

IN THE SUPREME COURT OF THE STATE OF NEVADA

YOUNG S. PARK AND KHISOON
CHOI,
Appellants,
vs.
HYUN KYU PARK,
Respondent.

No. 52711

FILED

JUL 22 2010

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

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment in a contract action. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellants Young S. Park and Khisoan Choi filed a complaint in district court against respondent Hyun Kyu Park alleging breach of contract, breach of the duty of good faith and fair dealing, conversion, and unjust enrichment related to the sale and purchase of a coin-operated laundry business. Respondent counterclaimed, alleging breach of contract and breach of the implied covenant of good faith and fair dealing. During the trial, at the conclusion of appellants' case in chief, the district court granted respondent's motion for judgment as a matter of law, pursuant to NRCP 50(a), directing a verdict for respondent on the breach of contract, breach of the implied covenant of good faith and fair dealing, and the conversion claims. The district court further found that respondent's affirmative defense of unclean hands barred appellants' claim of unjust enrichment. Respondent voluntarily dismissed his counterclaim.

In this appeal, appellants argue that: (1) substantial evidence does not support the district court's finding that appellants breached the contract, (2) substantial evidence does not support the district court's finding that appellants breached the implied covenant of good faith and

fair dealing, and (3) the district court erred in its application of the unclean hands doctrine to bar appellants' recovery for unjust enrichment.

The parties are familiar with the facts and we do not recount them further except as is necessary to our disposition.

DISCUSSION

I. Substantial evidence supports the district court's finding that appellants breached the contract

Appellants argue that the district court's finding that appellants breached the contract is erroneous because it was unreasonable to assume that respondent's landlord would allow appellants to sublease the property if the landlord would have refused an assignment. We disagree.

This court will not set aside a district court's findings of fact and conclusions of law if supported by substantial evidence, unless they are clearly erroneous. Sheehan & Sheehan v. Nelson Malley & Co., 121 Nev. 481, 486, 117 P.3d 219, 223 (2005). Substantial evidence is that which a reasonable person might find adequate to support a conclusion. State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986).

Appellants attempted to purchase a turn-key laundry business from respondent, the seller. They entered into a business agreement, which contained provisions regarding the assumption of the current lease by appellants. The business agreement between appellants and respondent stated that "[i]n the event the lease cannot be transferred, assigned and/or subleased to Buyer, this Agreement in its entirety shall be cancelled." Under that condition, respondent would return any money paid by appellants. The testimony at trial revealed that respondent never asked his landlord for an assignment after seeing appellants' credit because he thought his landlord would reject the request. Instead,

respondent presented appellants with an opportunity to sublease. Appellants refused.

The district court determined that in order for appellants to perform, they needed to attempt a sublease with respondent's landlord, even if an attempt to assign the lease failed. The district court said, "[Appellants] clearly and unequivocally stated today [they] refused to enter into a sublease." The court further stated that, despite any misunderstandings about requirements listed in the lease, appellants had "the ability to sublease the property. [Appellants] refused to even allow that to occur." We conclude that the business agreement and lease, as well as the testimony given at trial, provide substantial evidence that appellants breached the contract with respondent by refusing to enter a sublease with respondent's landlord and walking out on the business.

Regarding the directed verdict for respondent, this court applies the same standard on review as the district court. Nelson v. Heer, 123 Nev. 217, 222-23, 163 P.3d 420, 424 (2007). The court views all evidence in favor of the nonmoving party, and the evidence must be such that the court could grant relief to that party. Id. Here, the district court properly entered a judgment as a matter of law for respondent. The court could not have granted relief to appellants on the issue of breach of contract because appellants' actions caused the breach.

II. Substantial evidence supports the district court's finding that appellants breached the covenant of good faith and fair dealing

Appellants argue that substantial evidence does not support the district court's finding that they breached the implied covenant of good faith and fair dealing. According to appellants, they acted reasonably by refusing to enter into a sublease agreement that had not been preapproved by respondent's landlord. We disagree.

As stated above, this court will not set aside the district court's findings of fact and conclusions of law if based upon substantial evidence, unless they are clearly erroneous. Sheehan & Sheehan, 121 Nev. at 486, 117 P.3d at 223. Every contract implies a duty of good faith and fair dealing. A.C. Shaw Construction v. Washoe County, 105 Nev. 913, 914, 784 P.2d 9, 10 (1989); Restatement (Second) of Contracts § 205 (1981). A party can incur liability for the breach of the implied covenant of good faith and fair dealing if that party "deliberately countervenes the intention and spirit of the contract." Morris v. Bank of America Nevada, 110 Nev. 1274, 1278, 886 P.2d 454, 457 (1994) (quoting Hilton Hotels v. Butch Lewis Productions, 107 Nev. 226, 232, 808 P.2d 919, 922-23 (1991)). The district court concluded that appellants' refusal to enter into a sublease and subsequent abandonment of the laundry business "made it impossible for [respondent] to perform." The district court noted that "there's nothing in the contract that said, [appellants] don't have to sign a sublease until [they] see something to [their] satisfaction."

We conclude that the trial testimony provides substantial evidence that appellants breached the implied covenant of good faith and fair dealing. Despite appellants' discomfort with making the final payment without a finalized sublease, appellants should have negotiated for those terms in the contract or resorted to their available legal remedies. Appellants' actions made it impossible for the purpose of the contract to be fulfilled. The district court properly directed the verdict for respondent on this claim because the court could not find for appellants given that their actions made fulfillment of the contract impossible. Nelson, 123 Nev. at 222-23, 163 P.3d at 424.

III. The district court properly applied the unclean hands doctrine to bar appellants' recovery for unjust enrichment

Appellants argue that despite the district court's finding of breach of contract and breach of the implied covenant of good faith and fair dealing, the unclean hands doctrine does not bar appellants' possible recovery for unjust enrichment. Appellants contend that the harm of the breach does not outweigh the remedy. We disagree.

Appellants allege that respondent was unjustly enriched through appellants' payments that they made on the business, as well as through money spent on equipment purchases. Unjust enrichment is an equitable remedy that "allows recovery to a defaulting buyer upon his showing that the payments made by him exceed the amount of the seller's damages." Kitchin v. Mori, 84 Nev. 181, 183, 437 P.2d 865, 866 (1968). An action based on unjust enrichment is generally not available when there is an express written contract because no agreement can be implied when there is an express agreement. LeasePartners Corp. v. Brooks Trust, 113 Nev. 747, 755, 942 P.2d 182, 187 (1997). Here, the district court allowed appellants to proceed on this claim because the business agreement did not specify what would happen to appellants' second payment in the event of a breach of contract.

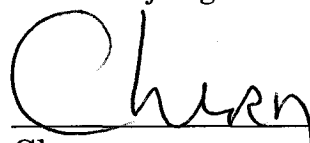
Respondent pleaded unclean hands as an affirmative defense to the claim of unjust enrichment. This court has articulated a two-factor balancing test for applying the unclean hands doctrine. Las Vegas Fetish & Fantasy v. Ahern Rentals, 124 Nev. 272, 276, 182 P.3d 764, 767 (2008). This test requires the balancing of the egregiousness of the misconduct and the seriousness of the harm caused by the misconduct, against the granting of the requested equitable relief. Id. The unclean hands doctrine does not apply unless the misconduct is "connected with the matter in litigation so that it has in some manner affected the equitable relations

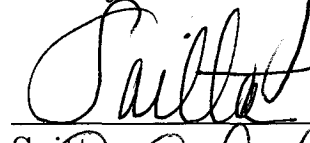
subsisting between the parties and arising out of the transaction.” Gravelle v. Burchett, 73 Nev. 333, 341, 319 P.2d 140, 144-45 (1957). The district court has broad discretion in applying the factors articulated in Las Vegas Fetish & Fantasy, and this court will not overturn that determination if it is supported by substantial evidence. 124 Nev. at 276, 182 P.3d at 767.

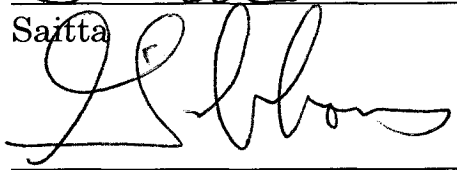
The district court found a connection between appellants’ misconduct, breach of contract, and cause of action for unjust enrichment. In weighing the factors required by Las Vegas Fetish & Fantasy, the district court concluded that “[appellants] caused all of this harm to occur by abandoning the property by refusing to enter into a sublease agreement.” The harm to respondent included that he must remain on a commercial lease, maintain a \$379,000 loan on the laundry equipment, and operate a laundry business that he did not want to operate.

Substantial evidence supports the district court’s decision to bar appellants’ unjust enrichment claim under the unclean hands doctrine. Based on the business agreement, lease, and trial testimony, we conclude that a reasonable person could find that appellants’ breach and respondent’s continued liability for a loan, lease, and business outweigh appellants’ request for the return of the \$210,000 payment.

Accordingly, we ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Michelle Leavitt, District Judge
Carolyn Worrell, Settlement Judge
Denton Lopez & Cho
Kang & Associates, PLLC
Eighth District Court Clerk