IN THE SUPREME COURT OF THE STATE OF NEVADA

HERMAN AHLERS, AS TRUSTEE OF AHLERS FAMILY TRUST AND THE AHLERS FAMILY TRUST,
Appellants,
vs.
RYLAND HOMES NEVADA, LLC, A DELAWARE LIMITED LIABILITY COMPANY,
Respondent.

No. 52511

ORDER OF REVERSAL

This is an appeal from a district court order denying a motion to compel arbitration in a mechanic's lien action. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

Respondent Ryland Homes Nevada, LLC, agreed to purchase 80 acres of land from Zomack 1, LLC, 5440 W. Sahara, LLC, D'Nal 3, LLC, One Cap Holding Corporation, and One Cap Real Estate Fund 1, LLC ("Owners"). The parties subsequently amended the agreement by bifurcating the 80 acres into two parcels. Ryland purchased the first parcel outright and entered into an option agreement with the Owners for the second parcel. The option agreement gave Ryland the right to improve the option property and to record and foreclose mechanic's liens on the option property.[1] The option agreement also contained an arbitration

[1]The underlying dispute focuses on whether the Option Agreement actually gave Ryland the right to record and foreclose mechanic's liens on the option property. However, that issue is not before this court and we offer no opinion on the matter.

clause in which the parties agreed that "except for equitable remedies . . . all disputes hereunder shall be settled by binding arbitration."

Appellant Ahlers loaned the Owners $12 million, secured by a deed of trust, to refinance the option property and pay off an existing deed of trust. Ahlers, however, was not a party to the option agreement. Ryland improved the option property, but ultimately declined to purchase it. Ryland recorded mechanic's liens in excess of $6 million on the option property for its improvements.

Ahlers foreclosed on the option property after the Owners defaulted on the loan. Ryland subsequently sued Ahlers and the Owners to foreclose upon the mechanic's lien. Ryland asserted claims against all defendants for foreclosure of mechanic's lien, quantum meruit, unjust enrichment, and priority of its mechanic's lien. Ryland asserted additional claims against the Owners for breach of contract, action on guarantee, negligent misrepresentation, and fraudulent concealment.

Ahlers moved to compel arbitration based upon the arbitration clause. The Owners joined in Ahler's motion. The district court ultimately denied the motion, but granted a stay pending appeal to this court.[2] The issue on appeal is whether Ahlers, a nonsignatory to the option agreement, can compel arbitration of Ryland's claims.

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[2]Ryland's contention that Ahlers waived the right to compel arbitration lacks merit. Ahlers filed motions to dismiss and motions for summary judgment that alternatively requested the district court to compel arbitration. The district court did not rule on the motion to compel arbitration until after the parties conducted limited discovery. Ahlers therefore consistently sought to compel arbitration and did not waive its right.

We review the denial of a motion to compel arbitration de novo. Clark Co. Public Employees v. Pearson, 106 Nev. 587, 590, 798 P.2d 136, 137 (1990). Doubts regarding the propriety of arbitration are resolved in favor of requiring arbitration. Id. at 591, 798 P.2d at 138.

Although there are several ways in which a nonsignatory to a contract may properly enforce an arbitration agreement against a signatory of a contract, the pertinent doctrine in this case is equitable estoppel. See Truck Ins. Exch. v. Palmer J. Swanson, Inc., 124 Nev. ___, ___, 189 P.3d 656, 661-62 (2008) (recognizing as theories on which an arbitration agreement may be enforced against a non-signatory: "1) incorporation by reference; 2) assumption; 3) agency; 4) veil-piercing/alter-ego; and 5) estoppel). "Equitable estoppel precludes a party from asserting rights 'he otherwise would have had against another' when his own conduct renders assertion of those rights contrary to equity"; International Paper v. Schwabedissen Maschinen & Anlagen GMBH, 206 F.3d 411, 417-18 (4th Cir. 2000) (compelling nonsignatory plaintiff to arbitrate claims brought under a contract containing an arbitration clause).

The equitable estoppel doctrine prevents a plaintiff signatory to a contract that contains an arbitration provision from avoiding the agreement to arbitrate if the plaintiff's claims rely on the contract as the basis for relief. MS Dealer Service Corp. v. Franklin, 177 F.3d 942, 947 (11th Cir. 1999); Hughes Masonry v. Greater Clark County Sch. Bldg., 659 F.2d 836, 838, 840-41 (7th Cir. 1981); Metalclad v. Ventana Environmental, 1 Cal. Rptr. 3d 328, 34-35 (Ct. App. 2003). Otherwise, "'[t]o allow [a plaintiff] to claim the benefit of the contract and simultaneously avoid its burdens would both disregard equity and

contravene the purposes underlying enactment of the Arbitration Act.'" International Paper, 206 F.3d at 418 (quoting Avila Group, Inc. v. Norma J. of California, 426 F. Supp. 537, 547 (S.D.N.Y. 1977)).

The allegations in Ryland's complaint are based on the option agreement, which contains the arbitration provision. The crux of Ryland's claims is that the option agreement allows Ryland to recover for the improvements to the option property. Because Ryland is seeking to enforce rights under the option agreement, it cannot simultaneously avoid other portions of the agreement, such as the arbitration provision.

Ryland asserts, however, that it can avoid arbitration based on the arbitration provision's exception for equitable remedies. Specifically, Ryland contends that its quantum meruit and unjust enrichment claims are claims for equitable remedies. We disagree.

> 'Almost invariably . . . suits seeking (whether by judgment, injunction, or declaration) to compel the defendant to pay a sum of money to the plaintiff are suits for "money damages," as that phrase has traditionally been applied, since they seek no more than compensation for loss resulting from the defendant's breach of legal duty.'

Great-West Life & Annuity Ins. Co. v. Knudson, 534 U.S. 204, 210 (2002) (quoting Bowen v. Massachusetts, 487 U.S. 879, 918-919 (1988)). "And '[m]oney damages are, of course, the classic form of legal relief.'" Id. (quoting Mertens v. Hewitt Associates, 508 U.S. 248, 255 (1993)). Ryland's quantum meruit and unjust enrichment claims seek monetary damages for the reasonable value of Ryland's improvements to the option property. Accordingly, Ryland's claims for quantum meruit and unjust enrichment do not seek equitable remedies and are not excluded from arbitration.

We therefore conclude that the district court incorrectly denied the motion to compel arbitration, and we reverse. We remand this matter to the district court to enter an order granting the motion.

It is so ORDERED.

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Pickering

cc: Hon. Kenneth C. Cory, District Judge
Michael H. Singer, Settlement Judge
Marquis & Aurbach
Duane Morris LLP
Eighth District Court Clerk