action. Second Judicial District Court, Washoe County; Peter I. Breen, Judge.

Respondent Maynard Alves entered into a livestock management agreement with appellant 26 Ranch for the pasturing of 3,000 head of cattle from August 2001 to April 2002. While negotiating the terms of this agreement, Alves was also attempting to negotiate purchase of the ranch.

A month after the agreement was executed, 26 Ranch sold the ranch to another buyer who offered more money. 26 Ranch sent a letter to Alves notifying him that the livestock management agreement would be terminated in 30 days pursuant to paragraph 17 of the agreement, which permitted termination with 30 days' notice if the Owner, cattle, or manager's best interests were not being served. At the time Alves received the notice, the cattle had only been pastured for approximately one month. Alves had to remove his cattle and find suitable pasturing at

considerable expense. Alves also alleged the cattle suffered diminished weight gain due to the stress of travel.

At trial, the jury determined that 26 Ranch breached the contract and the covenant of good faith and fair dealing. The jury awarded Alves damages based on his losses stemming from 26 Ranch's breach—including transportation costs and diminished weight gain suffered by the cattle as a result of their relocation. The district court also awarded Alves attorney fees based on a rejected offer of judgment.

Termination of the agreement

26 Ranch's main claim is that paragraph 17 of the agreement permitted it to terminate the livestock management agreement pursuant to their "best interests."[1] Alves, on the other hand, claimed the "best interest" clause referred to the interests of the ranch operations.

Whether an agreement is ambiguous is a matter to be determined by the district court. Here, the district court determined that both parties' constructions of paragraph 17 were reasonable constructions and that, therefore, the agreement was ambiguous.[2] We conclude substantial evidence supports the district court's decision and, therefore,

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[1]We have considered the issues raised concerning summary judgment and have determined that there were sufficient genuine issues of material facts presented such that summary judgment should not have been granted. We have also considered the issue regarding submitting to the jury the question of ambiguities in the contract and find the argument to be without merit.

[2]Shelton v Shelton, 119 Nev. 489, 497, 79 P.3d 507, 510 (2003) (contract is ambiguous when reasonably susceptible to more than one interpretation).

the district court did not err by submitting this evidence to the jury to determine the parties' intent.

As a result, it was the dominion of the jury to weigh the evidence presented. A jury's findings are upheld if supported by substantial evidence.[3] This court has stated that it "is not at liberty to weigh the evidence anew, and where conflicting evidence exists, all favorable inferences must be drawn towards the prevailing party."[4] In addition, ambiguous terms are construed against the drafter.[5] We do not weigh evidence anew and therefore the judgment of the jury will stand, provided substantial evidence supports the jury's finding that the termination provision applied to the best interests of ranch operations as determined by the ranch manager. The jury heard conflicting testimony regarding the right to terminate, and determined 26 Ranch's decision to terminate the agreement was not based on ranch operations but its desire to sell the property, thus resulting in breach.

Damages

26 Ranch asserts it was improperly held liable for the diminished weight gain of cattle purchased after the herd left 26 Ranch. We agree. A breaching party is only liable for foreseeable damages.[6] Foreseeable damages are those that arise naturally from the breach itself

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[3]Yamaha Motor Co. v. Arnoult, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998).

[4]Id.

[5]Ringle v. Bruton, 120 Nev. 82, 93, 86 P.3d 1032, 1039 (2004).

[6]Clark County Sch. Dist. v. Rolling Plains, 117 Nev. 101, 106, 16 P.3d 1079, 1082 (2001).

and were within the reasonable contemplation of both parties at the time the contract was made.[7] Alves's herd included 400 cattle purchased at the Westfall ranch. These cattle were never at 26 Ranch and were not subject to the stress of transportation caused by 26 Ranch's breach of contract. At oral argument, Alves's counsel could point to no evidence that 26 Ranch should be liable for these damages. As a result, we reverse the district court's order and remand with instructions to reduce Alves's damages by $29,400.

Attorney fees

We affirm the district court's award of attorney fees and costs because 26 Ranch rejected a NRCP 68 offer of judgment and failed to obtain a more favorable judgment at trial.[8]

26 Ranch argues that the award of attorney fees was inappropriate because Alves's offer of judgment was an unapportioned offer made to 26 Ranch and Western State Minerals Corporation (WSMC). Under NRS 17.115(9), the authority to award fees is not effective unless the same person is authorized to decide to settle the claims against all defendants to whom the offer is made. 26 Ranch argues that, because 26 Ranch and WSMC are different entities, Alves's joint unapportioned offer of judgment did not authorize the attorney fees award under NRS 17.115 and NRCP 68.

This argument is unpersuasive. An unapportioned offer of judgment is appropriate where a single theory of liability applies to both defendants, and where the same person or entity is authorized to make

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[7]Id. (quoting Hadley v. Baxendale, 156 Eng. Rep. 145, 151 (1854)).

[8]NRCP 68(f)(2).

the decision whether or not to settle.[9] Clearly, all of Alves's claims arose from a single common theory and sought identical relief. In addition, a number of factors indicate that the same entity or group was authorized to settle claims against both 26 Ranch and WSMC, making the unapportioned offer of judgment appropriate. First, both corporations are controlled by the same parent company. Second, the same individual serves as the president of both 26 Ranch and WSMC. Third, the lone member of the board of directors of WSMC also serves as a director of 26 Ranch. Fourth, the same attorney represented both 26 Ranch and WSMC in this litigation. As a result, we affirm the district court's conclusion that because of the overlap in personnel and representation, acceptance of the offer of judgment would have been authorized by the same entity.

The district court properly applied the factors from Beattie v. Thomas, concluding that Alves's claims were brought in good faith, that the offer of judgment was appropriate, and that 26 Ranch failed to provide a reason for rejecting the offer.[10] Therefore, the award of attorney fees was appropriate under NRS 17.115(9).

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED IN

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[9]RTTC Communications v. Saratoga Flier, 121 Nev. __, __, 110 P.3d 24, 29 (Adv. Op. No. 6, Apr. 14, 2005).

[10]99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983).

PART, REVERSED IN PART, AND REMANDED for entry of an amended judgment.

Douglas, J.

Becker, J.

Parraguirre, J.

cc: Hon. Peter I. Breen, District Judge
Erwin & Thompson
Robison Belaustegui Sharp & Low
Washoe District Court Clerk