

IN THE SUPREME COURT OF THE STATE OF NEVADA

OSCAR PAEZ,  
Appellant,  
vs.  
COLEMAN-TOLL LIMITED PARTNERSHIP,  
A DOMESTIC LIMITED PARTNERSHIP,  
Respondent.

No. 50562

**FILED**

**AUG 26 2009**

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

This is a proper person appeal from a final judgment in a contract action. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

On February 5, 2005, appellant Oscar Paez contracted with respondent Coleman-Toll Limited Partnership (Toll) to purchase a home to be built in Las Vegas, Nevada, for a total of \$966,875. Paez deposited \$35,000 as his earnest money deposit and an additional \$5,035 for options. The parties' contract required Paez to obtain a loan commitment by April 11, 2005, and meet other conditions. In the event that Paez failed to comply with the contract's terms, the contract permitted Toll to cancel the contract and "retain all amounts paid to or for the benefit of [Toll] as liquidated damages (and not as a penalty), in consideration for administering this Contract, installing/purchasing extras, canceling escrow and taking the Property off the market[.]"

Paez failed to obtain financing and on April 3, 2006, he wrote to Toll seeking rescission of the contract and a refund of his monies, on the basis that he would be unable to perform because he was unemployed, was separating from his wife, and had insufficient assets to purchase the property. Toll responded in a letter dated April 13, 2006, informing Paez that the house was under construction and that it considered Paez's letter to be an anticipatory repudiation of the contract. Toll contended that

“financial inability to perform is not a condition or excuse to the performance of Mr. Paez’s obligations under the Purchase Agreement” and gave Paez five business days to provide an unequivocal statement that he intended to perform. In the event of Paez’s breach, Toll claimed that under the contract, it was entitled to retain all amounts paid as liquidated damages and that it would seek to recover attorney fees if Paez proceeded with legal action. When Paez failed to cure his breach, Toll subsequently sold the property to a different purchaser.

Paez, through counsel, then filed a district court complaint against Toll for breach of contract and unjust enrichment and sought a judgment declaring that Toll breached the contract and that Paez was entitled to a full refund of his earnest money deposit. Following a bench trial, the district court entered a judgment in Toll’s favor on October 8, 2007, and detailed findings of fact and conclusions of law on October 9, 2007. The district court concluded that Toll was entitled to retain Paez’s earnest money and options deposits in the amount of \$40,035. This appeal followed.

On appeal, Paez challenges the denial of his claim to recover his deposit.<sup>1</sup> Paez contends that the case should have been “decided based on the facts and the contract itself, regardless of [his] employment, [his] finances or [his] relationship with [his] ex wife” and he claims that he had communicated his intent to cancel the contract to Toll.

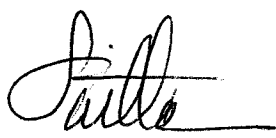
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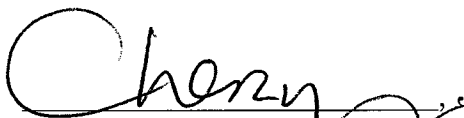
<sup>1</sup>In his civil proper person appeal statement, Paez makes arguments regarding the award of attorney fees to Toll, which was entered after this appeal was filed. We need not consider these arguments, however, as Paez never filed a notice of appeal from the district court’s order awarding attorney fees to Toll.

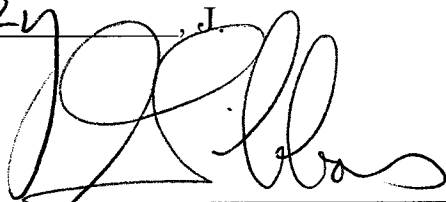
The district court's factual findings will not be disturbed on appeal if they are supported by substantial evidence, unless they are clearly erroneous. Sheehan & Sheehan v. Nelson Malley & Co., 121 Nev. 481, 486, 117 P.3d 219, 222 (2005). Substantial evidence is that which a reasonable person could accept as adequate to support a conclusion. Installation & Dismantle v. SIIS, 110 Nev. 930, 932, 879 P.2d 58, 59 (1994). Conclusions of law, however, are reviewed de novo by this court. Bedore v. Familian, 122 Nev. 5, 10, 125 P.3d 1168, 1171 (2006).

In this case, the contract clearly allowed Toll to retain, as liquidated damages, the monies paid by Paez if he failed to perform. Because Paez has admitted that he did not perform, Toll was entitled to retain the monies paid by Paez. As a result, having reviewed the record on appeal and appellant's civil proper person appeal statement, we conclude that substantial evidence in the record supports the district court's decision and that Paez has failed to demonstrate that the district court clearly erred. Sheehan, 121 Nev. at 486, 117 P.3d at 222. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Saitta

  
Cherry

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Jessie Elizabeth Walsh, District Judge  
Howard Roitman, Settlement Judge  
Oscar Paez  
McDonald Carano Wilson LLP/Las Vegas  
Eighth District Court Clerk