IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT KRAUSE, AN INDIVIDUAL,
Appellant/Cross-Respondent,
vs.
BARRY W. BECKER, INDIVIDUALLY, AND AS TRUSTEE FOR BARRY BECKER TRUST,
Respondent/Cross-Appellant,
and
NEVADA TITLE COMPANY, A NEVADA CORPORATION,
Respondent.

No. 48051

FILED

JUL 21 2008

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

ORDER AFFIRMING IN PART, VACATING IN PART AND REMANDING

This is an appeal and cross-appeal from a district court's amended judgment entered after a bench trial in a contract and tort action. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

As the parties are familiar with the facts and procedural history of this case, we do not recount them in this order except as is necessary for our disposition.

Standard of review

When we review a bench trial where the evidence was conflicting, we review the district court's findings of fact for clear error and will not disturb its findings if they are supported by substantial evidence.[1]

[1]Radaker v. Scott, 109 Nev. 653, 657, 855 P.2d 1037, 1040 (1993).

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We review conclusions of law de novo,[2] and the district court's calculation of damages for abuse of discretion.[3]

The escrow instructions

Robert Krause argues that Nevada Title Company (Nevada Title) breached the escrow instructions when it allowed Becker Enterprises to purchase the Dunes property through the stock purchase without Krause's consent. We disagree.

"[A]n escrow agent has no duty to investigate circumstances surrounding a particular sale in order to discover fraud."[4] Further, "the escrow instructions [generally] control the parties' rights and define the escrow agent's duties."[5] Generally, "if neither party tenders performance by the date set for closure under a contract that provides time is of the essence, the duties of both parties are discharged by passage of that date" as long as the delay is not the seller's fault.[6]

In this case, in number 50 of its findings of fact, the district court determined that time was of the essence in the purchase agreement and escrow instructions. In the findings numbered 54 through 57, the district court found that the extended closing date had passed, and, while

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[2]Keife v. Logan, 119 Nev. 372, 374, 75 P.3d 357, 359 (2003).

[3]Asphalt Prods. v. All Star Ready Mix, 111 Nev. 799, 802, 898 P.2d 699, 701 (1995).

[4]Mark Properties v. National Title Co., 117 Nev. 941, 945, 34 P.3d 587, 590-91 (2001).

[5]Id. at 946, 34 P.3d at 591.

[6]Goldston v. AMI Investments, Inc., 98 Nev. 567, 569, 655 P.2d 521, 523 (1982).

there had been discussions regarding extending the closing date, there had not been an agreement to do so. We conclude that substantial evidence supports all of these findings. Thus, as the closing date had passed, we conclude that the district court did not err when it concluded in number 9 of its conclusions of law that "Nevada Title did not breach any contractual obligation to [Krause]."

Oral joint venture

Krause argues that substantial evidence supported the district court's conclusion that he and Barry Becker entered into an oral joint venture agreement. We disagree.

"'A joint venture is a contractual relationship in the nature of an informal partnership wherein two or more persons conduct some business enterprise, agreeing to share jointly, or in proportion to capital contributed, in profits and losses.'"[7] When we consider the issue of the parties' intent to enter into a joint venture agreement, we apply the ordinary rules of contract construction and interpretation.[8] We also consider the parties' actions and conduct, which manifest their intent.[9]

In this case, Krause supports his argument that a joint venture existed by citing Jeaness v. Besnilian.[10] However, we conclude that Jeaness does not support Krause's argument. Unlike the facts in

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[7]Radaker, 109 Nev. at 658, 855 P.2d at 1040 (quoting Bruttomesso v. Las Vegas Met. Police, 95 Nev. 151, 154, 591 P.2d 254, 256 (1979)).

[8]Id.

[9]Id.

[10]101 Nev. 536, 706 P.2d 143 (1985).

Jeaness, in this case, Becker's actions and conduct do not reveal intent to enter a joint venture. In numbers 34 and 35 of its findings of fact, the district court determined that while Krause wrote Becker a letter alleging an oral joint venture agreement, Becker steadfastly testified that the Becker Trust had no interest in any business dealing with Krause other than the sale of the Becker Trust's 160 acres to Southwest Communities. Therefore, we conclude that the district court did not err when it determined in number 1 of its conclusions of law that Becker and Krause did not enter into a joint venture.

Intentional interference with contractual relations

Krause argues that he proved all of the elements of intentional interference with contractual relations. We disagree.

The elements of a claim for intentional interference with contractual relations are "(1) a valid and existing contract; (2) the defendant's knowledge of the contract; (3) intentional acts intended or designed to disrupt the contractual relationship; (4) actual disruption of the contract; and (5) resulting damage."[11] Therefore, we must first determine whether there is a valid and existing contract.

We conclude that, pursuant to Goldston v. AMI Investments, Inc., the contract was no longer valid because time was of the essence in the purchase agreement, and the closing date had passed.[12] Therefore, we need not address the remaining elements of intentional interference with contractual relations. As such, we conclude that substantial evidence

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[11]Sutherland v. Gross, 105 Nev. 192, 196, 772 P.2d 1287, 1290 (1989).

[12]See 98 Nev. 567, 569, 655 P.2d 521, 523 (1982).

supports number 6 of the district court's conclusions of law that "[t]here is no credible evidence of interference with the Las Vegas Dunes Stock Purchase Agreement."

Unjust enrichment

Krause argues that the district court erred by not showing its methodology for calculating the award. We agree.

"Unjust enrichment occurs whenever a person has and retains a benefit which in equity and good conscience belongs to another."[13] "In all actions tried upon the facts without a jury . . . , the court must find the facts specially. . . ."[14] Where "the district court fail[s] to explain its rationale for formulating [the damages for unjust enrichment,]" this court will remand to the district court for an explanation so that this court may determine whether the district court's method was reasonable.[15]

In this case, the district court did not explain its rationale for finding liability or its method of calculation for reaching the amount of $40,000. Therefore, we vacate the award and remand to the district court for further proceedings on the issue of unjust enrichment. The district court is instructed to determine whether Krause is entitled to relief for his unjust enrichment claim. If so, the district court must make additional findings of fact and conclusions of law to explain its method of calculation of damages and to identify the liable individual or entities. In the event

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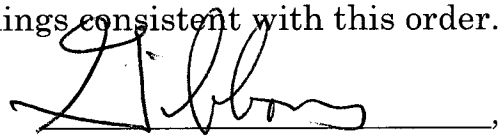
[13]Nevada Industrial Dev. v. Benedetti, 103 Nev. 360, 363 n.2, 741 P.2d 802, 804 n.2 (1987).

[14]NRCP 52(a).

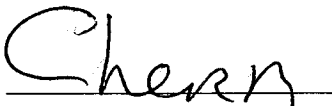
[15]Asphalt Prods. v. All Star Ready Mix, 111 Nev. 799, 803, 898 P.2d 699, 701 (1995).

that the district court determines that Krause is entitled to relief for unjust enrichment, we conclude that the district court properly determined that interest began accruing on April 25, 2002, the date of service of the summons.[16] Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND VACATED IN PART AND REMAND this matter to the district court for further proceedings consistent with this order.



_____, C. J.
Gibbons



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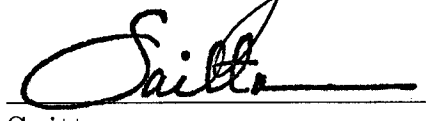
Cherry



_____, J.
Saitta

cc: Hon. Mark R. Denton, District Judge
Eugene Osko, Settlement Judge
Lionel Sawyer & Collins/Las Vegas
Kravitz, Schnitzer, Sloane, Johnson & Eberhardy, Chtd.
Nik Skrinjaric
Jones Vargas/Las Vegas
Eighth District Court Clerk

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[16]See NRS 17.130(2); Kerala Properties, Inc. v. Familian, 122 Nev. 601, 606 n.9, 137 P.3d 1146, 1150 n.9 (2006). Becker argued that Krause's unjust enrichment claim had to be liquidated for him to be entitled to prejudgment interest. However, "this court [has] abandoned 'liquidated' or 'unliquidated' tests for imposing prejudgment interest." Schoepe v. Pacific Silver Corp., 111 Nev. 563, 565, 893 P.2d 388, 389 (1995).