

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHAFIK HIRJI AND AL MAMDANI,
Appellants,
vs.
WILLIAM ERRICO AND TEMMUJEAN
ERRICO,
Respondents.

No. 47891

FILED

JAN 30 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appeal from a district court judgment in an action based on a real estate contract and post-judgment order awarding fees and costs. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

This case arises from an agreement entered by appellant Shafik Hirji and respondents William and Temmujean Errico concerning a house located at 36 Moraine Drive in Henderson. According to the Erricos, this agreement was a lease agreement with an option to purchase. Hirji maintains that the agreement was actually a seller-financed installment or conditional contract to purchase real estate.

All parties signed the agreement, and Hirji tendered a \$25,000 "option fee" that he believed to be a down payment. Hirji also agreed to make a series of monthly "cost" and "equity" payments, as well an additional series of "equity reduction payments." The agreement specified that Hirji would not assign his rights under the agreement without the Erricos' consent. Although Hirji began to make the payments required by the agreement, it does not appear that he ever resided at 36 Moraine Drive. Instead, Hirji allowed his friend, appellant Al Mamdani, to occupy the residence with his wife. During their occupancy of the residence,

Mamdani and his wife wrote a series of checks payable to Errico, which they believed to be “mortgage payments.”

After the Erricos discovered that the Mamdanis, and not Hirji, were living at 36 Moraine Drive, they brought an action for breach of contract and unlawful detainer, arguing that Hirji had either assigned or subleased the property to Mamdani in violation of the agreement. Following a bench trial, the district court determined that the disputed agreement was an “agreement for occupancy of real property with option to purchase,” and that Hirji had either subleased or assigned his agreement rights to Mamdani, resulting in a default. Thus, based on a forfeiture and liquidated damages provision in the agreement, the court determined that Mamdani and Hirji forfeited any payments made to the Erricos, and ordered Hirji and Mamdani to quit the premises. The court also awarded attorney fees and costs to the Erricos in a post-judgment order.

On appeal, Hirji and Mamdani primarily contend that the district court erred in concluding that the agreement between Hirji and the Erricos was a lease agreement with option to purchase, and erroneously allowed the Erricos to proceed in their action for unlawful detainer. We disagree. Generally, “[a]n option to purchase property is a contract wherein the owner, in return for valuable consideration, agrees with another person that the latter may buy property within a specified time upon expressed terms and conditions.”¹ An option contract is distinct

¹Mohr Park Manor, Inc. v. Mohr, 83 Nev. 107, 111, 424 P.2d 101, 104 (1967).

from any other underlying agreement,² and may be entered into in combination with a lease or rental agreement as defined by NRS 118A.160. However, if the “optionee” of a lease and option-to-purchase contract fails to comply with the terms of the agreement, the optionee loses no interest or equity in the property beyond the right to possession established in the lease agreement, and the eventual right to purchase the property, as established in the option agreement.³ Conversely, “[a] different situation exists in the case of an agreement whereby the first party agrees to sell, and the second party agrees to buy, land.”⁴ Under this type of installment purchase agreement, the purchaser, unlike the optionee, actually becomes vested with equitable title to the property, and is entitled to reasonable opportunity to cure a default or deficiency before he is deprived of his rights in the property.⁵ Whether a contract is merely a purchase option or a bilateral obligation to sell and purchase is determined by the nature of the obligations imposed, rather than the name provided by the parties.⁶

We conclude that the district court properly construed the agreement between Hirji and Errico as a rental agreement with an option to purchase. Unlike a traditional sales contract, the agreement does not

²Id. at 112, 424 P.2d at 104.

³McCall v. Carlson, 63 Nev. 390, 407, 172 P.2d 171, 179 (1946).

⁴Id. (emphasis in original).

⁵Title Ins. & Trust v. Chicago Title, 97 Nev. 523, 526, 634 P.2d 1216, 1218 (1981).

⁶See Cutter Development Corp. v. Peluso, 561 A.2d 926, 928 (Conn. 1989).

state that Hirji is obligated to purchase the property. Rather, the agreement provides that the payment of the \$25,000 “purchase option” “induc[ed] Seller to remove the house from the market, and grant[] buyer the right to purchase the home under the following terms. . . .” The agreement references this \$25,000 “option fee” on at least three occasions, and explicitly provides that “Buyer’s rights are limited to the use of the premises until all Buyer’s obligations are met. Buyer shall have no equitable interest in the house until the close of escrow as described herein.” The agreement also expressly authorizes the use of unlawful detainer remedies, which generally cannot be used if a party has an equitable interest in a piece of property.⁷ Therefore, because the parties clearly did not intend for Hirji to receive an equitable interest in the property until complete exercise of the purchase option, we conclude that the district court did not err in construing the agreement as a lease agreement with option to purchase, and in allowing the Erricos to proceed in their action for unlawful detainer.

Hirji and Mamdani additionally argue that the district court erred in finding that Hirji materially breached the agreement by assigning his agreement rights and/or subleasing the property to Mamdani. We disagree. When the parties dispute the course of events in a breach of contract action, the district court’s factual determinations will not be disturbed on appeal unless they are unsupported by substantial evidence.⁸

⁷See NRS 40.430 (providing that any action for enforcement of any right secured by mortgage or other lien on real estate must be in accordance with the foreclosure provisions of NRS 40.430).

⁸Lorenz v. Beltio, Ltd., 114 Nev. 795, 803, 963 P.2d 488, 494 (1998).

Here, testimony at trial conflicted regarding whether or not Hirji had assigned his contractual rights to Mamdani. In its decision and order, the district court specifically stated that it found witness testimony suggesting existence of an assignment to be “very credible,” and testimony denying the assignment “not credible.” Given the superior position of the district court to assess the weight and credibility of evidence, we will not disturb its determination that Hirji assigned his agreement rights to Mamdani, resulting in a default under the agreement.⁹ Due to Mamdani’s extended occupancy of 36 Moraine Drive, and his payments to either Hirji or Errico in connection with his use of the property, we further conclude that the district court’s finding that Hirji materially breached the agreement by subleasing 36 Moraine Drive to Mamdani was also supported by substantial evidence. Thus, under the default and forfeiture provision contained in the agreement, we discern no err in the district court’s order requiring Hirji and Mamdani to vacate the premises, and forfeit any monies paid to the Erricos as liquidated damages.¹⁰

⁹Because it appears that Hirji and Mamdani partially performed pursuant to this assignment agreement, we reject Hirji and Mamdani’s argument that any assignment contract is void under the Statute of Frauds. See Gravelle v. Burchett, 73 Nev. 333, 319 P.2d 140 (1957).

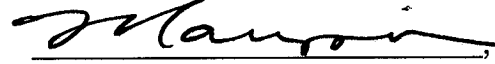
¹⁰We have considered Hirji and Mamdani’s equitable and public policy arguments regarding the validity of the forfeiture provision, and conclude they lack merit. We further conclude that the district court did not err in awarding liquidated damages, as Hirji and Mamdani have provided no evidence beyond blanket assertions that the liquidated damages allowed by the agreement were “grossly disproportionate” to the Erricos’ actual damages. See Loomis v. Lang Financial Corp., 109 Nev. 1121, 1126, 865 P.2d 1161, 1164 (1993).

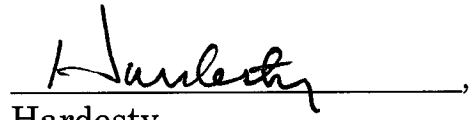
Finally, Hirji and Mamdani argue that the district court erred in awarding the Erricos attorney fees pursuant to the agreement. Absent a manifest abuse of discretion, this court will not overturn the district court's award of attorney fees on appeal.¹¹ NRS 18.010(1) provides that fees may be awarded pursuant to an agreement by the parties. Here, the agreement signed by the parties provided that "in the event of failure of performance, the non-breaching party shall be obligated to pay attorney's fees and costs to enforce the terms of this agreement." Despite the fact that the agreement provided that the "non-breaching" party would pay fees, the district court concluded that the Erricos were entitled to fees under this provision, reasoning that the language was clearly in error, and was properly read to allow an award of fees to a prevailing non-breaching party. We conclude that this was a reasonable interpretation of this fee provision, indicating that the district court did not abuse its discretion in awarding attorney fees pursuant to NRS 18.010(1).

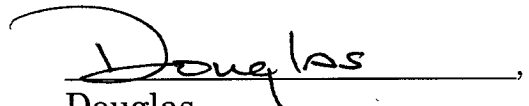
¹¹See Nelson v. Peckham Plaza Partnerships, 110 Nev. 23, 26, 866 P.2d 1138, 1139-40 (1994).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹²

 J.
Maupin

 J.
Hardesty

 J.
Douglas

cc: Hon. Douglas W. Herndon, District Judge
William F. Buchanan, Settlement Judge
Olson, Cannon, Gormley & Desruisseaux
Michael R. Pontoni
Eighth District Court Clerk

¹²We have examined the parties remaining claims on appeal, and conclude they lack merit. Specifically, we note that despite Hirji and Mamdani's assertions of error, "[n]o appeal may be taken from an order denying a motion to alter or amend a judgment." Uniroyal Goodrich Tire v. Mercer, 111 Nev. 318, 320 n.1, 890 P.2d 785, 787 n.1 (1995).