

IN THE SUPREME COURT OF THE STATE OF NEVADA

FIVE STAR CAPITAL CORPORATION,
Appellant,
vs.
GHASSAN TAWFIK MERHI,
Respondent.

No. 50234

FILED

SEP 28 2009

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *T. Choy*
DEPUTY CLERK

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

Appellant Five Star Capital Corporation (Buyer) attempted to purchase an unimproved five-acre plot of land located in Clark County, Nevada, from respondent Ghassan Tawfik Merhi (Seller). The parties did not reach a definitive agreement as to the terms of the purchase, which led the Buyer to file suit when Seller sold the property to a third party. Following a bench trial, the district court found against Buyer because the purchase agreement was unenforceable because escrow was never opened. This appeal followed.

On appeal, Buyer contends that the district court erred in finding that the real estate purchase agreement was unenforceable and that Buyer was not entitled to an award of damages. Having reviewed the record on appeal, we conclude that the escrow instructions and necessary documentation were never filed in escrow nor was money deposited in escrow as required. Therefore, we conclude that the district court was correct; escrow was never opened. The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

“Construction of a contractual term is a question of law,” which we review de novo. NGA #2 Ltd. Liab. Co. v. Rains, 113 Nev. 1151, 1158, 946 P.2d 163, 167 (1997). When “interpreting a contract, ‘the court shall effectuate the intent of the parties, which may be determined in light of the surrounding circumstances if not clear from the contract itself.’” Id. (quoting Davis v. Nevada National Bank, 103 Nev. 220, 223, 737 P.2d 503, 505 (1987)).

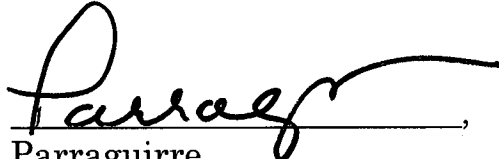
Here, the agreement specifically provided that “[u]pon the opening of Escrow . . . Buyer shall deposit with Escrow Holder the sum of \$5,000.” The agreement stated that “[e]scrow shall be deemed to be ‘opened’ as of the date the Deposit and fully executed counterparts of this Agreement and escrow instructions are delivered to Escrow Holder by Buyer and Seller.” Our review of the record indicates that the signed escrow instructions and documents from Buyer and Seller were never filed in escrow as required by the agreement. Further, the \$5,000 earnest money deposit was made by Golden State Holdings, LLC, a third party, and therefore, was insufficient to satisfy the conditions of escrow because the buyer was Five Star Capital Corporation, not Golden State Holdings. Thus, Buyer never complied with the agreement as required.

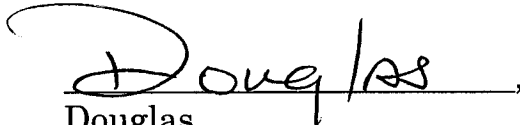
Based on the foregoing, we conclude that the district court correctly determined that escrow was never opened. Consequently, the purchase agreement is unenforceable.¹ Accordingly, we

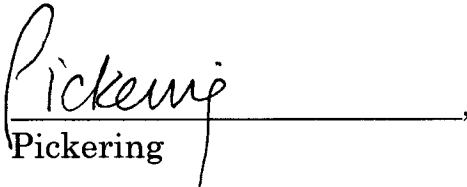
¹We note that Buyer also raises issues regarding the district court’s decision that the agreement was not supported by consideration or mutuality of obligation, that Buyer failed to cure ambiguities in the agreement, that Buyer breached because there was no agreement, and

continued on next page . . .

ORDER the judgment of the district court AFFIRMED.


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Timothy C. Williams, District Judge
Carolyn Worrell, Settlement Judge
Michael R. Pontoni
Law Offices of John M. Netzorg
Eighth District Court Clerk

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that Buyer was entitled to an award of damages. However, because there was no valid escrow, we conclude that these additional issues are moot.