

IN THE SUPREME COURT OF THE STATE OF NEVADA

KINGWOOD INVESTMENTS, L.L.C., A
NEVADA LIMITED LIABILITY
COMPANY WITH A PRINCIPAL
PLACE OF BUSINESS IN THE STATE
OF TEXAS; AND KINGWOOD
INDUSTRIES, L.L.C., A NEVADA
LIMITED LIABILITY COMPANY WITH
A PRINCIPAL PLACE OF BUSINESS
IN THE STATE OF TEXAS,

Appellants,

vs.

FLOYD A. MELDRUM, A RESIDENT
OF THE STATE OF NEVADA;
GERALDINE MELDRUM, A RESIDENT
OF THE STATE OF NEVADA; STEVE
JENSEN, A RESIDENT OF THE STATE
OF NEVADA; SOUTHERN NEVADA
PAVING, INC., A BUSINESS
INCORPORATED IN THE STATE OF
NEVADA; NEVADA PAVING, INC., A
BUSINESS INCORPORATED IN THE
STATE OF NEVADA; AND VALLEY
TRUCKING, INC., A BUSINESS
INCORPORATED IN THE STATE OF
NEVADA,

Respondents.

No. 45680

FILED

DEC 01 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 order dismissing a contract action. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

The underlying action involves a dispute between appellants Kingwood Investments, L.L.C. and Kingwood Industries, L.L.C. (collectively, "Kingwood") and respondents Floyd A. Meldrum and his

companies Southern Nevada Paving, Inc., Nevada Paving, Inc., and Valley Trucking, Inc. (collectively, the "Companies"). Seeking to acquire 100% of the common stock of the Companies, Kingwood, through its representative Ritchie G. Studor, presented a letter of intent to Meldrum, dated September 23, 2002, that proposed the material terms and conditions of a prospective transaction. Executed by Meldrum on September 30, 2002, the letter of intent also contained an exclusivity provision under which the parties agreed to use their best efforts to finalize a written purchase and sale agreement.¹

Despite their letter of intent, however, the parties failed to complete the prospective transaction, with Meldrum ultimately selling the Companies to a third party. Alleging that Meldrum breached the letter of intent and negotiated with third parties in violation of the exclusivity provision, Kingwood initiated suit against Meldrum and the Companies for breach of contract, breach of the implied covenant of good faith and fair dealing, and breach of duty to negotiate in good faith.²

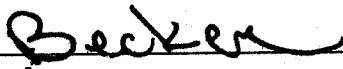
¹The exclusivity provision states, in whole,

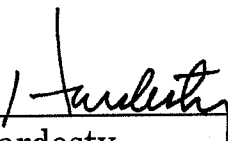
The Parties agree to an Exclusivity period for finalizing a Definite Agreement during which the Companies or its Selling Stockholders will not solicit, entertain or otherwise negotiate with parties for the representation, sale or merger of the Companies to others. Purchaser and Seller agree to use best efforts to finalize the Purchase and Sale Agreement on or before October 31, 2002 and to close the transaction prior to November 30, 2002.

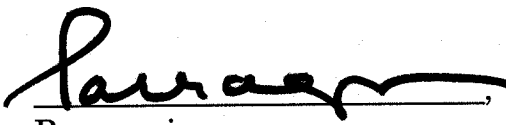
²Kingwood also named Geraldine Meldrum and Steve Jensen as defendants to the complaint.

The named defendants subsequently moved to dismiss the action pursuant to NRCP 12(b)(5). After reviewing the letter of intent, the district court granted the motion on the grounds that Kingwood failed to state a claim upon which relief could be granted. We agree and decline to recognize, at this time, the enforceability of preliminary agreements that require parties to negotiate in good faith.³ As such, we conclude that the district court did not err in dismissing the action pursuant to NRCP 12(b)(5).⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Hardesty


_____, J.
Parraguirre

³See City of Reno v. Silver State Flying Serv., 84 Nev. 170, 176, 438 P.2d 257, 261 (noting that “[a]n agreement to agree at a future time is nothing and will not support an action for damages” (quoting Salomon v. Cooper, 220 P.2d 774 (Cal. Ct. App. 1950))).

⁴On appeal, Kingwood also contends that the motion to dismiss should have been treated as a summary judgment motion because the district court, in dismissing the action, relied upon its review of the letter of intent, which was referenced, but not included, in the complaint. We conclude that this contention lacks merit.

cc: Hon. Michelle Leavitt, District Judge
Janet Trost, Settlement Judge
Rawlings Olson Cannon Gormley & Desruisseaux
McCullough, Perez & Associates, Ltd.
Clark County Clerk