IN THE SUPREME COURT OF THE STATE OF NEVADA

GOLDEN STATE HOLDINGS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY,
Appellant,
vs.
JACK J. WASHINGTON AND PENNY F. WASHINGTON,
Respondents.

No. 46988

FILED

MAY 31 2007

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

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment after a bench trial in a land sale contract dispute. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

In July 1999, appellant Golden State Holdings (GSH) entered into an agreement to purchase a parcel of land owned by respondents Jack and Penny Washington. After the Washingtons canceled escrow, GSH recorded a document memorializing the sale which placed a cloud on the Washingtons' title. The Washingtons filed a quiet title action and GSH counterclaimed for breach of contract.

The district court found in favor of the Washingtons after a one-day bench trial. The district court concluded that there was no "meeting of the minds" between the parties regarding certain essential terms of the sale; therefore, no contract was formed. The district court also issued alternative conclusions of law indicating that, even if a contract existed, GSH breached the contract by failing to obtain a zoning change and close escrow within 90 days. This appeal followed.

On appeal, GSH contends that substantial evidence does not support the district court's conclusion that no contract was formed

between GSH and the Washingtons. We agree.[1] However, we conclude that GSH breached the contract and affirm the district court's judgment based upon its alternative conclusions of law.[2]

GSH's initial offer called for a 210-day escrow period (subject to certain conditions) and contained boilerplate language permitting either

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[1]"[T]he question of whether a contract exists is one of fact, requiring this court to defer to the district court's findings unless they are clearly erroneous or not based on substantial evidence." May v. Anderson, 121 Nev. 668, 672-73, 119 P.3d 1254, 1257 (2005). An enforceable contract requires an offer and acceptance, meeting of the minds, and consideration. Keddie v. Beneficial Insurance, Inc., 94 Nev. 418, 421, 580 P.2d 955, 956 (1978) (Batjer, C.J., concurring). In judging whether a "meeting of the minds" has taken place, "[t]he fact finder should look to objective manifestations of intent to enter into a contract." James Hardie Gypsum, Inc. v. Inquipco, 112 Nev. 1397, 1402, 929 P.2d 903, 906 (1996). By contrast, the self-serving testimony of the parties as to their subjective intentions or understandings is not probative evidence of whether the parties entered into a contract. Id.

The district court erred in determining no "meeting of the minds" occurred between the Washingtons and GSH. In its findings of fact, the district court focused squarely on the conflicting interpretations of the escrow provisions attributed to each party. However, in determining whether a "meeting of the minds" has occurred this court focuses on objective manifestations of intent to enter into a contract. Id. The record on appeal indicates that both GSH and the Washingtons objectively intended to enter into a contract for the sale of land. Regardless of their subjective understandings of the effect of certain contractual terms, nothing on the face of the contract indicates that no "meeting of the minds" occurred. Accordingly, we conclude that substantial evidence does not support the district court's finding that no contract existed. May, 121 Nev. at 672-73, 119 P.3d at 1257.

[2]Where the district court reaches the right decision, even if based upon the wrong standard, this court will affirm. Sengel v. IGT, 116 Nev. 565, 570, 2 P.3d 258, 261 (2000).

GSH's initial offer called for a 210-day escrow period (subject to certain conditions) and contained boilerplate language permitting either party to unilaterally extend the escrow period by providing written notice to the escrow holder. The Washingtons' counteroffer did not explicitly eliminate either provision, but stated conclusively that escrow must close within 60 days. GSH then made a counteroffer to the counteroffer, increasing the escrow period from 60 to 90 days. The Washingtons accepted GSH's counteroffer.

GSH argues, therefore, that the plain language of the contract provides for both an initial 90-day escrow period and permits either party to unilaterally extend the escrow period. According to GSH, these provisions can be easily harmonized and do not render the contract ambiguous. GSH argues that it properly extended the escrow period within 90 days of contract formation; therefore, its failure to accomplish the zoning change within 90 days does not constitute breach.

When the facts are not in dispute, we review the district court's interpretation of a contract de novo.[3] As an initial matter, we agree with the district court that the escrow provisions at issue render the contract ambiguous. "A contract is ambiguous if it is reasonably susceptible to more than one interpretation."[4] Under the interpretation urged by GSH, the contract creates a 90-day escrow period with the possibility of three further 90-day extensions, a total of 360 days.

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[3]Shelton v. Shelton, 119 Nev. 492, 497, 78 P.3d 507, 510 (2003).

[4]Margrave v. Dermody Properties, 110 Nev. 824, 827, 878 P.2d 291, 293 (1994).

However, the clear language of Section 5 of the written counteroffer states that escrow is to close "within 90 days."[5] The use of the word "within" directly contradicts any provision allowing for extensions and instead creates a definite 90-day escrow period, which cannot be harmonized with the provision permitting unilateral extensions, as GSH contends. As a matter of law, therefore, we conclude that the contract formed by the parties is ambiguous.

When called upon to interpret an ambiguous contract, this court delves beyond its express terms and "examine[s] the circumstances surrounding the parties' agreement in order to determine the true mutual intentions of the parties."[6] While the self-serving testimony of a party may not be used to prove or deny the existence of a contract, such testimony may be used to interpret a contract.[7] "An interpretation which results in a fair and reasonable contract is preferable to one that results in a harsh and unreasonable contract."[8]

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[5]Penny Washington's testimony at trial indicates the unequivocal nature of this language:

> Q: When you put "close within 60 days," what did you mean? Sixty days of what?
>
> A: Escrow – closing of escrow. The contract should be over by then.

[6]Hilton Hotels v. Butch Lewis Productions, 107 Nev. 226, 231, 808 P.2d 919, 921 (1991).

[7]James Hardie Gypsum, Inc. v. Inquipco, 112 Nev. 1297, 1402, 929 P.2d 903, 906 (1996).

[8]Dickenson v. State, Dep't of Wildlife, 110 Nev. 934, 937, 877 P.2d 1059, 1061 (1994).

Given the circumstances surrounding the contract's execution and the subsequent acts and testimony of the parties (which were admitted at trial without objection), we conclude that the contract should be interpreted as requiring a 90-day escrow period for three reasons. First, both Penny and Jack Washington testified explicitly that their goal in selling the property was to wrap up escrow as soon as possible—especially considering Penny's plans to leave the country in February 2000. Second, the record reflects no apparent reason for GSH to have negotiated the initial escrow period up from 60 to 90 days if it believed that it could extend escrow an additional nine months pursuant to the extension provision.[9] Third, under well-established canons of contractual interpretation, specifically negotiated terms are to be given greater weight than boilerplate language.[10]

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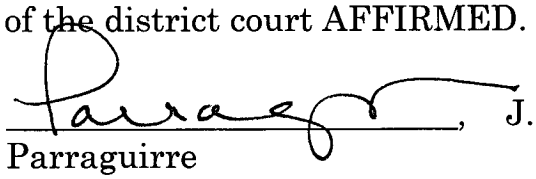
[9]In fact, GSH's president, John Hui, testified at trial that GSH requested the longer period because he believed that the zoning change could be accomplished within 90 days but not within 60 days.

[10]Restatement (Second) of Contracts § 203(d) (noting that "separately negotiated or added terms are given greater weight than standardized terms or other terms not separately negotiated.")

In light of the above, we conclude that a valid contract was formed. We further conclude that the 90-day escrow provision that the parties specifically negotiated applies, and that substantial evidence supports the district court's finding that GSH breached the contract by failing to close within this 90-day period. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



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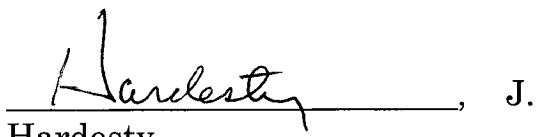

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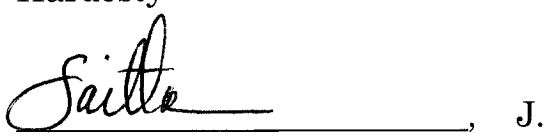

_____, J.
Saitta

cc: Hon. Lee A. Gates, District Judge
Leonard I. Gang, Settlement Judge
Scarpello & Huss, Ltd.
Foley & Foley
J. Michael Oakes
Eighth District Court Clerk