

IN THE SUPREME COURT OF THE STATE OF NEVADA

KIM KUIAVA, INDIVIDUALLY; AND
DARWYCKS, LTD.,
Appellants,

vs.

WAYNE KWASNIEWSKI,
INDIVIDUALLY; MACFARLAND, INC.;
MACFARLAND NORTH, INC.;
MACFARLAND SOUTH, INC.; AND
MACFARLAND WEST, INC.,
Respondents.

No. 53011

FILED

JUN 10 2010

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

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a contract action. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Having reviewed appellants' brief and the record on appeal, we conclude that the district court properly granted summary judgment in favor of respondents, and thus, we affirm.

The parties' written partnership agreement for the purchase of real property in and around Indian Springs, Nevada, specifically stated, in relevant part, that the partners would equally share the "net proceeds" from the project and that the partners had entered into no oral agreements or other understandings. The underlying evidence demonstrates that the project was a complete economic loss for all parties involved. Nonetheless, appellants claim that they were entitled to proceeds from the respondents' alleged sale of the property's water rights and that the district court erred in concluding otherwise. We disagree.

Given the partnership agreement's terms regarding the division of net proceeds, and the lack of evidence of any such net proceeds,

we conclude that appellants failed to demonstrate a genuine issue of material fact concerning whether respondents breached the terms of the contract by withholding proceeds from an alleged sale of the property's water rights. Wood v. Safeway, Inc., 121 Nev. 724, 729-32, 121 P.3d 1026, 1029-31 (2005) (setting forth the summary judgment standard); Ringle v. Bruton, 120 Nev. 82, 93, 86 P.3d 1032, 1039 (2004) (stating that "when a contract is clear, unambiguous, and complete, its terms must be given their plain meaning"). Further, appellants failed to provide any foundation linking respondents' alleged sale of water rights to the property outlined in the parties' partnership agreement.

Additionally, given the provisions of the partnership agreement confirming that no other understandings between the parties existed, there was no genuine issue of material fact as to whether respondents breached the implied covenant of good faith and fair dealing. Kucharczyk v. Regents of University of California, 946 F. Supp. 1419, 1432 (N.D. Cal. 1996) (noting that the implied covenant of good faith and fair dealing may not be used to imply a term that is contradicted by an express term of the contract). Similarly, appellants presented no evidence to support their claim that respondents acted fraudulently during their business relationship with appellants. Chen v. State, Gaming Control Board, 116 Nev. 282, 284, 994 P.2d 1151, 1152 (2000) (outlining the requirements needed to establish fraud).¹ Accordingly, we

¹Appellants have failed to address the district court's decision to grant summary judgment in favor of respondents as to appellants' claims of conversion, civil conspiracy, and alter ego. Accordingly, we need not reach those issues, as they are deemed waived. Edwards v. Emperor's Garden Rest., 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006)

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ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Elissa F. Cadish, District Judge
Phillip Aurbach, Settlement Judge
Kurth Law Office
Wayne Kwasniewski
Macfarland North, Inc.
Macfarland, Inc.
Macfarland South, Inc.
Macfarland West, Inc.
Eighth District Court Clerk

... continued

(holding that if a party fails “to cogently argue, and present relevant authority” on an issue, this court need not address the issue because it is deemed waived).