

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROY A. WOOFTER,
Appellant,
vs.
RICHARD AGGERS,
Respondent.

No. 50394

FILED

NOV 03 2009

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

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment in a real property action. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

FACTS

On August 9, 2003, respondent Richard Aggers submitted a written purchase agreement, which offered to purchase Las Vegas, Nevada, property from appellant Roy A. Woofter for \$475,000. By its terms, Aggers' offer would expire if not accepted by 5 p.m. on August 11, 2003. After allowing the offer to expire, on August 12, 2003, Woofter orally informed his real estate agent that he would sell the property for \$500,000. Aggers then prepared a written addendum increasing the purchase price to \$500,000, which Aggers signed on August 12, 2003, and Woofter signed on August 15, 2003. As the addendum incorporated by reference the terms of the August 9 offer, Woofter also signed the written offer on August 15, 2003.

The addendum provides that it "shall be a part of the offer made by Richard Aggers dated 8/9/03" and that it "supersedes and takes precedence whenever the two (2) conflict." The addendum further provided that "all other terms and conditions of [the] original purchase

offer stand.” Under the terms of the purchase agreement, close of escrow was set for September 9, 2003. The purchase agreement also provided that at the discretion of Century 21 Aadvantage Gold, the escrow period could be extended for a period not to exceed 31 days at the written request of any party “for the purposes of completing any documentation or obtaining any approvals necessary to close said escrow.” Further extensions could only be granted by mutual agreement of the parties.

On September 1, 2003, Aggers wrote to his real estate agent at Century 21, indicating that he wanted to extend the close of escrow. On September 4, 2003, the Century 21 agent provided written notification to the escrow company and Woofter’s agent informing them that the close of escrow was being extended for 31 days until October 10, 2003. On September 23, 2003, Woofter wrote a note to the escrow officer indicating that the escrow should be cancelled followed by an October 1, 2003, letter stating that he “will not sign any papers to close escrow.” Escrow did not close, and thereafter, Aggers filed a district court complaint for specific performance. Woofter filed an answer and counterclaim for breach of contract by Aggers and sought a declaration that the contract was null and void.¹

Following a bench trial, the district court entered a judgment in favor of Aggers and rejected Woofter’s counterclaim. The court found that Woofter’s August 9 offer for \$475,000 expired by its own terms on August 11 when it was not accepted by 5 p.m. that day and that a valid and enforceable contract was created on August 15, 2003, when the

¹Woofter also filed a third-party complaint against his real estate agent and her company, which is not a subject of this appeal.

purchase agreement and addendum for a \$500,000 purchase price were executed and accepted by Woofter. The court concluded that the terms of the purchase agreement and addendum were definite and clear and that close of escrow had been properly extended until October 10, 2003. The court further held that Aggers was ready, willing, and able to perform, but that Woofter had repudiated and breached the contract. Thus, the court ordered specific performance of the contract and required closing and recordation to occur by October 15, 2007. After procuring financing and attempting to obtain Woofter's execution of the closing documents, Aggers moved on October 9, 2007, to enforce the judgment. The district court granted the motion and ordered Woofter to sign the escrow document by October 11, 2007, which Woofter did. Woofter then filed a timely notice of appeal from the judgment.

On appeal, Woofter contends that the contract was ambiguous and should be construed against Aggers as the drafter. According to Woofter, the purchase agreement allowed for only one unilateral 31-day extension, which occurred when Woofter executed the agreement and addendum on August 15 and "rati[fied] or breath[ed] life back into a contract that had expired," such that Aggers' request for an extension of the closing date until October 10 constituted a second extension requiring Woofter's agreement. Because Woofter did not agree to the extension, he contends that he did not breach the contract and that his repudiation was justified when Aggers failed to close by September 9. We conclude that Woofter's arguments lack merit.

DISCUSSION

The district court's findings of fact and conclusions of law, including whether or not a contract was breached, will not be disturbed on

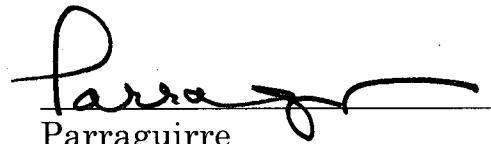
appeal if they are supported by substantial evidence, unless they are clearly erroneous. Sheehan & Sheehan v. Nelson Malley & Co., 121 Nev. 481, 486, 117 P.3d 219, 223 (2005). Contract interpretation, however, is a question of law subject to independent appellate review, and we will not defer to the district court's interpretation of the meaning of contractual terms. Id. When the contract is clear and unambiguous, this court will enforce it as written. Kaldi v. Farmers Ins. Exch., 117 Nev. 273, 278, 21 P.3d 16, 20 (2001).

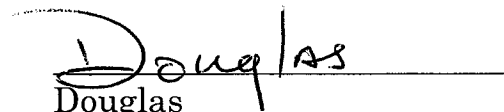
CONCLUSION

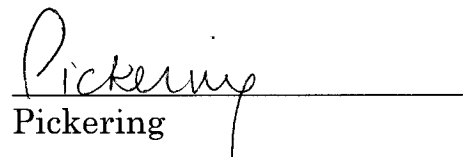
Based on our review of the documents before us, we conclude that substantial evidence exists to support the district court's findings of fact and conclusions of law. Specifically, the record reveals that there was only one contract created—the one created on August 15 with Woofter's acceptance and execution of the purchase agreement and addendum. As the district court properly found, this contract clearly and unambiguously allowed either party to request one 31-day extension of the escrow closing date and gave Century 21 the discretion to authorize such an extension, which it did, as demonstrated by the fact that Century 21 subsequently informed the escrow officer and Woofter's agent that escrow had been extended. Thus, we conclude that substantial evidence demonstrates that Century 21 had properly extended the close of escrow until October 10, 2003, at Aggers' request and that Woofter subsequently repudiated and breached the contract. See Kahle v. Kostiner, 85 Nev. 355, 345, 455 P.2d 42, 44 (1969) (affirming the doctrine that anticipatory repudiation applies when a party demonstrates a definite unequivocal and absolute intent not to perform a substantial portion of the contract). Accordingly, as substantial evidence supports the district court's decision, Sheehan, 121

Nev. 481, 117 P.3d 219, and the district court did not err in awarding Aggers specific performance on the contract, we

ORDER the judgment of the district court AFFIRMED.²


Parraguirre J.


Douglas J.


Pickering J.

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Howard Roitman, Settlement Judge
Michael H. Schwarz
Lin & Associates
Eighth District Court Clerk

²In his surrepley, Aggers requests sanctions in the form of attorney fees and costs on appeal based on his contention that this appeal is frivolous and that Woofter has abused the appellate process. Although we affirm the district court's judgment, we conclude that sanctions are not warranted, and thus, we deny Aggers' request for sanctions.