IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO LAURO,
Appellant,
vs.
DAVID ARANA AND GRACIELA ARANA, HUSBAND AND WIFE,
Respondents.

No. 45224

FILED

SEP 29 2006

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

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a breach of contract action. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

Appellant Antonio Lauro argues that the district court erred in granting summary judgment to respondents David and Graciela Arana (collectively Arana). The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

Standard of Review

Arana filed a motion to dismiss pursuant to NRCP 12(b)(5); however, because the pleadings included exhibits, which the district court considered, the district court properly treated the motion as one for summary judgment pursuant to NRCP 56.[1] Summary judgment is appropriate when the pleadings and evidence demonstrate no genuine issue of material fact remains to be decided, and the moving party is entitled to judgment as a matter of law.[2]

[1]See Coty v. Washoe County, 108 Nev. 757, 759, 839 P.2d 97, 98 (1992).

[2]NRCP 56(c); Wood v. Safeway, Inc., 121 Nev. ____, ____, 121 P.3d 1026, 1031 (2005).

Summary judgment in favor of Arana

From 1994 to 1996, Arana and Lauro executed several agreements in an ongoing effort towards Arana's purchase from Lauro of the Cattleman's Restaurant in Las Vegas. The sole issue on appeal is whether the district court erred in concluding that the parties' first contract (Contract 1), executed on March 24, 1994, had been replaced by a subsequent contract (Contract 2), executed on March 8, 1996. Lauro argues that these two contracts were entirely separate. We conclude that Lauro's claim lacks merit and thus affirm.

Unambiguous contracts must be construed according to their plain language.[3] We attempt to effectuate the intent of the parties when interpreting contracts.[4] If the parties' intent is not clear from the contract itself, it may be determined in light of the circumstances surrounding the contract's execution.[5]

Arana argues that Contract 1 was merely a preliminary agreement that was replaced by Contract 2. We agree. Contract 1's title demonstrates that the parties intended it as an interim agreement. This contract explicitly states that a more formal and complete agreement may be executed at a later date. Our review of Contract 2 indicates that it is the formal and complete agreement contemplated in Contract 1. While

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[3]Geo. B. Smith Chemical v. Simon, 92 Nev. 580, 582, 555 P.2d 216, 216 (1976); see Kaldi v. Farmers Ins. Exch., 117 Nev. 273, 281, 21 P.3d 16, 21 (2001) (noting that this court is "not free to modify or vary the terms of an unambiguous agreement").

[4]NGA #2 Ltd. Liab. Co. v. Rains, 113 Nev. 1151, 1158, 946 P.2d 163, 167 (1997).

[5]Id.

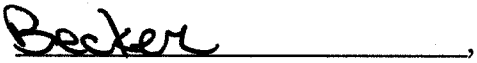
Contract 1 is a one-page document only providing basic information on the proposed sale, Contract 2 delineates how the sale will be performed, each party's obligations, and dozens of other provisions governing the parties' agreement. Furthermore, Contract 2 contains an integration clause explicitly stating that Contract 2 is the final agreement between the parties.

Because Contract 2 was intended to replace Contract 1, there is no merit in Lauro's claim that Contract 1 governed disposition of 70% of Lauro's interest in the restaurant while Contract 2 controlled the sale of Lauro's remaining 30% interest. Although paragraph one of Contract 1 states that Arana was only purchasing a majority interest, paragraph five of the same document states that Arana's $2,500 monthly payments applied towards his purchase of the business and indicates that the total purchase price was $275,000. Thus, according to this provision, Arana would acquire ownership of the entire restaurant—not merely a majority interest—upon payment of $275,000. Furthermore, Contract 2 included a document signed by Lauro in October of 1995 where he agreed to discount the purchase price to $225,000 to compensate Arana for work he had already completed on the restaurant. Lauro has not explained why this document would be attached to Contract 2 if it was not intended to lower the purchase price for the entire business from the $275,000 price included in Contract 1.

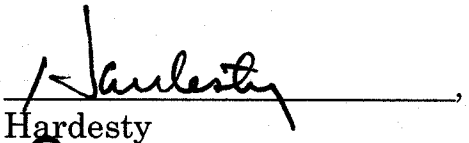
Based on these facts, we conclude that Arana and Lauro originally agreed to a sales price of $275,000 when Contract 1 was executed in 1994 but agreed to reduce the amount to $225,000 in October of 1995. The parties included this $225,000 purchase price in the more formal and complete Contract 2, which the parties executed in March of

1996. The parties do not dispute that this money was paid; as a result, Arana was entitled to summary judgment. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Becker



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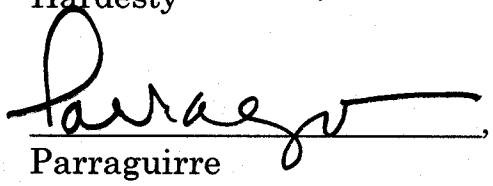

_____, J.
Parraguirre

cc: Hon. Valorie Vega, District Judge
Nathaniel J. Reed, Settlement Judge
Law Offices of Douglas C. Crawford
Cooper Christensen Law Firm, LLP
Clark County Clerk