

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEONARDO CHAVEZ AND MARY  
CHAVEZ, HUSBAND AND WIFE,  
Appellants,  
vs.  
RICARDO OSTOLAZA,  
Respondent.

No. 47291

**FILED**

DEC 07 2007

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment in a real property contract action. Eighth Judicial District Court, Clark County; David Wall, Judge.

Appellants Leonardo and Mary Chavez instituted this case against respondent Ricardo Ostolaza, asserting that Ostolaza breached the parties' real property purchase agreement when he refused to consummate the sale of his and his wife's residence to them. The Chavezes sought monetary relief and equitable relief in the form of specific performance.

After the Chavezes presented their case, Ostolaza moved for judgment as a matter of law. The district court ultimately granted the motion, concluding that the document that the Chavezes relied on as the purported real property purchase agreement failed to constitute an enforceable contract for the purchase of real property, as it lacked certain essential terms. This appeal followed.

A motion for judgment as a matter of law made in a bench trial is governed by NRCP 52(c), which requires the district court to make findings of fact and conclusions of law if it grants the motion. On appeal, we give deference to the court's factual findings so long as they are not clearly erroneous and are supported by substantial evidence,<sup>1</sup> which has been defined as evidence that "a reasonable mind might accept as adequate to support a conclusion."<sup>2</sup> While the question whether a contract exists is a factual one,<sup>3</sup> whether it satisfies the statute of frauds is a question of law,<sup>4</sup> which we review de novo.<sup>5</sup>

Under NRS 111.210, Nevada's statute of frauds, a contract for the sale of real property, to be enforceable, must be written. Further, the writing must contain certain essential terms, including (1) the parties'

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<sup>1</sup>See Goodrich & Pennington v. J.R. Woolard, 120 Nev. 777, 782, 101 P.3d 792, 795 (2004).

<sup>2</sup>First Interstate Bank v. Jafbros Auto Body, 106 Nev. 54, 56, 787 P.2d 765, 767 (1990) (internal quotation marks omitted).

<sup>3</sup>May v. Anderson, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005).

<sup>4</sup>Edwards Indus. v. DTE/BTE, Inc., 112 Nev. 1025, 1033, 923 P.2d 569, 574 (1996).

<sup>5</sup>Clark County v. Sun State Properties, 119 Nev. 329, 334, 72 P.3d 954, 957 (2003).

names, (2) the agreement's terms and conditions, (3) a description of the property affected, and (4) the purchase price.<sup>6</sup>

The hand-written document at issue in this case reads as follows: "I[,] Ricardo Ostolaza, rece[iv]ed \$3000.00, earnest money deposit[ ] to purchase [h]ome at[ ] 3524 Sierra Patricia St[.], Las Vegas[,] NV, 89121[, f]or value of \$310,000.00[, c]ontingent upon sale of buyers['] home by March 26, 2004."<sup>7</sup> That language fails to give rise to an enforceable contract for the sale of land since it lacks necessary terms and conditions, including the terms for payment of the outstanding purchase price.<sup>8</sup> Thus, because the document proffered by the Chavezes as the parties' real property purchase agreement fails to include all essential

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<sup>6</sup>See Pentax Corp. v. Boyd, 111 Nev. 1296, 1299-1300, 904 P.2d 1024, 1026 (1995).

<sup>7</sup>Subsequently, a \$3,000 check to Ostolaza was drafted.

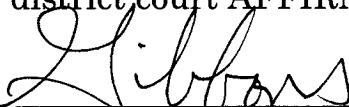
<sup>8</sup>See Johnson v. Watson, 70 Nev. 443, 446-47, 272 P.2d 580, 581-82 (1954) (providing that when a written memorandum for the sale of land includes, among other essential terms and requirements, provisions for payment of the purchase price, the memorandum satisfied the statute of frauds); see also Lynch v. Davis, 435 A.2d 977, 979 (Conn. 1980) (noting that "a memorandum is insufficient if it fails to specify the terms of payment of any part of the purchase price"); A.S. Reeves & Co., Inc. v. McMickle, 605 S.E.2d 857, 859 (Ga. Ct. App. 2004) (noting that, to be enforceable, a contract for the sale of land must include the terms of payment); Asplund v. Fisher, 120 N.W.2d 724, 726 (1963) (same).

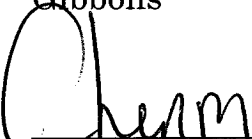
terms, it is not a valid contract for the sale of real property.<sup>9</sup> Accordingly, we conclude that the district court did not err in determining that the document offered by the Chavezes is not an enforceable contract and that no monetary damages were available for any breach of that document.

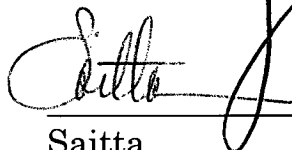
Likewise, because no enforceable contract for the sale of land existed between the parties, the district court did not abuse its discretion when it denied the Chavezes' request that the document be specifically performed.<sup>10</sup>

Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>11</sup>

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

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<sup>9</sup>NRS 111.210; Pentax Corp., 111 Nev. at 1299-1300, 904 P.2d at 1026.

<sup>10</sup>Serpa v. Darling, 107 Nev. 299, 304-05, 810 P.2d 778, 782 (1991).

<sup>11</sup>Having considered all of the issues raised by the Chavezes, we conclude that their other arguments lack merit and thus do not warrant reversal of the district court's judgment.

cc: Hon. David Wall, District Judge  
Kathleen M. Paustian, Settlement Judge  
Law Offices of James J. Lee  
Olson, Cannon, Gormley & Desruisseaux  
Eighth District Court Clerk