

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD E. REESE,
Appellant,
vs.
SPIGOT RESOURCES, INC., A
NEVADA CORPORATION,
Respondent.

No. 45393

FILED

JAN 08 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal challenging a district court judgment regarding a contract for the sale of real property. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Appellant Donald E. Reese offered to purchase approximately six acres of the "southerly portion" of respondent Spigot Resources, Inc.'s two-parcel property, which would have required that parcels' existing property line be changed to run in an east to west direction. After various counteroffers, the parties signed a purchase agreement. Thereafter, they continued to engage in extensive negotiations to map the specific six-acre property to be conveyed.

Ultimately, however, the parties failed to agree on a common map or survey of the six acres to be conveyed, and the sale did not take place. Consequently, Reese filed a complaint, seeking specific performance and damages for breach of contract and unjust enrichment. Spigot Resources answered and filed counterclaims, seeking declaratory relief and damages for breach of contract.

Following a bench trial, the district court entered a written decision and judgment, concluding that the property description in the parties' agreement was not specific enough to meet the requirements of the statute of frauds, NRS 111.210. The district court rescinded the

agreement as unenforceable, placing both parties back into the positions that they previously occupied, so that Spigot Resources was obligated to return a deposit received from Reese, plus pay interest at the legal rate from when it took control of the deposit. The district court also dismissed Spigot Resource's counterclaims with prejudice and ordered that Reese's notice of lis pendens be removed.

Reese has appealed, contending that the original agreement and amendments thereto were clear and thus should have been enforced. Spigot Resources has filed a timely response, as directed, contending, among other things, that the district court's judgment was correct as a matter of law.

Whether a writing required by the statute of frauds is legally sufficient presents a question of law,¹ subject to de novo review by this court.² Nevada's statute of frauds specifically requires that a "contract" be "in writing," or it will be deemed void.³ Under the statute of frauds and basic contract principles, the parties' agreement must contain all material terms to create a valid contract.⁴ Unless the parties have agreed to all

¹Ray Motor Lodge, Inc. v. Shatz, 80 Nev. 114, 118, 390 P.2d 42, 44 (1964).

²Musser v. Bank of America, 114 Nev. 945, 947, 964 P.2d 51, 52 (1998) (citing Grand Hotel Gift Shop v. Granite St. Ins., 108 Nev. 811, 815, 839 P.2d 599, 602 (1992)).

³NRS 111.210(1); NRS 111.235.

⁴See Ray Motor Lodge, 80 Nev. 114, 390 P.2d 42 (concluding that an enforceable contract meeting the statute of frauds' requirements could be found in two separate letters, which together provided a description of the property to be sold and all essential terms of the parties' agreement for the sale of land); Johnson v. Watson, 70 Nev. 443, 272 P.2d 580 (1954) (concluding that a written memorandum, referring to a street address,

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material terms, preliminary negotiations do not constitute a binding contract.⁵

In a land sales contract, the property's description is a material term.⁶ In this case, however, the written documents and the parties' conduct clearly evidenced their lack of agreement on the specific property to be conveyed, instead showing their intent to continue negotiations on this issue. As Reese has noted, when he accepted Spigot Resource's February 13, 2004 counteroffer, "the exact location and overall size in square feet [of the property to be conveyed] was unknown as evidenced by the terms and conditions of the counter offer." The record contains undisputed evidence showing that the parties engaged in extensive post-agreement negotiations and proposed various ways to map and define the property to be conveyed. Even after Spigot Resources provided Reese with a copy of the boundary line adjustment map in November 2004, Reese submitted a different plan to Spigot Resources in February 2005, in which the parcel to be conveyed would have encroached into the northern parcel that Spigot Resources wanted to retain.

As the district court found, this case is distinguishable from Wiley v. Cook, in which this court found legally sufficient a description for "the 24 acres east of Las Vegas Blvd. North & North Main Streets [sic] in

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sufficiently set forth the property's description and contained all other essential elements to make it an enforceable contract within the statute of frauds).

⁵May v. Anderson, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005).

⁶See Ray Motor Lodge, 80 Nev. 114, 390 P.2d 42; Johnson, 70 Nev. 443, 272 P.2d 580.

the city of North Las Vegas, Nevada.”⁷ Unlike the Wiley case, in which the entire parcel was being conveyed, the six acres at issue in this case were only a portion of the fourteen-acre property owned by Spigot Resources, and the parties never agreed on the boundaries of the six acres to be conveyed.

Having failed to agree on a material term, the contract did not meet the statute of frauds requirements and was void.⁸ Since the contract was void and thus unenforceable, the district court properly refused to order specific performance of the contract or to award damages to Reese.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

⁷94 Nev. 558, 561, 565, 583 P.2d 1076, 1077, 1080 (1978).

⁸NRS 111.210; NRS 111.235.

⁹Linebarger v. Devine, 47 Nev. 67, 73, 214 P. 532, 534 (1923) (holding that no right of action exists for damages occasioned by the breach of a contract void under the statute of frauds); see Insurance Co. of the West v. Gibson Tile, 122 Nev. 455, 464, 134 P.3d 698, 704 (2006) (citing Linebarger, 47 Nev. at 73, 214 P. at 534); Great American Ins. v. General Builders, 113 Nev. 346, 353 n.6, 934 P.2d 257, 262 n.6 (1997) (recognizing the court’s ability to equitably rescind and nullify a contract, and stating that there is no cause of action for a breach when there is no longer any contract to enforce).

cc: Hon. Connie J. Steinheimer, District Judge
William C. Turner, Settlement Judge
Donald E. Reese
Law Offices of Mark Wray
Washoe District Court Clerk