

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT ALGEE, AN INDIVIDUAL,
Appellant,


vs.

THOMAS SKOUROS, AN INDIVIDUAL
AND LISA SKOUROS, AN
INDIVIDUAL,
Respondents.

No. 47387

FILED

JAN 15 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from summary judgment in a real property contract dispute. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

The sole issue on appeal is whether genuine issues of material fact existed with respect to whether the appraisal and loan commitment “deadlines” in the parties’ written real estate contract operated as conditions precedent excusing Skouros performance. We conclude that genuine issues of material fact exist with respect to the parties’ intent to have the deadlines operate as conditions precedent. Accordingly, we reverse the judgment of the district court and remand this matter for further proceedings. The parties are familiar with the facts and we do not recount them except as necessary to our discussion.

Standard of review

“If a motion to dismiss is made under NRCP 12(b)(5) and matters outside the pleading are presented to and not excluded by the

court, the motion shall be treated as one for summary judgment.”¹ This court reviews a district court's grant of summary judgment de novo.²

Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to a judgment as a matter of law.³ “A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party.”⁴ In reviewing a motion for summary judgment, this court views the evidence, and any reasonable inferences drawn from it, in a light most favorable to the nonmoving party.⁵

Discussion

The record indicates that the district court granted Skouros motion for summary judgment after determining that Algee’s failure to conduct an appraisal of the property and provide notice of a formal loan commitment voided the contract and excused Skouros failure to convey the property.⁶

¹Linthicum v. Rudi, 122 Nev. ___, ___, 148 P.3d 746, 748 (Ad. Op. No. 120, December 28, 2006) (internal quotation marks omitted).

²Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

³Id.

⁴Id. at 731, 121 P.3d at 1031.

⁵Id. at 729, 121 P.3d at 1029.

⁶Skouros also alleges that Algee’s failure to pay monthly rent prior to the escrow period justified the cancellation of the land sale contract. In our view, however, this allegation is not a basis for summary judgment. The parties dispute whether Algee was required to pay monthly rent or whether the rent obligation was built into the purchase price of the

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“A condition precedent to an obligation to perform calls for the performance of some act after a contract is entered into, upon which the corresponding obligation to perform immediately is made to depend.”⁷ In Goldston v. AMI Investments, Inc., this court held that “[a] seller of land pursuant to a contract of sale is justified in cancelling the contract if the purchaser has failed to perform a material part of the contract which is a condition concurrent or precedent to the seller’s obligations to perform.”⁸

Whether a provision in a contract amounts to a condition precedent is generally dependent on the intention of the parties, as adduced from the contract itself.⁹ However, courts are reluctant to interpret a contractual provision as a condition precedent to performance unless such an interpretation is clearly the intent of the parties.¹⁰

In this case, it is far from clear that the parties intended the “deadlines” identified by Skouros to operate as conditions precedent to Skouros performance. Paragraph 26 of the contract contains an “optional”

. . . continued

property. Because there was no formal written lease agreement, a genuine issue of material fact exists regarding the nature of Algee’s rent obligations.

⁷NGA #2 Ltd. Liab. Co. v. Rains, 113 Nev. 1151, 1158-59, 946 P.2d 163, 168 (1997).

⁸98 Nev. 567, 569, 655 P.2d 521, 523 (1982).

⁹Mecham v. Nelson, 451 P.2d 529, 533 (Idaho 1969) (internal quotation marks omitted).

¹⁰American Leasing v. Morrison Co., 454 A.2d 555, 559 (Pa. 1982); Rubin v. Fuchs, 459 P.2d 925, 928 (Cal. 1969).

deadline list, which includes a requirement that Algee conduct an appraisal prior to February 29, 2004, and that Algee provide notice of a formal loan commitment by March 20, 2004. However, the contract specifies only that “[a]ny appraisal of the property shall be the responsibility of” the buyer and contemplates an “as is,” cash-only sale of the property “not contingent on financing.” In our view, a genuine issue of material fact exists as to whether the parties intended these deadlines to act as conditions precedent to Skouros duty to convey the property.

Furthermore, while it is a well-established principle of contract law that when one party to a contract commits a material breach of that contract, the other party is excused from any obligation to perform,¹¹ the determination of whether a party’s breach of the agreement is sufficiently material to excuse performance is a question for the trier of fact.¹² In our view, a reasonable jury could have concluded that Algee did not materially breach the parties’ agreement in failing to meet the appraisal and loan commitment deadlines.

Conclusion

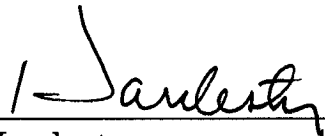
We conclude that the district court erred in granting Skouros motion for summary judgment because genuine issues of material fact exist with respect to whether the parties intended the appraisal and loan

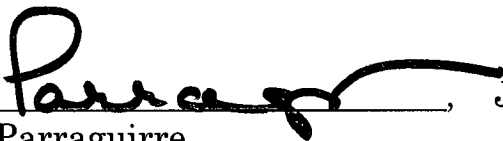
¹¹Hernandez v. Gulf Group Lloyds, 875 S.W.2d 691, 692 (Tex. 1994).

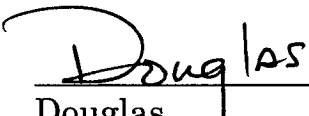
¹²Management Computer v. Hawkins, Ash, 557 N.W.2d 67, 78 (Wis. 1996); see generally Powers v. United Servs. Auto. Ass'n, 114 Nev. 690, 698, 962 P.2d 596, 601 (1998) (issue as to whether a given misrepresentation is material for purposes of a fraud claim is left to the jury).

commitment deadlines to operate as enforceable conditions precedent.
Accordingly, we

ORDER the judgment of the district court REVERSED AND
REMAND this matter to the district court for proceedings consistent with
this order.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Chief Judge, Eighth Judicial District
Hon. Joseph S. Pavlikowski, Senior Judge
Hon. Stewart L. Bell, District Judge
William F. Buchanan, Settlement Judge
Olson, Cannon, Gormley & Desruisseaux
M. Lani Esteban-Trinidad
Eighth District Court Clerk