

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD FORD, INDIVIDUALLY, AND
NATIONAL COOLER, INC., A NEVADA
CORPORATION,
Appellants,
vs.
AMELCO PROPERTIES, INC., A
CALIFORNIA CORPORATION,
Respondent.

No. 53352

FILED

JUN 10 2010

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

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment in a real property action. Eighth Judicial District Court, Clark County; Allan R. Earl, Judge.

On appeal, appellants argue that the district court abused its discretion in denying specific performance based on an erroneous conclusion that appellants had failed to demonstrate that they were ready and able to tender the purchase price on a real property option contract because, under this court's decision in Mayfield v. Koroghli, 124 Nev. 343, 184 P.3d 362 (2008), their sending of a letter to respondents and funding an escrow account with \$5,000 constituted tender for the \$865,000 purchase price. Appellants further assert that the district court's award of holdover rent was improper because they only became holdover tenants as a result of being denied their contractual right to exercise the option. Respondent disagrees.

This court reviews the district court's decision to grant or deny specific performance for abuse of discretion. Serpa v. Darling, 107 Nev. 299, 304, 810 P.2d 778, 782 (1991). Specific performance is only available when, among other things, the purchasers have tendered performance or otherwise demonstrated that they are "ready, willing, and able to perform." Id. at 304-05, 810 P.2d at 782. Having reviewed the parties'

briefs and the record on appeal, we conclude that appellants' arguments lack merit. In Mayfield, 124 Nev. at 347-48, 184 P.3d at 365, this court affirmed a district court's decision granting specific performance when the purchaser sent a letter stating that he was ready, willing, and able to perform. In that case, however, there was "no dispute" that the purchaser offered to tender the purchase price. Id. at 351-52, 184 P.3d at 368. Here, based on our review of the trial transcripts and evidence submitted in district court, we conclude that there was a reasonable dispute as to whether appellants had demonstrated that they were, in fact, able to tender the purchase price and that Mayfield does not require reversal in this appeal. And in light of our conclusion that the district court's denial of specific performance was not improper, because appellants' argument that the holdover tenancy rent award was improper is based on their contention that denying specific performance was improper, we also reject that argument. Accordingly, as the district court did not abuse its discretion in denying specific performance, and as appellants' argument necessarily fails, we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Allan R. Earl, District Judge
William F. Buchanan, Settlement Judge
John H. Sarb
Hoy & Hoy
Eighth District Court Clerk