

IN THE SUPREME COURT OF THE STATE OF NEVADA

RYDER HOMES OF NEVADA, INC., A
NEVADA CORPORATION,

Appellant,

vs.

DONALD E. BORSACK AND LOIS E.
BORSACK, TRUSTEES OF THE
DONALD E. BORSACK AND LOIS E.
BORSACK TRUST DATED JANUARY
25, 1985; L. JACK TOBLER, TRUSTEE
OF THE JRB CORP. MONEY
PURCHASE PENSION TRUST AND
TRUSTEE OF THE JRB CORP. PROFIT
SHARING PLAN AND TRUST; THE
BEVJACK FAMILY LIMITED
PARTNERSHIP, A NEVADA LIMITED
PARTNERSHIP; AND L. JACK
TOBLER, TRUSTEE OF THE L. JACK
TOBLER TRUST DATED DECEMBER
30, 1963,
Respondents.

No. 44958

FILED

AUG 08 2006

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

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a land purchase breach of contract action. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Appellant Ryder Homes of Nevada, Inc. and respondent property owners entered into a contract regarding the purchase of real property. The contract provided that it would self-terminate if the property owners did not receive a Feasibility Approval Notice by October 4, 2003. Ryder Homes never sent the notice. Instead, on that date, Ryder Homes sent a conditional notice indicating that it intended to purchase the property if certain issues were resolved. A subsequent phone

conversation revealed the issues concerned the feasibility and cost of providing water service to the property, as well as the identity of the provider.

The parties agreed to extend the deadline to January 2, 2004, so that Ryder Homes could take steps to resolve the water service issue. However, as the January 2 deadline approached, the matter was still unresolved. Ryder Homes then suggested that the parties explore developing the property as a joint venture and the deadline was further extended to January 31, 2004, in order to evaluate the possibility of forming a joint venture.

As of January 31, 2004, Ryder Homes had not complied with the provision of the contract by supplying notice of its unconditional agreement of feasibility or expressing its intent to proceed forward with a purchase regardless of the joint venture discussions or the unresolved water service issue. Ryder Homes also failed to request any additional extensions. However, some activities continued to occur regarding the possibility of a joint venture, and the property owners never notified Ryder Homes that the property owners considered the failure to provide the Feasibility Approval Notice by January 31, 2004, as a termination of the contract.

Sometime after January 31, 2004, the property owners were approached by, and entered into discussions with, a third party regarding purchase of the real property. On March 31, 2004, the property owners asked Ryder Homes to provide its best and final terms for either purchasing the real property or proceeding via joint venture by April 2, 2004. Ryder Homes failed to respond to this notice before April 2.

On April 5, 2004, given Ryder Homes' failure to respond, the property owners entered into an agreement to sell the property to the third party. Subsequently, Ryder Homes sent an unconditional acceptance.

The district court concluded that the agreement terminated on January 31, 2004, by its own terms and granted summary judgment in favor of the property owners.

Ryder Homes alleges that the property owners waived any right to enforce the January 31, 2004, termination deadline by conduct or, alternatively, should be estopped from asserting termination of the agreement because the property owners had failed to disclose that they considered the agreement terminated by January 31, 2004, and were negotiating with a third party.

Viewing the facts in a light most favorable to Ryder Homes,¹ appellant has failed to present evidence demonstrating that the property owners were informed of Ryder Homes' intention to proceed forward with the purchase of property under the original agreement regardless of the outcome of the joint venture negotiations. Ryder Homes' subjective belief that this would occur is insufficient to invoke the doctrines of waiver and estoppel. Nor has Ryder Homes presented material evidence that the property owners took any affirmative action encouraging Ryder Homes not to respond by January 31, 2004.

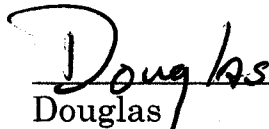
On its face, the contract terminated on January 31, 2004. Ryder Homes was aware of the deadline and had negotiated two previous extensions. The property owners were not required to notify Ryder Homes


¹Wood v. Safeway, Inc., 121 Nev. __, __, 121 P.3d 1026, 1029 (2005).

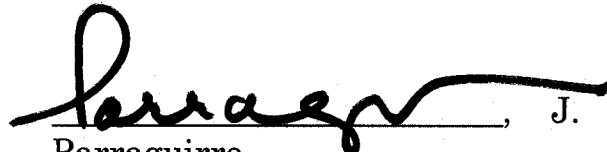
that failure to respond would be considered a termination of the contract and Ryder Homes presented no material evidence demonstrating that the property owner affirmatively did or said anything to suggest that the deadline would be waived.

Ryder Homes also relies upon the fact that after the deadline had passed, the parties continued to exchange documents and discuss a joint venture. Ryder Homes indicates that based upon this conduct, Ryder Homes reasonably assumed that the property owners understood that Ryder Homes would purchase the property pursuant to the original agreement even if the joint venture never materialized. However, Ryder Homes never informed the property owners of this assumption and it cannot be the basis of a claim of waiver or estoppel. Therefore, we conclude that the district court did not err in granting summary judgment. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 _____, J.
Douglas

 _____, J.
Becker

 _____, J.
Parraguirre

cc: Hon. Brent T. Adams, District Judge
Noel E. Manoukian, Settlement Judge
Hale Lane Peek Dennison & Howard/Reno
Parsons Behle & Latimer
Richard L. Tobler
Washoe District Court Clerk