

IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA FIRST BANCORP, A
NEVADA CORPORATION,
Appellant,

vs.

HIGHLAND A.V.A., LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Respondent.

NEVADA FIRST BANCORP, A
NEVADA CORPORATION,
Appellant,

vs.

HIGHLAND A.V.A., LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Respondent.

No. 50566

✓ No. 52874

FILED

JUL 06 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are consolidated appeals from a district court summary judgment in a real property contract action and a post-judgment order awarding attorney fees. Eighth Judicial District Court, Clark County; James M. Bixler, Judge. Finding no genuine issue of material fact and that the award of attorney fees was proper, we affirm.

The dispute concerns a purchase option in a lease. The lease imposed three conditions on the purchase option it granted, the occurrence of any of which would terminate the purchase option. The first of these provided that the purchase option "shall terminate and be of no further force and effect . . . [if] Tenant fails to pay to Landlord a monetary obligation of Tenant for a period of thirty (30) days after such obligation becomes due (without any necessity of Landlord to give notice thereof to Tenant)." The undisputed facts showed that appellant Nevada First Bancorp, as Tenant, failed to pay respondent Highland A.V.A., as

Landlord, a monthly rental payment for a period of 30 days after it became due. The district court concluded that, as a matter of law, Nevada First's failure to pay rent terminated the purchase option per the express terms of the lease, entitling Highland to summary judgment.

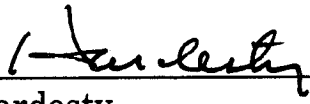
"[A] lease is in the nature of a contract and is controlled by principles of contract law." Cimina v. Bronich, 537 A.2d 1355, 1358 (Pa. 1988). A breach of contract is a "material failure of performance of a duty arising under or imposed by agreement." Bernard v. Rockhill Dev. Co., 103 Nev. 132, 135, 734 P.2d 1238, 1240 (1987) (quoting Malone v. University of Kansas Medical Center, 552 P.2d 885, 888 (Kan. 1976)). While, generally, "whether the actions of a party constitute a material breach is a question of fact, not a question of law," O'Connell Mgmt. Co. v. Carlyle-XIII Managers, 765 F. Supp. 779, 783 (D. Mass. 1991), where there is no dispute about the facts and the parties only dispute "the meaning and effect of the lease provisions[, the question] is a matter of law for the court to decide. Pear v. Davenport, 853 N.E.2d 206, 208 (Mass. App. Ct. 2006). Thus, where the facts are undisputed as they are here, a court can decide as a matter of law whether a purchase option has been terminated—and if it has, grant summary judgment to a lessor in a lessee's suit seeking enforcement on a purchase option. See, e.g., id.; Galapo v. Feinberg, 699 N.Y.S.2d 344,345 (N.Y. App. Div.1999).

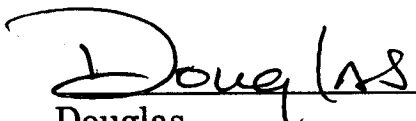
Given the lease agreement's express purchase option termination provision and Nevada First's undisputed failure to pay rent, "a monetary obligation of Tenant for a period of thirty (30) days after such obligation becomes due," the district court correctly concluded that Nevada First's actions terminated the purchase option. Summary judgment for

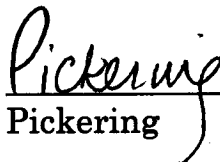
Highland on Nevada First's breach of contract and specific performance claims thus was proper.¹

With respect to the district court's award of attorney fees, under NRS 18.010(1) and (4), a court may award attorney fees to the prevailing party pursuant to a contractual agreement between the parties. The agreement between the parties allowed for an award of attorney fees. Nevada First has not provided any argument or facts that suggest that the district court abused its discretion in awarding Highland attorney fees.

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


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. James M. Bixler, District Judge
Howard Roitman, Settlement Judge
Lewis & Roca, LLP/Las Vegas
Ballard Spahr Andrews & Ingersoll, LLP /Las Vegas
Eighth District Court Clerk

¹We also conclude that Nevada First's waiver, forfeiture, and materiality arguments are unavailing, and hence provide no basis for reversing the order of summary judgment.