

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD SEPULVEDA, AN INDIVIDUAL,
AND FLORA SEPULVEDA, AN INDIVIDUAL,
Appellants,

vs.

TRANQUILLINO PADRON, AN INDIVIDUAL;
JOSEPHINE PADRON; THE MARTIN TODD
GROUP, INC., A NEVADA CORPORATION;
TODD GLICK, AN INDIVIDUAL; AND
MARTIN MASRI, AN INDIVIDUAL,
Respondents.

No. 52656

FILED

DEC 04 2009

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court summary judgment in a contract action. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

FACTS

Appellants, who were represented by counsel below, filed a complaint in the district court, alleging that they had a valid contract to purchase certain property from respondents Tranquillino and Josephine Padron, and that the Padrons breached that contract by selling the property to respondent Martin Todd Group, Inc. Appellants maintained that, before the sale, respondents Todd Glick and Martin Masri, officers of the Martin Todd Group, knew that appellants had a contract to purchase the property from the Padrons. Appellants sought (1) declaratory relief, (2) to quiet title and specific performance of the contract, and (3) monetary damages for contract- and fraud-based claims. They recorded a notice of lis pendens on the property.

The Padrons, joined by the Martin Todd Group, Glick, and Masri (collectively MTG), moved for summary judgment and to expunge the Sepulvedas' lis pendens, arguing that the Sepulvedas' claims failed as a matter of law, as no binding contract for the property's sale existed between the Padrons and the Sepulvedas. According to the summary judgment motion, the Sepulvedas had presented two letters of intent to purchase the property, both indicating that they were not intended to be a "binding agreement and shall not imply such an agreement exists." Subsequently, they summarized in a third letter the two letters of intent, after which the Padrons submitted a counteroffer on February 13, 2005, setting forth a \$530,000 purchase price, a \$10,000 earnest money deposit, a 30-day due diligence period to obtain financing, and an escrow closing date within 15 days after the due diligence period. The counteroffer stated that a formal contract would follow if the Sepulvedas agreed to those terms. The Sepulvedas' signed and faxed the counteroffer to the Padrons' agent, and the Sepulvedas' agent subsequently prepared a formal contract to purchase the property for \$530,000, contingent upon obtaining financing, but the Padrons never signed the contract. The formal contract differed from the counteroffer in that it listed "Edward Sepulveda and his assigns" as the purchaser instead of Edward and Flora Sepulveda, and it changed the escrow closing date to no later than April 18, 2005. The Padrons then accepted a \$550,000 cash offer from MTG.

In moving for summary judgment, the Padrons argued as follows. The counteroffer incorporated by reference the language from the letters of intent, by providing that "all other terms to remain the same as original offer and acceptance (letters of intent)." The letters of

intent were not meant to be binding contracts, and thus the Padróns' decision to accept a cash offer, rather than deal with a buyer who needed to obtain financing, was proper. In joining the summary judgment motion, MTG asserted that the counteroffer was not accepted by the Sepulvedas, but instead the Sepulvedas prepared a purchase agreement, changing or adding many material terms that were not in the Padróns' counteroffer. Regardless, MTG asserted that it was a bona fide purchaser for value, unaware of any other "agreement" concerning the property.

The Sepulvedas opposed the motion and filed a countermotion for summary judgment, arguing the following. The Padróns' counteroffer contained all of the necessary terms for contract formation. The letter summarizing the first two letters of intent contained no language indicating that it was non-binding. The counteroffer's condition that the seller had the "right to accept other offers . . . prior to [the Sepulvedas] acceptance of the counter offer," evidenced that the counteroffer was intended to be binding, and because the Sepulvedas immediately accepted and signed the counteroffer and faxed it to the Padróns, it became a binding contract.

After a hearing, the district court entered summary judgment in favor of the Padróns and MTG, finding that the three letters merely memorialized the parties' negotiations, and the fourth document, entitled "counteroffer" was intended to document ongoing negotiations. The court found that there was no "offer" to counter, as the preceding "letters of intent" were not intended to be binding. The court further found that because the "counteroffer" stated that a formal contract would

follow if the terms were agreed upon, the Padrans did not intend for the “counteroffer” to bind them to the sale. In that regard, the court determined that the differences between the “counteroffer” and the formal purchase agreement prepared by the Sepulvedas were material. Finally, the court found that a formal agreement was required, as evidenced by testimony from the Sepulvedas admitting that the formal purchase agreement was prepared to comply with escrow requirements. This proper person appeal followed.

DISCUSSION

To establish that an enforceable contract exists, a plaintiff must show an offer and acceptance, mutuality of agreement or a “meeting of the minds” regarding the essential terms of the contract, and consideration. May v. Anderson, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). This court has recognized a distinction between preliminary negotiations toward an agreement and the actual existence of a final contract, explaining that a contract is not formed until the parties have agreed to all material terms. Id. (“A valid contract cannot exist when material terms are lacking or are insufficiently certain and definite.”).

Further, a district court may enter summary judgment when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). This court reviews an order granting summary judgment de novo. Id.

Having considered the Sepulvedas’ proper person appeal statement and reviewed the record, we conclude that the district court properly entered summary judgment. As the district court properly

noted in its judgment, while there are disputed issues of fact, none are material to the Sepulvedas' ability to recover under the causes of action asserted. Thus, as no genuine issues of material fact existed as to the absence of mutuality of agreement, respondents were entitled to judgment as a matter of law, and summary judgment was appropriate. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Hardesty, C.J.
Hardesty

Cherry, J.
Cherry

Gibbons, J.
Gibbons

cc: Hon. Susan Johnson, District Judge
Edward Sepulveda
Flora Sepulveda
Steven Marzullo
Shumway Van & Hansen
Eighth District Court Clerk