

IN THE SUPREME COURT OF THE STATE OF NEVADA

HOME SELLERS SOLUTIONS, INC., A  
NEVADA CORPORATION; WE BUY  
HOMES, INC., A NEVADA  
CORPORATION; EXECUTIVE  
AGENTS, INC., A NEVADA  
CORPORATION; FREEDOM  
SERVICES, A NEVADA  
CORPORATION; THE MOORE FAMILY  
TRUST; AND WILLIAM PLUMMER,  
Appellants,  
vs.  
JOHN MICHAEL MOORE AND DORA  
CELIA WILLIAMS MOORE,  
Respondents.

No. 46003

**FILED**

NOV 17 2006

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

ORDER OF AFFIRMANCE AND REMAND

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

Appellants argue that the district court erred in (1) rescinding appellants' contract with respondents and, in the alternative, (2) failing to restore the parties to the status quo ante. We conclude that the district court properly rescinded the parties' contract, and we affirm the district court's judgment. However, we also conclude that the district court abused its discretion by not addressing the issue of restitution. Therefore, we remand to the district court for further findings of fact and conclusions of law.

A. Meeting of the minds

We review the district court's factual findings for substantial evidence.<sup>1</sup> An enforceable contract requires a meeting of the minds of the parties as to all essential elements of the contract.<sup>2</sup> There is an absence of a meeting of the minds, mutual assent, or agreement when both parties to the contract reasonably attach different meanings to the contract and neither has reason to know of the other's meaning.<sup>3</sup>

After reviewing the record on appeal, we conclude that substantial evidence supports the district court's findings that (1) who was to make payments on respondent's Federal Housing Administration loan was an essential element of the contract, (2) both parties reasonably attached different meanings to the contract as to that essential term, and (3) neither party had reason to know of the other's meaning. Therefore, we conclude that there was no meeting of the minds and that, accordingly, the district court did not abuse its discretion by rescinding the contract.

B. Restitution

We review the district court's decision regarding restitution for abuse of discretion.<sup>4</sup> In a successful action for rescission of contract,

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<sup>1</sup>Lawry v. Devine, 82 Nev. 65, 67, 410 P.2d 761, 762 (1966).


<sup>2</sup>May v. Anderson, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005); Roth v. Scott, 112 Nev. 1078, 1083, 921 P.2d 1262, 1265 (1996).


<sup>3</sup>Restatement (Second) of Contracts § 201 cmt. d (stating that where the parties attach different meanings to the contract and neither party knows of the other's meaning, "neither party is bound by the understanding of the other. The result may be an entire failure of agreement . . . if the term is . . . essential . . .").

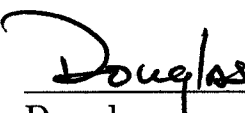
<sup>4</sup>Befumo v. Johnson, 119 P.3d 936, 944 (Wyo. 2005).

the court should restore the parties to the status quo ante.<sup>5</sup> The district court made extensive findings of fact and conclusions of law, but did not make any specific findings of fact and conclusions of law as to whether restitution is appropriate.<sup>6</sup> The district court must equitably restore the parties to their condition prior to the entry of their contract. We conclude that it abused its discretion by failing to conduct such an analysis.

We have considered appellants' other arguments and conclude that they lack merit. Accordingly, we ORDER the judgment of the district court AFFIRMED AND REMAND this matter to the district court for further proceedings consistent with this order.

  
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Gibbons J.

  
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Maupin J.

  
\_\_\_\_\_  
Douglas J.

cc: Hon. Jennifer Togliatti, District Judge  
William L. McGimsey  
Clark County Legal Services Program, Inc.  
David A. Olshan  
Clark County Clerk

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<sup>5</sup>Great American Ins. v. General Builders, 113 Nev. 346, 353-54 n.6, 934 P.2d 257, 262 n.6 (1997).

<sup>6</sup>This court has reviewed Paragraph 77 of the district court's order dated May 27, 2004, and concludes that the district court did not abuse its discretion as to this portion of the order.