

IN THE SUPREME COURT OF THE STATE OF NEVADA

KYLE AGENT, LLC; AND KAG
PROPERTY, LLC, A FOREIGN
LIMITED LIABILITY COMPANY,
Appellants,
vs.
KYLE ACQUISITION GROUP, LLC, A
DOMESTIC LIMITED LIABILITY
COMPANY,
Respondent.

No. 58851

FILED

DEC 18 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a summary judgment order in an interpleader action. Because the parties are familiar with the facts, this court will provide only those necessary for its disposition.

Wachovia Bank (Wachovia)¹ is the administrative agent for a consortium of lenders that lent Respondent Kyle Acquisition Group, LLC (Kyle) \$565 million to purchase land for a development project. As part of the credit agreement, Kyle assigned its interest in the project to Wachovia in the event of default. Kyle also deposited \$2,024,200.00 with the Las

¹Pursuant to a recently approved stipulation, Wachovia has assigned and transferred its rights and interests at issue in this case to Kyle Agent, LLC. While the caption has been modified to reflect the change, this order refers to Wachovia to maintain the integrity of this case's factual and procedural history.

Vegas Water District (Water District) as part of a development agreement related to the project. Ultimately, Kyle defaulted, and Wachovia sought to enforce its assigned interest, in part, by terminating the development agreement with the Water District and seeking a refund of the \$2 million that was deposited by Kyle. Upon learning this, Kyle protested that the refund was due to it and not Wachovia, so the Water District filed an interpleader action to resolve this issue.


Meanwhile, Wachovia was also involved in a deficiency action in New York against each of Kyle's members and guarantors. Eventually, six members of Kyle and their parent companies entered into a confidential settlement agreement (Agreement) with Wachovia, leading to the dismissal of the deficiency action.


After the Agreement was entered into, both parties still disagreed about who was entitled to the refund, as both parties read the Agreement's terms differently. The district court ultimately filed an order in favor of Kyle's counter-motion for summary judgment in the interpleader action. The district court determined that pursuant to the dismissal order and terms of the Agreement, Wachovia expressly released Kyle from all disputes and claims relating to Kyle and the project. Additionally, the district court concluded that Kyle's cross-claim against Wachovia in the interpleader action was a dispute in existence and related to Kyle and the project as defined in the Agreement. The court then determined that, through the Agreement, Wachovia released Kyle and abandoned any rights it had to the refund, leaving no genuine issue of material fact.


This court reviews summary judgment orders de novo. *Univ. of Nevada, Reno v. Stacey*, 116 Nev. 428, 431, 997 P.2d 812, 814 (2000).

“Summary judgment is appropriate when a contract is clear and unambiguous, meaning that the contract is not reasonably susceptible to more than one interpretation.” *Id.* Additionally, “[w]hen there is no dispute of fact, a contract’s interpretation is a legal question subject to de novo review. *Diaz v. Ferne*, 120 Nev. 70, 73, 84 P.3d 664, 666 (2004).

While Wachovia argued that the release was limited to the individual members of Kyle who signed the Agreement, the plain language of the release suggests otherwise. Construing the release to include Kyle along with the settling members is sensible and corresponds with the purpose of the Agreement: to release those settling from all liability. Moreover, this conclusion comports with the language of the Dismissal Order in the deficiency action, which allows Wachovia to seek damages from those non-settling members of Kyle in their individual capacity. Accordingly, we conclude that the district court properly construed the Agreement and did not err in granting Kyle’s motion for summary judgment and ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. Elizabeth Goff Gonzalez, District Judge
William C. Turner, Settlement Judge
Cotton, Driggs, Walch, Holley, Woloson & Thompson/Las Vegas
Armstrong Teasdale, LLP/Las Vegas
Fennemore Craig Jones Vargas/Las Vegas
Eighth District Court Clerk