

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT O. RAINS, JR., TRUSTEE OF  
THE RAINS 1992 TRUST DATED  
DECEMBER 14, 1992,

No. 34665

Appellant,

vs.

NGA #2 LIMITED LIABILITY COMPANY,

Respondent.

**FILED**

AUG 9 2001

ANNETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. [Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant's motion for attorney fees pursuant to NRS 18.010. We conclude that the district court did not err in denying appellant's motion because the record reflects that respondent's claims for declaratory judgment and specific performance, when initiated, were brought on reasonable grounds.

Attorney fees are only available when authorized by a "rule, statute, or contract."<sup>1</sup> NRS 18.010, governing awards of attorney fees, states in pertinent part:

2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:

(a) When he has not recovered more than \$20,000; or

(b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought without reasonable ground or to harass the prevailing party.

(Emphasis added.)

An award of attorney fees under NRS 18.010(2)(b) is discretionary with the district court.<sup>2</sup> To support such an

<sup>1</sup>Ace Truck v. Kahn, 103 Nev. 503, 512 n.4, 746 P.2d 132, 138 n.4 (1987).

<sup>2</sup>Foley v. Morse & Mowbray, 109 Nev. 116, 124, 848 P.2d 519, 524 (1993).

award, however, "there must be evidence in the record supporting the proposition that the complaint was brought without reasonable grounds or to harass the other party."<sup>3</sup>

In Bergmann v. Boyce,<sup>4</sup> this court recognized that a claim is groundless if the complaint contains allegations that are not supported by any credible evidence at trial. Such an analysis depends upon the actual circumstances of the case.<sup>5</sup> "If an action is not frivolous when it is initiated, then the fact that it later became frivolous will not support an award of fees."<sup>6</sup>

Appellant Robert O. Rains Jr., Trustee of the Rains 1992 Trust dated December 14, 1992, argues that the district court erred in denying his motion for attorney fees because he was the prevailing party at every point in this litigation. Specifically, Rains argues that respondent NGA #2 Limited Liability Company ("NGA") knowingly filed a groundless complaint requesting a declaratory judgment and specific performance because NGA was aware that it could not prove the essential element of detrimental reliance on Rains' conduct.<sup>7</sup>

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<sup>3</sup>Chowdhry v. NLVH, Inc., 109 Nev. 478, 486, 851 P.2d 459, 464 (1993).

<sup>4</sup>109 Nev. 670, 675, 856 P.2d 560, 563 (1993) (citing Fountain v. Mojo, 687 P.2d 496, 501 (Colo. Ct. App. 1984).

<sup>5</sup>See id., 109 Nev. at 675, 856 P.2d at 563.

<sup>6</sup>Duff v. Foster, 110 Nev. 1306, 1309, 885 P.2d 589, 591 (1994), abrogated on other grounds by Halbrook v. Halbrook, 114 Nev. 1455, 971 P.2d 1262 (1998).

<sup>7</sup>This court has previously characterized equitable estoppel as generally comprised of the following four elements:

- (1) the party to be estopped must be apprised of the true facts;
- (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting estoppel has the right to believe it was so intended;
- (3) the party asserting the estoppel must be ignorant of the true state of facts;
- (4) he must have

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Rains reasons that NGA could not have detrimentally relied upon his conduct because NGA would never have accepted Rains' interpretation of the contract.

NGA responds that the rulings delivered from this court and the district court conclusively establish that its claims were brought on reasonable grounds. Specifically, NGA argues that Rains' contentions are based on a misunderstanding of the four legal theories NGA developed and employed at trial.<sup>8</sup> NGA states that although establishing the element of detrimental reliance was necessary to support only one of its theories, it produced credible evidence at trial demonstrating NGA's detrimental reliance on Rains' silence for purposes of an estoppel-by-silence theory. Finally, NGA points out that in Rains I,<sup>9</sup> this court concluded that there were "genuine issues of material fact regarding whether Rains [was] estopped from asserting [NGA's] breach [of the contract] as a defense as well as whether he waived that right."<sup>10</sup>

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. . . continued

relied to his detriment on the conduct of the party to be estopped.

Cheger, Inc. v. Painters & Decorators, 98 Nev. 609, 614, 655 P.2d 996, 998-99 (1982) (emphasis added).

<sup>8</sup>NGA brought this action based upon the following legal theories: 1) recording the parcel map was a contingency to be removed before the ninety-day grace period for closing escrow could begin to run; 2) Rains was estopped from asserting that NGA had breached the contract because he had remained silent after the July 12, 1995, deadline and had continued to act as if the contract had not been breached until he attempted to cancel escrow in November; 3) Rains was estopped from asserting NGA's breach as a defense because Rains had failed to assist NGA in filing the parcel map and had actually caused its delay; and 4) Rains waived his right to assert NGA's breach as a defense because Rains had continued to work toward the closing of the transaction for four months after he believed NGA had breached the contract.

<sup>9</sup>See NGA #2 Ltd. Liab. Co. v. Rains, 113 Nev. 1151, 946 P.2d 163 (1997).

<sup>10</sup>Id. at 1164, 946 P.2d at 171.

In its decision and order, the district court did not explain why it denied Rains' motion for attorney fees. However, the record reflects that NGA presented credible evidence in support of its theories of estoppel and waiver. Therefore, we conclude that Rains' claim lacks merit.

Although we concluded that NGA had breached the contract in question, we considered whether Rains was estopped from asserting breach because he had remained silent from July 12, 1995, the closing deadline, until Rains attempted to cancel escrow on November 6, 1995.<sup>11</sup>

The evidence showed that Rains was aware that NGA was working to record the map with the City well after the July 12, 1995, closing deadline. Rains admitted that he received NGA's July 6, 1995, letter stating its belief that escrow would not close until after it removed the contingency of recording the map. Rains signed the draft map in September 1995 for resubmission to the City, and NGA claimed that it informed Rains of its ongoing activity. On November 8, 1995, NGA notified the escrow agent to continue escrow. Also, in January 1996, NGA took steps toward remedying an improper excavation that had taken place on the property. Thus, the uncontradicted evidence showed that Rains was apprised of the fact that NGA believed the contract was valid after July 12, 1995, because NGA was still working toward contract closure.

Further, in Rains I, we concluded:

[B]ecause Rains admitted receiving the July 6th letter, but failed to respond, we conclude that whether Rains knew NGA would act on his "silence" is also a question of fact. NGA also presented evidence that it was ignorant of the true state of facts

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<sup>11</sup>See id.; see also Cheger, 98 Nev. at 614, 655 P.2d at 998-99 ("silence can raise an estoppel quite as effectively as can words").


and that it relied on Rains' conduct to its detriment in expending time and money on the property after the July deadline.<sup>12</sup>

We conclude that NGA's claims for declaratory judgment and specific performance were brought on reasonable grounds and without the intention of harassing Rains. When initiated, NGA's claims contained allegations that were later supported by ample credible evidence. Because the record reflects that NGA, at trial, presented credible evidence indicating that it relied upon Rains' conduct to its detriment, we conclude that the district court did not abuse its discretion in denying Rains' motion for attorney fees.

Having considered Rains' contention and concluded that it lacks merit, we

ORDER the judgment of the district court AFFIRMED.

  
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Young J.

  
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Leavitt J.

  
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Becker J.

cc: Hon. Gary L. Redmon, District Judge  
Marquis & Aurbach  
John Peter Lee Ltd.  
Clark County Clerk

<sup>12</sup>Rains I, 113 Nev. at 1160, 946 P.2d at 169.