

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICK BAILEY AND NEPTUNE
SERVICES, INC., A NEVADA
CORPORATION,
Appellants,
vs.
STEVE GILBERT,
Respondent.

No. 35822

FILED

FEB 8 2002

JANE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal of a district court order confirming an arbitrator's decision that a sublease was a material breach of a lease warranting termination of both the lease and the tenant's option to purchase.

Appellant Rick Bailey acknowledges that he breached the lease by subleasing a portion of the premises without obtaining the landlord's authorization. He also does not challenge the provision in the lease in which the landlord reserved the right to terminate both the lease and the option for any breach. However, appellant contends that the arbitrator and the district court erred in failing to consider the equities involved in terminating the lease and option. We disagree.

Parties have the freedom to make their own contracts.¹ Whether two agreements constitute an inseverable contract "is a question of the intention of the parties, to be ascertained from the language employed and the subject-matter of the contract."² It is a question of

¹See McCall v. Carlson, 63 Nev. 390, 424, 172 P.2d 171, 187 (1946).

²Linebarger v. Devine, 47 Nev. 67, 72, 214 P. 532, 534 (1923).

law.³ This court will not undertake the task of rewriting a different or better contract than that which the parties bargained for.⁴

In the original lease, appellant expressly agreed not to sublet any portion of the premises without the owner's authorization. The option to purchase was executed as a separate agreement. However, in 1997, appellant signed an addendum to the lease, which among other things, merged the lease and option to purchase by making the option conditional upon full performance of the lease. The addendum clearly evidences the parties intent to merge the lease and option into one inseverable contract. The sublease was a breach of the lease agreement, which entitled the owner to terminate the lease.

An "optionee has no interest in the property which the optionor has agreed to sell to him, and can only acquire such an interest by complying with the terms and conditions of the [option] agreement. If [he] fails to do so, his contractual right to acquire an interest in the property . . . ceases."⁵ Here, the option to purchase was conditioned on appellant remaining in compliance with all provisions of the lease. Since the lease and the option became one inseverable contract and the lease provision against subletting was violated, termination of the option conformed with the parties' agreement.

Appellant presented his equitable arguments to the arbitrator and the district court. Both rejected appellant's contention that equity should intercede to save the option and we agree. "Our equitable powers

³Id.


⁴Kampf v. Franklin Life Ins. Co., 161 A.2d 717, 720 (N.J. 1960).


⁵McCall, 63 Nev. at 408, 172 P.2d at 180.

do not extend so far as to permit us to disregard fundamental principles of the law of contracts, or arbitrarily to force upon parties contractual obligations . . . not voluntarily assumed.”⁶ To do so would have an adverse impact on “the necessary certainty, stability and integrity of contractual rights and obligations.”⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁸


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Gene T. Porter, District Judge
Steven B. Glade
Deaner, Deaner, Scann, Malan & Larsen
Clark County Clerk

⁶Id. at 424, 172 P.2d at 187.

⁷Id. at 424, 172 P.2d at 188.

⁸In light of this order, the stay imposed by our March 30, 2000 order is vacated. We deny as moot respondent’s motion to dissolve the stay.