IN THE SUPREME COURT OF THE STATE OF NEVADA

MONTEZ LOVE, INDIVIDUALLY, Appellant/Cross-Respondent, vs. ABEL RAMOS, AN INDIVIDUAL, Respondent/Cross-Appellant.	No. 50220
ABEL RAMOS, INDIVIDUALLY, Appellant, vs. MONTEZ LOVE, INDIVIDUALLY, Respondent.	No. 50407

FILED

DEC 14 2009

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

ORDER OF AFFIRMANCE

These are consolidated appeals and a cross-appeal from a district court judgment in a real property contract action and appeal from a post-judgment order affirming an appraisal valuation. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

This case arises out of numerous agreements between Montez Love, appellant/cross-respondent in Docket No. 50220 and respondent in Docket No. 50407, and Abel Ramos, respondent/cross-appellant in Docket No. 50220 and appellant in Docket No. 50407, regarding the sale and development of a 2.5 acre parcel of land called the "Dapple Gray" property. Both parties now appeal various determinations in the district court's judgment and Ramos appeals its post-judgment order regarding the valuation of Lot 3 of the Dapple Gray property.

For the reasons discussed below, we conclude that all of Love's and Ramos's arguments fail, and therefore, we affirm the district court's judgment and post-judgment order. The parties are familiar with the facts and we do not recount them here except as necessary to our disposition.

DISCUSSION

I. Standard of review

Regarding questions of law, this court reviews the district court's conclusions de novo. Bopp v. Lino, 110 Nev. 1246, 1249, 885 P.2d 559, 561 (1994). This case also involves the construction and interpretation of various contracts, which this court reviews de novo. May v. Anderson, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005).

Regarding questions of fact, this case involves a bench trial. Therefore, this court will not disturb the district court's factual determinations if substantial evidence supports those determinations. Radaker v. Scott, 109 Nev. 653, 657, 855 P.2d 1037, 1040 (1993). "Substantial evidence is that [evidence] which 'a reasonable mind might accept as adequate to support a conclusion.'" Id. (quoting State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986)). Therefore, this court will only set aside findings that are clearly erroneous. Id.

II. Love's appeal

Love's appeal raises the following arguments: (1) the district court erred when it determined as a matter of law that no joint venture existed between Love and Ramos; (2) substantial evidence does not support the district court's determination that (a) Love had only a 19.83 percent equitable interest in Lot 3 and (b) the fair rental value of Lot 3 is $4,500 a month; and (3) the district court abused its discretion when it denied Love's request for costs. We conclude that these arguments lack merit.

A. The district court properly determined that no joint venture existed between Love and Ramos

Love argues that the district court improperly required written evidence of a joint venture between him and Ramos or, alternatively, that the district court erred in finding no joint venture because there was sufficient evidence of a joint venture. We conclude that Love's arguments lack merit because there was substantial evidence that no joint venture existed between Love and Ramos.

The district court found that there was no formal joint venture between Love and Ramos. It also found that there was no joint venture by estoppel because Ramos never represented to anyone that he and Love were partners. Finally, the district court found that there was never any meeting of the minds regarding a joint venture between Love and Ramos.

"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." Bruttomesso v. Las Vegas Met. Police, 95 Nev. 151, 154, 591 P.2d 254, 256 (1979). Joint ventures are less formal than partnerships and they are more limited in scope and duration. Hook v. Giuricich, 108 Nev. 29, 31, 823 P.2d 294, 296 (1992). However, general partnership principles apply to joint ventures. Radaker, 109 Nev. at 658, 855 P.2d at 1040. Therefore, whether a joint venture exists depends on the parties' intent. Id. The parties' intent is determined by the construction of any contracts and the "actions and conduct of the parties." Id. Thus, we first examine the signed agreements between Love and Ramos and then look to their conduct.

1. The parties' agreements

Love and Ramos entered into numerous agreements, including the following: (1) a document that states Love will have possession of Lot 3 on the Dapple Gray property and that he will pay for any remaining balance on that property if Ramos is unable to do so; (2) a land-purchase contract, which states that Love purchased Lot 3 and paid in full; (3) a quitclaim deed from Ramos to Love; (4) another quitclaim deed from Love to Ramos; (5) an undated, handwritten, signed land-purchase agreement; (6) a work-for-hire agreement; (7) a construction loan with Allstate Mortgage; (8) a signed note secured by deed of trust; and (9) an unsigned lease option agreement. We conclude that, collectively, these documents do not support Love's assertion that there was a for-profit joint venture between Love and Ramos for the development of the Dapple Gray property. On the contrary, the documents suggest that the relationships between Love and Ramos were buyer-seller, then owner-builder, then landlord-tenant.

In L.V.M. & E. Works v. Roemisch, 67 Nev. 1, 12, 213 P.2d 319, 324 (1950), this court affirmed a district court finding that a joint venture did not exist despite a contract stating the parties would share profits. This court held that although there is no one exclusive test for determining whether a joint venture exists, an agreement to share profits and losses is important. Id. at 8-9, 213 P.2d at 322-23. Similarly, NRS 87.060(1) generally defines a partnership in Nevada as "an association of two or more persons to carry on as co-owners a business for profit." Further, NRS 87.070(2) states that co-ownership in joint property is not itself sufficient to establish a partnership. Thus, a joint venture requires more than just co-ownership of property; it necessarily requires the intent to seek a profit.

In addition, Roemisch stated that joint participation in a for-profit business was a necessary element of a joint venture. 67 Nev. at 10, 213 P.2d at 323. Similarly, NRS 87.4324(1) states that property is only partnership property if purchased in the name of the partnership or by a partner with reference to the partnership. Property not purchased for or in the name of the partnership is presumed the purchaser's separate property. NRS 87.4324(4). Thus, a joint venture regarding real estate development necessarily requires an intent to make a profit by joint operation of a for-profit business.

For example, this court determined that a joint venture existed in Radaker because the parties created a contract that included the following objectives:

> (1) to recover [the owners'] investment in the lot; (2) to build and sell a good-quality home on the lot; (3) to complete the house within a designated time frame; (4) to provide an unusually attractive financial incentive to [the contractor]; and (5) to make a profit for both parties.

109 Nev. at 655-56, 855 P.2d at 1038-39 (emphasis added). The parties then performed their respective duties under the contract. Id. at 656, 855 P.2d at 1039. The facts in Radaker illustrate that the purpose of the land development and construction was for both parties to profit, and both parties participated in the joint management of the venture. Id. at 658-59, 855 P.2d at 1040-41.

Here, there were various agreements regarding the purchase of Lot 3, the transferring of the entire Dapple Gray property, the construction of Love's house on Lot 3, and the financing of the construction on Lot 3 and the other parcels. However, none of these agreements discussed profits or losses, or even mentioned a joint venture relationship.

Further, the agreements do not discuss the joint operation of a for-profit business. In fact, the agreements often place Love and Ramos on opposite ends of the transaction. For example, the land purchase agreements show Love as the buyer and Ramos as the seller, and the owner-contractor agreements show Love as the owner and Ramos as the contractor. Thus, we conclude that the agreements do not suggest there is a joint venture under the facts of this case.

2. The parties' conduct

According to Love, the Dapple Gray property became a joint venture asset when Ramos insisted that Love sign the construction loan. We conclude that Love's argument lacks merit because substantial evidence supports the district court's conclusion that no joint venture existed.

Ramos testified to the following: (1) he agreed to build Love's home for $60 per square foot, excluding upgrades; (2) the contract price did not include pre-construction development expenses; and (3) the parties never memorialized these agreements in writing. However, the parties did sign a work-for-hire agreement that stated Ramos would build Love's house on Lot 3 for a $40,000 contractor fee.

In his preliminary report and at trial, Ramos's general contracting expert testified to the following: (1) both parties kept inadequate records and produced inadequate evidence of their contributions; (2) it was difficult to determine exactly what both parties contributed because payments were made in multiple forms, including cash and bartering; (3) Love did not produce canceled checks for some of his claimed expenditures; (4) Ramos purchased the Dapple Gray property without any involvement from Love, and he built the Lot 3 house without receiving compensation from Love; and (5) the sum of money both parties

allegedly contributed totaled an amount reasonably consistent with developing a similar house in the area during that time period.

Love claims he made interest-only payments and contributed over $70,000 to the development of the house structure and over $140,000 to the development of the undeveloped land. However, the district court did not find that Love made any interest payments during the construction process. After the house was constructed, Love only paid part of the interest payments. In addition, the district court made the following factual findings: (1) Love contributed both money and sweat equity, totaling $151,351.79, to the development of his Lot 3 house; (2) these contributions rendered value to Lot 3 and the house, and therefore the district court found Love had a 19.83 percent equitable interest in Lot 3; (3) there was no joint venture or joint venture by estoppel; (4) Love agreed to purchase Lot 3 for $135,000, but he breached this contract when he failed to tender the monies into escrow; (5) Love contracted Ramos to build a house on Lot 3 for $60 per square foot and a $40,000 contractor's fee, and Love failed to pay Ramos the fee; and (6) Ramos was the sole legal owner of the entire 2.5 acres known as Dapple Gray.

We conclude that there is substantial evidence to support the district court's findings. The relevant written agreements and the parties' conduct do not clearly establish a joint venture. These documents, however, do establish both a buyer-seller and an owner-contractor relationship. Thus, the district court's findings and conclusions are not clearly erroneous.

B. Substantial evidence supports the district court's determination that Love has only a 19.83 percent equitable interest in Lot 3

Love argues that the district court erred when it found that he had only a 19.83 percent interest in Lot 3 because he contributed sweat

equity and money to all 2.5 acres of the Dapple Gray property, including the undeveloped portion. We conclude that Love's argument merely challenges the district court's weighing of the evidence and the credibility of the witnesses, and therefore Love fails to show that the district court's decision was clearly erroneous.

At trial, the district court reviewed evidence and evaluated testimony regarding the parties' contributions. An Allstate Mortgage representative testified that during the construction process, Ramos maintained poor records, if any, and Allstate did not demand any subcontracts, receipts, or other financial verification because of Ramos's previous loans, his submission of receipts, and his previous deliveries of titles free of mechanics' liens. In addition, one of Ramos's experts testified that both Ramos and Love kept poor records, and therefore it was difficult to track everything, particularly Love's bartering "payments."

The district court found that Ramos was the sole legal owner of the entire Dapple Gray property, including Lot 3. But the district court also found that Love made contributions to the entire 2.5-acre Dapple Gray property. As a result, the district court ordered that Love had a 19.83 percent equitable interest in Lot 3, but Ramos had the remaining 80.17 percent equitable interest in Lot 3 and full legal interest in the remaining property.

We conclude that substantial evidence supports the district court's determination. As discussed previously, there was no joint venture between Love and Ramos to develop the entire 2.5-acre Dapple Gray property. As a result, the district court properly limited Love's equity to Lot 3. We further conclude that the district court relied on expert testimony, the parties' submitted checks, receipts, and other evidence to

determine both Love's and Ramos's contributions. Therefore, substantial evidence supports the district court's determinations.

C. Substantial evidence supports the district court's determination that $4,500 is the fair rental value of the Lot 3 house

Love argues that the district court erred in finding a fair rental value of the Dapple Gray property because there was no evidence addressing the fair rental value. We conclude that Love's argument lacks merit.

Nevada recognizes an owner's ability to testify to the value of his property. See City of Elko v. Zillich, 100 Nev. 366, 371, 683 P.2d 5, 8 (1984) (holding "[t]he general rule is that an owner, because of his ownership, is presumed to have special knowledge of the property and may testify as to its value").

Here, the district court ordered that Love continue to pay rent of $4,500 to Ramos until either party bought out the other or the house was sold on the open market. Prior to trial, Love had already agreed to and paid $4,500 a month for occupying Lot 3. Further, Ramos had asked his attorneys to prepare a lease-option agreement, but Love would not sign the agreement without consulting his own attorney. The lease agreement stated that the rental value of the property would be $4,500.

We conclude that substantial evidence supports the district court's determination that $4,500 is the fair rental value of the property. Love does not cite to any contrary evidence that he produced at trial. Further, the district court filed its order in August 2007, and by that time Love had been paying $4,500 a month since the fall/winter of 2003. As a result, substantial evidence supports the district court's determination.

D. The district court acted within its discretion when it did not award Love prevailing-party costs

Love argues that the district court erred when it refused to award his costs under NRS 18.020 because he brought this matter pursuant to NRS 18.020(1) and (5), and therefore the district court should have awarded his costs because he was the prevailing party. We conclude that Love's argument lacks merit because he is not the prevailing party.

This court reviews a district court's award of costs for an abuse of discretion. Bower v. Harrah's Laughlin, 125 Nev. ___, ___, 215 P.3d 709, 726 (2009). Under NRS 18.020(1) and (5), the district court must award costs to the prevailing party in the following relevant actions: (1) "recovery of real property or a possessory right thereto" and (2) disputes involving "the title or boundaries of real estate." A prevailing party is a party who "'succeeds on any significant issue in litigation which achieves some of the benefit [it] sought in bringing the suit.'" Hornwood v. Smith's Food King, 105 Nev. 188, 192, 772 P.2d 1284, 1287 (1989) (quoting Women's Federal S & L Ass'n v. Nevada Nat. Bank, 623 F. Supp. 469, 470 (D. Nev. 1985)).

Here, the district court found that Ramos, as a prevailing party, was entitled to reimbursement of his costs in the amount of $23,117.16. In Glenbrook Homeowners, 111 Nev. at 922, 901 P.2d at 141, the district court found that the complexity of the case made it impossible to determine which party prevailed. On appeal, this court held that both parties won some issues and lost some issues, and therefore the district court did not abuse its discretion. Id. In this case, the district court quieted title for Love in Lot 3 in the form of Love's 19.83 percent equitable interest. However, the court denied Love's claims of breach of contract, conversion, unjust enrichment, and constructive trust. On the other hand,

the district court quieted title for Ramos in the entire 2.5-acre Dapple Gray property, with the exception of Love's equitable interest in Lot 3. However, the district court denied Ramos's claims of unlawful detainer, loss of income, and other damage claims.

We conclude that, in light of Love's overall objective to establish a joint venture and a legal interest in the entire 2.5 acre Dapple Gray property, Love was not a prevailing party. The purpose of Love's equitable interest was to prevent Ramos from being unjustly enriched by Love's contribution. Thus, Love's interest is more of a reimbursement as opposed to a successful legal claim. As a result, the district court did not abuse its discretion when it denied Love prevailing-party costs.

III. Ramos's cross-appeal

Ramos's cross-appeal raises the following arguments: (1) the district court erred when it credited Love for his payments to Broadbent & Associates, and (2) the district court erred when it denied Ramos's requested credit for his interest-only payments on the construction loan. We conclude that these arguments lack merit.

A. The district court acted within its discretion when it credited Love for his payments made to Broadbent & Associates

Ramos argues that the district court erred in crediting Love with payments to Broadbent because the engineering firm provided little benefit to either Ramos or the parcel. We conclude that Ramos's arguments lack merit because Broadbent performed services that benefitted the development of the property.

"Unjust enrichment occurs when ever [sic] a person has and retains a benefit which in equity and good conscience belongs to another." Unionamerica Mtg. v. McDonald, 97 Nev. 210, 212, 626 P.2d 1272, 1273 (1981). There are three elements of unjust enrichment: (1) a benefit

conferred upon one party by another party, (2) an appreciation or knowledge of the benefit by the benefiting party, and (3) the acceptance or retention of the benefit by the benefitting party under circumstances that make it inequitable for the benefitting party to retain the benefit without payment of its value to the conferring party. Topaz Mutual Co. v. Marsh, 108 Nev. 845, 856, 839 P.2d 606, 613 (1992).

The testifying engineer stated that Broadbent had filed for a determination parcel map, submitted two drainage studies, and developed the preliminary engineering requirements. Although Clark County rejected Broadbent's two drainage studies and Broadbent had not obtained all of the approvals for the parcel map, the engineer testified that about 20 percent of the work was completed. Further, the engineer testified that it usually took three submittals to get a drainage study approved. In addition, the engineer testified that Ramos paid his firm $17,700 plus additional charges to complete the project. But on cross-examination, the engineer stated that he did not need to charge Ramos for the drainage study because Broadbent hired and paid another firm to complete the study. Thus, Love's payments to Broadbent for some of the engineering work required to develop Lot 3 were the only payments towards the drainage study. Finally, the district court reduced Love's requested amount from $17,428 to $14,708.26.

We conclude that the district court's decision to credit Love the $14,708.26 was not clearly erroneous. There was substantial evidence to support the district court's conclusion that Love paid for some of the engineering work required to develop Lot 3. Further, the district court apparently weighed the evidence against Love's requested amount and

ultimately awarded a lesser amount. As a result, the district court did not abuse its discretion.

B. The district court acted within its discretion when it did not credit Ramos for his interest payments on the construction loan

Ramos argues that the district court erred when it did not credit him for the interest payments on the Allstate construction loan because Love, as a co-borrower, received a benefit from Ramos's payments and Love agreed to make those payments. We conclude that Ramos's arguments lack merit because the district court found that no agreement existed between Ramos and Love to pay the interest and there is no evidence that the district court's decision is clearly erroneous.

The district court found that there was no agreement between Love and Ramos requiring Love to pay the monthly interest ($5,910) on the construction loan between the time Ramos and Love incurred the loan until the house was constructed. However, Ramos testified that Love agreed to bear the interest expenses so Ramos could obtain sufficient construction funding. Love concedes that he agreed to make interest payments of $4,500 a month after the house was constructed.

We conclude that the district court's finding—that there was no agreement between Love and Ramos for Love to make the entire interest payments on the construction loan—was not clearly erroneous. The only evidence presented at trial regarding this agreement was Ramos's own testimony. As the trier of fact, the district court weighs witness credibility. Considering that Love and Ramos made numerous written agreements regarding the house and loan, the district court's decision to reject Ramos's assertion is not clearly erroneous. Therefore, the district court did not abuse its discretion when it denied Ramos's unjust enrichment claim regarding the interest payments.

IV. Ramos's appeal

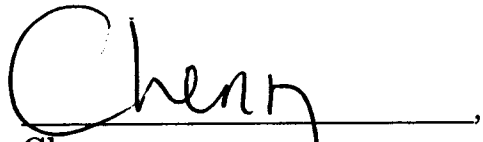
Ramos's appeal raises the following argument: the district court abused its discretion when it accepted an independent appraiser's property valuation, which valued Lot 3 at $725,000. We conclude that this argument lacks merit because there is substantial evidence supporting the district court's conclusion.

The district court stated in its order that the parties had seven days to agree on a licensed or certified appraiser; otherwise, the court would appoint its own independent appraiser. Apparently, the parties were unable to agree on an appraiser because the court ultimately used the independent appraiser named in its initial order. The independent appraiser assessed the fair market value of Lot 3, including the house, at $750,000. Both parties challenged the assessment, with Love arguing it was too high and Ramos arguing it was too low. After a hearing on the matter, the district court determined that the appraisal was sound, and it concluded that $725,000 was the fair market value of the property.

We conclude that the district court's determination of the fair market value of Lot 3 is not clearly erroneous. The district court held a hearing that allowed Ramos to present his challenge. At the hearing, Ramos argued that the independent appraiser's valuation was $50,000 to $60,000 too low because of the below-average condition of the subject property. Ramos then submitted an estimate from an appraiser he hired, who valued the property at $900,000. However, this estimate diverges from Ramos's argument that the property should be valued around $800,000. Thus, the district court's rejection of Ramos's estimate was not clearly erroneous. Further, substantial evidence supports the district court's valuation of the property at $725,000 because the independent appraiser valued that property at $750,000. As a result, the district court

did not abuse its discretion when it valued Lot 3 and the attached house at $725,000. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



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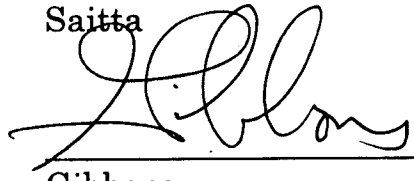

_____, J.
Gibbons

cc: Hon. Susan Johnson, District Judge
Carolyn Worrell, Settlement Judge
Deaner, Deaner, Scann, Malan & Larsen
Feldman Graf
Eighth District Court Clerk