IN THE SUPREME COURT OF THE STATE OF NEVADA

IMAGE COMMERCIAL CLEANING, INC., A NEVADA CORPORATION, D/B/A SERVICEMASTER OF LV,
Appellant,
vs.
VARSITY CONTRACTORS, INC., AN IDAHO CORPORATION,
Respondent.

No. 47188

FILED

MAY 15 2007

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 contract action. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge.

Respondent Varsity Contractors, Inc., contracted with certain businesses to perform cleaning services for them at their business locations. For some of the business locations, Varsity Contractors subcontracted with appellant Image Commercial Cleaning, Inc., for Image Commercial to perform the cleaning services. According to Image Commercial, when the parties were negotiating the subcontract, a Varsity Contractors representative expressed to an Image Commercial representative that Varsity Contractors would not terminate Image Commercial's services so long as Image Commercial performed satisfactorily.

Notwithstanding that purported representation, the parties subsequently entered into a written subcontract that included a

termination clause, essentially allowing either party to terminate the agreement "at any time" on thirty days' written notice. The written agreement also included an integration or merger clause, essentially providing that the subcontract contained the parties' entire agreement and superseded any prior oral or written agreements.

Thereafter, on June 28, 2004, Varsity Contractors notified Image Commercial in writing that, effective August 15, 2004, it was terminating Image Commercial's services with respect to certain business locations. In response, essentially based on its termination, Image Commercial instituted this case against Varsity Contractors, asserting, among other things, various contract and tort claims. Varsity Contractors, then, on September 16, 2004, notified Image Commercial in writing that, effective October 17, 2006, it was terminating Image Commercial's services at the remaining business locations for which Image Commercial was responsible. Image Commercial subsequently amended its complaint.

The district court ultimately granted summary judgment to Varsity Contractors through two separate orders that together dismissed all of Image Commercial's claims against Varsity Contractors. This appeal followed.

This court reviews the orders granting summary judgment to Varsity Contractors de novo.[1] Summary judgment is appropriate if the pleadings and other evidence on file, viewed in a light most favorable to

[1]See Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

Image Commercial, demonstrate that no genuine issue of material fact remains in dispute and that Varsity Contractors was entitled to judgment as a matter of law.[2] Likewise, we review matters of contract interpretation de novo.[3]

On appeal, Image Commercial limits its arguments to the district court's second order granting summary judgment to Varsity Contractors. In that order, the district court concluded that, based on the subcontract's termination and integration provisions, Varsity Contractors could terminate Image Commercial's services on thirty days' written notice regardless of any purported evidence of the parties' prior conversation to the contrary. In this, the district court determined that the parol evidence rule barred any evidence of Varsity Contractors' oral representations occurring before the parties entered the written subcontract. The parol evidence rule generally precludes consideration of evidence used to contradict or vary the terms of an unambiguous written contractual agreement because "'all prior negotiations and agreements are deemed to have been merged therein.'"[4]

Image Commercial contends that the district court erred when it precluded Image Commercial from presenting evidence of Varsity

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[2]Id.

[3]May v. Anderson, 121 Nev. 668, 119 P.3d 1254 (2005).

[4]Kaldi v. Farmers Ins. Exch., 117 Nev. 273, 281, 21 P.3d 16, 21 (2001) (quoting Daly v. Del E. Webb Corp., 96 Nev. 359, 361, 609 P.2d 319, 320 (1980)).

Contractors' representative's purported oral assurance. Specifically, Image Commercial argues that its parol evidence was admissible under various exceptions to the parol evidence rule, such as when the extrinsic evidence is intended to (1) demonstrate that a valid oral agreement existed between the parties;[5] (2) show that a contract was procured through fraud or some breach of confidence in relation to the contract;[6] or (3) clarify an ambiguity in a written agreement.[7]

After reviewing the record, we disagree that the parties' alleged oral agreement was admissible under the noted exceptions to the parol evidence rule. To the extent that Image Commercial argues that the parties' representatives' alleged conversation demonstrates an oral agreement contemporaneous with or collateral to the parties' subsequent written subcontract, that argument is meritless. Aside from the obvious redundancy of entering an oral subcontract to perform cleaning services and later, separately, also agreeing to perform at-will under a written subcontract for the same services, parol evidence of oral agreements inconsistent with the terms of an unambiguous written agreement is

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[5]See Micheletti v. Fugitt, 61 Nev. 478, 488-89, 134 P.2d 99, 103-04 (1943); Crow-Spieker #23 v. Robinson, 97 Nev. 302, 305, 629 P.2d 1198, 1199 (1981) (providing when extrinsic evidence is admissible to prove the existence of a separate oral agreement).

[6]See Tallman v. First Nat. Bank, 66 Nev. 248, 258, 208 P.2d 302, 306-07 (1949).

[7]See Ma-Gar Mining v. Comstock Bank, 100 Nev. 66, 68, 675 P.2d 992, 993 (1984).

generally inadmissible.[8] Here, the written agreement precisely states that the subcontract "may be terminated at any time by Varsity [Contractors] or by [Image Commercial] upon giving (30) thirty days written notice to the other party." Thus, because Image Commercial's parol evidence that the parties purportedly agreed that Image Commercial would be terminated only if it performed unsatisfactorily is inconsistent with the written provision stating that the subcontract could be terminated "at any time," it is inadmissible.[9]

Likewise, with respect to Image Commercial's fraud argument, "fraud is not established by showing parol agreements at variance with a written instrument," since permitting parol evidence of such agreements would effectively eviscerate the parol evidence rule.[10]

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[8]Crow-Spieker #23, 97 Nev. at 305, 629 P.2d at 1199.

[9]The written agreement, moreover, contains an unequivocal statement that it "supersedes all prior oral written agreements, if any, between the parties and constitutes the entire agreement between the parties." In light of that clear language, the parties' alleged conversation does not appear to constitute a contemporaneous oral agreement, but rather an agreement or negotiation expressly superseded by the terms of the parties' ensuing written subcontract. See Kaldi, 117 Nev. at 281, 21 P.3d at 21 (recognizing that any negotiations are considered merged into the final written contractual agreement); Restatement (Second) of Contracts § 213 (1981) (stating that "[a] binding integrated agreement discharges prior agreements to the extent that it is inconsistent with them"); see also Ellison v. C.S.A.A., 106 Nev. 601, 603, 797 P.2d 975, 977 (1990) (providing that "contracts will be construed from the written language and enforced as written").

[10]Tallman, 66 Nev. at 258, 208 P.2d at 307.

Here, Image Commercial appears to rely solely on Varsity Contractors' representative's alleged assurance, before the parties memorialized their agreement in writing, that it would not terminate Image Commercial's services unless Image Commercial performed them unsatisfactorily. Extrinsic evidence of any assurance of that nature, however, is not admissible under the fraud exception to the parol evidence rule because it would merely be "at variance" with the written agreement's termination provision, which allows either party to terminate the agreement "at any time" on thirty days' written notice.[11] Moreover, because the record reveals that Image Commercial's representative read and understood the written agreement before signing it, any earlier, contrary oral assurance from Varsity Contractors would not rise to the level of "fraud in procurement of the instrument," as Image Commercial argues.[12]

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[11]See Crow-Spieker #23, 97 Nev. at 305, 629 P.2d at 1199 (noting that parol evidence is not admissible to demonstrate the existence of an oral agreement inconsistent with a written contract's terms).

To the extent that Image Commercial challenges Varsity Contractors' compliance with the thirty-day written notice requirement, that argument appears disingenuous. Image Commercial concedes in its opening brief that it received a thirty-day notice before its termination, and Image Commercial supports that concession with citation to the written notice included in the record.

[12]Further, to the extent that Image Commercial's fraud argument rests on Varsity Contractors' purported breach of any confidential relationship between the parties, see Perry v. Jordan, 111 Nev. 943, 947, 900 P.2d 335, 337-38 (1995), it is also unavailing. No fiduciary or

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As regards the ambiguity exception to the parol evidence rule, the written subcontract is simply not ambiguous.[13] And Image Commercial's parol evidence may not be considered for the purpose of making it so.[14] Indeed, the termination provision plainly states that the subcontract "may be terminated at any time by Varsity [Contractors] or by [Image Commercial] upon giving (30) thirty days written notice to the other party." In light of that straightforward language, we cannot conclude that the district court should have considered Image Commercial's parol evidence, intended to demonstrate that the parties had agreed to limit their ability to terminate the subcontract other than by thirty days' written notice.

We therefore conclude that the district court did not err when it precluded Image Commercial from presenting its parol evidence, and that, based on the parties' written subcontract, Varsity Contractors was entitled to judgment as a matter of law. Accordingly, we

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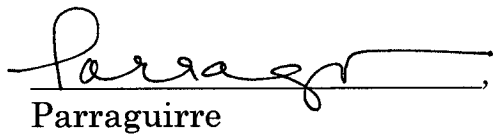
. . . *continued*
confidential relationship emanated from the parties' arm's-length business transaction. Id.

[13]See Shelton v. Shelton, 119 Nev. 492, 497, 78 P.3d 507, 510 (2003) (noting that an ambiguous contract is one susceptible to multiple interpretations).

[14]Ringle v. Bruton, 120 Nev. 82, 91, 86 P.3d 1032, 1037 (2004).

ORDER the judgment of the district court AFFIRMED.[15]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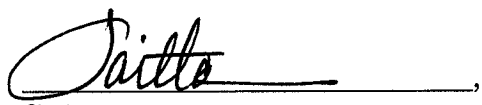
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[15]We note that although the parties' written agreement states that disputes arising under or related to it "shall be decided in accordance with the laws of the [S]tate of Idaho," neither party cited Idaho law, nor does it appear that the district court decided the matter under Idaho law. But the parol evidence rule is a principle of substantive (as opposed to procedural) law, see State ex rel. List v. Courtesy Motors, 95 Nev. 103, 590 P.2d 163 (1979), requiring the application of Idaho law to determine the admissibility of Image Commercial's parol evidence, see Tipton v. Heeren, 109 Nev. 921, 922 n.3, 859 P.2d 465, 466 n.3 (1993). Regardless, even applying Idaho's approach to the parol evidence rule, we reach the same conclusion. See Howard v. Perry, 106 P.3d 465, 467 (Idaho 2005) (stating that "[i]f a written contract is complete upon its face and unambiguous, no fraud or mistake being alleged, extrinsic evidence of prior or contemporaneous negotiations or conversations is not admissible to contradict, vary, alter, add to, or detract from the terms of the contract"); Mikesell v. Newworld Development Corp., 840 P.2d 1090, 1098 (Idaho Ct. App. 1992) (providing that averments of fraud to which the parol evidence rule does not apply are those that, if true, render a contract void or voidable).

cc: Eighth Judicial District Court Dept. 17, District Judge
Nathaniel J. Reed, Settlement Judge
Callister & Reynolds
Albright Stoddard Warnick & Albright
Eighth District Court Clerk