

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDREA HARRIS; EDWARD CLARK;  
AND SANDRA CLARK,

Appellants,

vs.

EQUITY TITLE COMPANY, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY; FIDELITY AND DEPOSIT  
COMPANY OF MARYLAND, A  
MARYLAND CORPORATION; AND  
KATHY DEICHLER, AN INDIVIDUAL,  
Respondents.

No. 52197

**FILED**

JUL 20 2010

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

ORDER OF AFFIRMANCE

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

On appeal, appellants Andrea Harris and Edward and Sandra Clark argue that the district court erred in granting summary judgment in favor of respondents Equity Title Company, Fidelity and Deposit Company of Maryland, and Kathy Deichler, rather than entering summary judgment in their favor. Appellants contend that the escrow terms of the purchase contracts conflict with NRS Chapter 116.<sup>1</sup> We disagree.

---

<sup>1</sup>Appellants also contend that NRS 116.411 escrow deposits impose an affirmative duty upon escrow holders, that the escrow terms of the appellants' purchase contracts for condominium units conflicted with NRS 116.411, and that appellants are entitled to judgment against respondent Fidelity for the full amount of the surety bond. We conclude these claims are without merit.

Harris and the Clarks entered into separate preprinted purchase contracts to buy two residential condominium units from Tower Homes, LLC, to be constructed in a project commonly known as the Spanish View Tower Homes, a high-rise condominium complex development. Harris deposited a total of \$230,000 and the Clarks deposited a total of \$176,000 into escrow as their earnest money deposits for their respective units.

As required by the purchase contracts, appellants deposited the money with respondent Equity Title, the escrow agent for the transactions between Tower Homes and purchasers. Section 2(e) of the contract states:

Any Initial Payment delivered to the Title Company [Equity Title] within five (5) days of the "Purchaser's Execution Date" (which is the date in which this Contract is executed by Purchaser), shall be held in escrow at the Title Company pending the expiration of the Purchaser's five (5) day right of cancellation provided below. . . . If within ten (10) days following the Purchaser's Execution Date, the Title Company has not received notice from Seller that Purchaser has timely cancelled this Contract, then, except as provided in Paragraph 3 below, the Title Company shall deliver such Initial Payment to the "Seller's Depository" (defined below) for deposit into an interest bearing trust account or money market account of the Seller (the "Account") designated solely for the purpose of holding Initial Payments received from purchasers of units in the Condominium, where such Initial Payment shall be held or distributed as provided below.

After the respective cancellation periods passed for Harris and the Clarks, Equity Title released the earnest money deposit funds to Tower Homes' money market account at Business Bank of Nevada

pursuant to section 2(e) of the purchase contracts. Subsequently, on May 31, 2007, Tower Homes filed a Chapter 11 bankruptcy petition. The condominiums that were the subject of the purchase contracts were never completed.

Appellants argue that the district court erred in granting summary judgment in favor of respondents, rather than entering summary judgment in their favor, because the escrow terms of the purchase contracts conflict with NRS Chapter 116 escrow deposits. Respondents counter that the district court correctly applied the law in finding appellants' claims without merit and granting summary judgment in their favor, arguing that the provisions in appellants' purchase contracts did not violate NRS 116.411 escrow deposits. We conclude that the terms of the purchase contracts govern the dispute and NRS Chapter 116 is not applicable.

This court reviews a district court's grant of summary judgment de novo, without deference to the findings of the lower court. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper when, viewing the evidence in the light most favorable to the nonmoving party, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Id. An issue of material fact is genuine when the evidence is such that a rational trier of fact could return a verdict in favor of the nonmoving party. Id. at 731, 121 P.3d at 1031.

In addition, this court has held that “[g]enerally, the escrow instructions control the parties’ rights and define the escrow agent’s duties.” Mark Properties v. National Title Co., 117 Nev. 941, 946, 34 P.3d 587, 591 (2001). This court has held that an “escrow agent must strictly

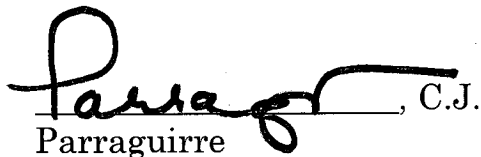
comply with the terms of the escrow agreement and may not use the proceeds in any manner that is not authorized by contract or deposit.”

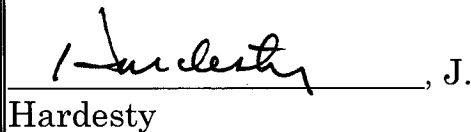
Broussard v. Hill, 100 Nev. 325, 329, 682 P.2d 1376, 1378 (1984).

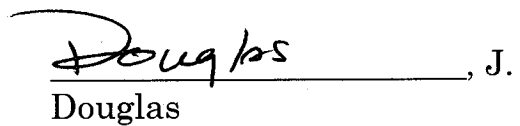
Here, appellants’ purchase contracts instructed Equity Title to deliver the escrow deposits to Business Bank of Nevada (Tower Homes’ depository) once the ten-day cancellation period expired. Equity Title strictly complied with the terms of the escrow agreement and the instructions in the purchase contracts controlled appellants’ rights and defined Equity Title’s duties. Broussard, 100 Nev. at 329, 682 P.2d at 1378; Mark Properties, 117 Nev. at 946, 34 P.3d at 591. Therefore, the district court did not err in granting summary judgment because no genuine issue of material fact remains and respondents are entitled to judgment as a matter of law. Wood, 121 Nev. at 729, 121 P.3d at 1029.

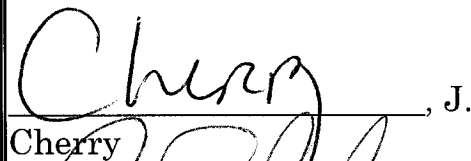
Accordingly, we

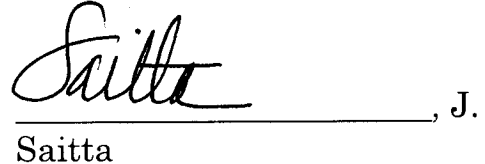
ORDER the judgment of the district court AFFIRMED.

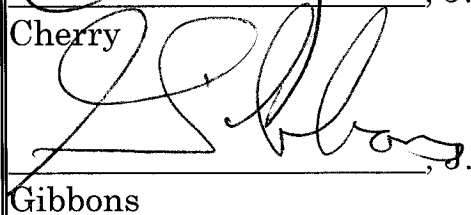
 , C.J.  
Parraguirre

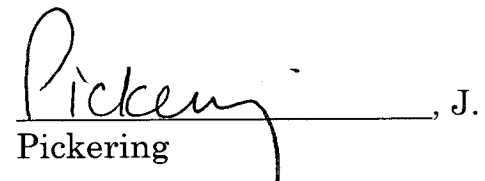
 , J.  
Hardesty

 , J.  
Douglas

 , J.  
Cherry

 , J.  
Saitta

 , J.  
Gibbons

 , J.  
Pickering

cc: Hon. Timothy C. Williams, District Judge  
Carolyn Worrell, Settlement Judge  
Sterling Law, LLC  
Meier & Fine, LLC  
Eighth District Court Clerk