

IN THE SUPREME COURT OF THE STATE OF NEVADA

GENEVA MINERALS, INC. A NEVADA CORPORATION; THORNTON D. BARNES, A/K/A T.D. BARNES; DORIS W. BARNES; WAYMAN D. BARNES; DARVIN W. BARNES; DEBORAH G. ENGLISH; TAMERA R. EASTMAN; DAVE EASTMAN; AND HEATHER R. KELLY,

Appellants,

vs.

DIANA L. FLAHERTY, INDIVIDUALLY AND AS SPECIAL ADMINISTRATOR OF THE ESTATE OF ROBERT F. FLAHERTY; AND PHOENIX METALS U.S.A. II, INC., A COLORADO CORPORATION,  
Respondents.

No. 35704

**FILED**

MAY 15 2003

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment and other orders in favor of Robert F. and Diana L. Flaherty (Diana and Robert) concerning a contractual dispute. Thornton D. and Doris W. Barnes agreed to sell Diana and Robert unpatented mill sites filed with the Bureau of Land Management (BLM). The contract to purchase the mill sites provided that the Barneses possessed all the necessary permits to operate the mill sites and equipment thereon. The parties also entered a second contract; however, the second contract did not involve the permits at issue in this appeal. After purchasing the mill sites, government officials informed Diana and Robert that they did not possess the necessary permits to operate the mill sites. Diana and Robert filed a declaratory action to determine the duties and obligations of the parties under the two contracts.

The district court held a bench trial. The district court determined that Diana and Robert's expectations had not been met under the first contract in that they were required to obtain permits that Thornton represented he possessed or would be "grandfathered in." Based on testimony that Diana and Robert spent approximately \$220,000 to obtain the necessary permits to operate the mill sites, the district court awarded them \$175,000 as the fair value of the cost of the permits plus \$3,000 in damages. After awarding the Barneses money in escrow and subtracting money Diana and Robert owed the Barneses under the contract, the Barneses were required to pay Diana and Robert \$32,000. The Barneses appealed.

On appeal, the Barneses argue that the district court erred by admitting parol evidence during trial, finding that they did not provide necessary permits to operate the mill sites, and awarding Diana and Robert \$178,000.

When a contract is ambiguous, parol evidence is admissible to determine the intent of the contracting parties.<sup>1</sup> The question of whether a contract is ambiguous is a question of law, and thus, reviewed de novo.<sup>2</sup> "A contract is ambiguous if it is reasonably susceptible to more than one interpretation."<sup>3</sup> Here, the contract provides that "Barnes possesses all

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<sup>1</sup>Sandy Valley Assocs. v. Sky Ranch Estates, 117 Nev. 948, 954, 35 P.3d 964, 967 (2001); Pentax Corp. v. Boyd, 111 Nev. 1296, 1300-01, 904 P.2d 1024, 1027 (1995); Lowden Investment Co. v. General Electric, 103 Nev. 374, 379, 741 P.2d 806, 809 (1987); Wiley v. Cook, 94 Nev. 558, 564, 583 P.2d 1076, 1079 (1978).

<sup>2</sup>Margrave v. Dermody Properties, 110 Nev. 824, 827, 878 P.2d 291, 293 (1994); Pressler v. City of Reno, 118 Nev. \_\_, \_\_, 50 P.3d 1096, 1098 (2002).

<sup>3</sup>Margrave, 110 Nev. at 827, 879 P.2d at 293.

necessary permits for operating the mill sites and equipment presently on the property.” The contract does not specify whether “all necessary permits” refers to the permits the Barneses needed to run their operation prior to the sale or whether it refers to the permits Diana and Robert needed to run the operation after the purchase. “[A]ll necessary permits for operating the mill sites” is susceptible to more than one interpretation, and thus, ambiguous. Therefore, the district court did not err by admitting parol evidence to determine the meaning of “all necessary permits.”

In interpreting an ambiguous contract, the district court may look beyond the express terms of the contract and examine the circumstances surrounding the contract to determine the mutual intention of the parties regarding unclear contractual provisions.<sup>4</sup> To determine the intention of the parties, the district court must weigh their credibility, and credibility is an issue for the determination of the trier of fact.<sup>5</sup> This court will not set aside factual determinations unless they are “clearly erroneous and are not based on substantial evidence.”<sup>6</sup> “Substantial evidence is that evidence which a reasonable mind might accept as adequate to support a conclusion.”<sup>7</sup> Further, when there is conflicting evidence, this court will

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<sup>4</sup>Sandy Valley, 117 Nev. at 954, 35 P.3d at 967-68; Stuhmer v. Centaur Sculpture Galleries, 110 Nev. 270, 273, 871 P.2d 327, 330 (1994).

<sup>5</sup>Agric. Aviation v. Clark Co. Bd. Comm’rs, 106 Nev. 396, 400, 794 P.2d 710, 713 (1990).

<sup>6</sup>Lorenz v. Beltio, Ltd., 114 Nev. 795, 803, 963 P.2d 488, 494 (quoting Gibellini v. Klindt, 110 Nev. 1201, 1204, 885 P.2d 540, 542 (1994)).

<sup>7</sup>Schmanski v. Schmanski, 115 Nev. 247, 251, 984 P.2d 752, 755 (1999).

not interfere with a finding of the district court on appeal.<sup>8</sup> Thus, this court must determine whether the district court's determination that the Barneses did not provide Diana and Robert with the necessary permits to operate the mill sites is supported by substantial evidence.

During trial, the parties vehemently disputed the meaning of "all necessary permits" and provided conflicting evidence. Diana testified that she and Robert were willing to purchase the mill sites for \$400,000 because they believed they would save time and money since Thornton represented that he possessed all the necessary permits to immediately begin operating the mill sites or that the necessary permits would be "grandfathered in." Diana testified that Thornton told her that they would never have to obtain another permit. Additionally, Diana, Robert, and Larry Sip, a former employee of the BLM, testified that Diana and Robert had to hire employees and make improvements to the mill sites to obtain several permits that they believed were included in the contract. Further, Sip testified a mill operator would expect to possess the permits Diana and Robert had to obtain to operate a functional mill site. Much of Thornton's testimony conflicted with Diana's, Robert's, and Sip's. Although the evidence is conflicting,<sup>9</sup> the district court's determination that the Barneses did not provide Diana and Robert with the necessary permits to operate the mill sites as contemplated by the contract is supported by substantial evidence.

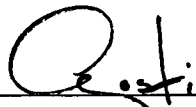
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<sup>8</sup>Wiley, 94 Nev. at 562, 583 P.2d at 1078; see also Lagrange Construction, Inc. v. Kent Corp., 88 Nev. 271, 276, 496 P.2d 766, 769 (1972).


<sup>9</sup>Wiley, 94 Nev. at 562, 583 P.2d at 1078 (noting that when there is conflicting evidence, this court will not interfere with a finding of the district court on appeal).

The Barneses maintain that the evidence in the record does not support the award of \$178,000. This court will not reverse a district court's award of damages absent an abuse of discretion.<sup>10</sup> Diana, Robert, and Sip testified that Diana and Robert expended approximately \$222,000 to obtain permits to operate the mill cites. This testimony constitutes substantial evidence. Thus, the district court did not abuse its discretion by awarding Diana and Robert \$178,000. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Agosti

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Leavitt

cc: Hon. Nancy M. Saitta, District Judge  
Roger L. Harris  
Diana Lee Flaherty  
Phoenix Metals U.S.A. II, Inc.  
Clark County Clerk

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<sup>10</sup>Frantz v. Johnson, 116 Nev. 455, 469, 999 P.2d 351, 360 (2000) (holding that the district court has broad discretion in awarding damages and its award will not be set aside absent an abuse of discretion); see also Commercial Cabinet Co. v. Wallin, 103 Nev. 238, 240, 737 P.2d 515, 517 (1987) (stating that an award of damages "must be supported by substantial evidence").