

IN THE SUPREME COURT OF THE STATE OF NEVADA

STUDIO ENTERPRISES, LTD., A  
NEVADA CORPORATION,

No. 36171

Appellant,

vs.

INSYNCH UNLIMITED LLC, A  
NEVADA LIMITED LIABILITY  
CORPORATION; AND BLACK  
MOUNTAIN LEGACY DEVELOPMENT  
GROUP, LLC, A NEVADA LIMITED  
LIABILITY CORPORATION,

**FILED**

DEC 12 2001

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

Respondents.

INSYNCH UNLIMITED LLC, A  
NEVADA LIMITED LIABILITY  
CORPORATION; AND BLACK  
MOUNTAIN LEGACY DEVELOPMENT  
GROUP, LLC, A NEVADA LIMITED  
LIABILITY CORPORATION,

Cross-Appellants,

vs.

STUDIO ENTERPRISES, LTD., A  
NEVADA CORPORATION; AND THE  
CITY OF HENDERSON, A MUNICIPAL  
CORPORATION,

Cross-Respondents.

ORDER OF AFFIRMANCE

Shortly after purchasing twenty acres of land from the City of Henderson for commercial development, Studio Enterprises agreed to develop a five-acre parcel of the property with InSynch. Studio Enterprises and InSynch signed a Document of Intent creating a new entity, Black Mountain Legacy Development Group, to develop the five acres. Pursuant to the terms of the Document of Intent, Studio Enterprises contributed the five-acre parcel to Legacy as capital in exchange for a minority ownership interest in Legacy.

01-20911

Studio Enterprises subsequently reconveyed the twenty-acre parcel to the City for cash to settle a lawsuit brought by Studio Enterprises after the City refused to approve the project. InSynch and Legacy sought to enjoin the settlement, claiming that Studio Enterprises had, via the Document of Intent, conveyed a valid property interest in the five-acre parcel to Legacy.

The district court held that the Document of Intent was not a real estate contract. The court, however, determined that Legacy possibly had an interest in the settlement proceeds, which could be distributed upon Legacy's dissolution. The district court then ordered twenty-five percent of the settlement proceeds placed in escrow until further court order.

1. Legacy's intervention

As a preliminary issue, Studio Enterprises challenges InSynch's power to authorize Legacy's intervention in this matter. The operating agreement allows a manager to make decisions on Legacy's behalf in the ordinary course of business. InSynch's principal implicitly possessed the authority to protect and promote Legacy's interests in the ordinary course of business by bringing suit on its behalf. This is especially true given the operating agreement's language precluding Legacy's managers from acting in a manner contrary to the Document of Intent. Accordingly, InSynch's principal, Mary O'Callaghan-Miele, properly authorized Legacy's intervention in this matter.

2. Equitable conversion

The doctrine of equitable conversion allows a vendee of real property to enjoy the benefits of property ownership without a formal transfer of title to real property.

An equitable conversion occurs when a contract for the sale of real property becomes binding upon the parties. The purchaser is deemed to be the equitable owner of the land and the seller is considered to be the owner of the purchase price. This, because of the maxim that equity considers as done that which was agreed to be done.<sup>1</sup>

---

<sup>1</sup>Harrison v. Rice, 89 Nev. 180, 183, 510 P.2d 633, 635 (1973) (citing Panushka v. Panushka, 349 P.2d 450 (Or. 1960); Shay v. Penrose, 185 N.E.2d 218 (Ill. 1962); Parr-Richmond Industrial Corp. v. Boyd, 272 P.2d 16 (Cal. 1954); In re Wiley's Estate, 36 N.W.2d 483 (Neb. 1949)).

InSynch and Legacy contend in their cross-appeal that the Document of Intent constituted an equitable conversion of the five-acre parcel to Legacy. The district court disagreed, determining that any transfers of property in the industrial park were subject to preexisting covenants and conditions, including the City's rights of first refusal and buy-back. Section 8.02 of the covenants, conditions, and restrictions precluded Studio Enterprises from selling or transferring any part of the twenty-acre parcel "unless and until" the City waived its right of first refusal in writing.

InSynch maintains that the City implicitly waived its rights of first refusal and buy-back by acquiescing to Studio Enterprises' agreement to transfer the five-acre parcel. In support of this contention, InSynch emphasizes the fact that the Planned Urban Development (PUD) application listed Legacy as the applicant and contained a development map showing the site of the proposed five-acre parcel. Additionally, InSynch's principal testified that she personally met with City representatives to discuss the transaction concerning the five-acre parcel.

This evidence does confirm that the City was aware of the proposed development. However, the City's subsequent disapproval of the PUD application, and, more critically, failure to waive its right of first refusal pursuant to section 8.02 of the CC&Rs, amply demonstrate that the City never intended to allow Studio Enterprises to transfer the five-acre parcel to Legacy. The City did not waive any of its rights, a condition precedent to the formation of a binding contract to pass title. This by definition prevented an equitable conversion from ever occurring.<sup>2</sup> We have considered InSynch and Legacy's other contentions in this regard, and conclude that they lack merit. Thus, the Document of Intent failed to legally or equitably convey the five-acre parcel to Legacy.

### 3. Escrow

Finally, Studio Enterprises claims that the district court abused its discretion in ordering a portion of the settlement proceeds placed in escrow. In this, Studio Enterprises erroneously characterizes the court's action as a pre-judgment attachment. By definition, an attachment "cause[s] the property of [a] defendant to be attached as

---


<sup>2</sup>Id.


security for the satisfaction of any judgment that may be recovered.”<sup>3</sup> Here, the district court did not issue a pre-judgment attachment. Rather, the court sought to preserve Legacy’s possible assets for final corporate dissolution and distribution, which is not directly at issue in this appeal.


The real issue, then, is whether the district court abused its discretion in granting a preliminary injunction requiring the City and Studio Enterprises to deposit the settlement proceeds in an escrow account.<sup>4</sup> “A preliminary injunction may be issued to preserve the status quo if the party seeking it shows: (1) that the party enjoys a reasonable ‘likelihood of success’ on the merits; and (2) the party will be subjected to ‘irreparable harm.’”<sup>5</sup>

The district court determined that InSynch and Legacy demonstrated a reasonable probability of success on the merits based on their intricate involvement in the development of the five-acre parcel and their reasonable reliance on Studio to protect their rights in the litigation. The court also determined that dissipation of Legacy’s corporate assets would cause irreparable injury. The record sufficiently supports these determinations. Studio Enterprises has failed to demonstrate how the court abused its discretion. Having considered the parties’ arguments, we

ORDER the judgment of the district court AFFIRMED.

 C.J.  
Maupin

 J.  
Agosti

 J.  
Leavitt

---

<sup>3</sup>NRS 31.010.

<sup>4</sup>A district court’s decision to grant a preliminary injunction will not be disturbed on appeal absent an abuse of discretion. See Dangberg Holdings v. Douglas Co., 115 Nev. 129, 142-43, 978 P.2d 311, 319 (1999) (citing Number One Rent-A-Car v. Ramada Inns, 94 Nev. 779, 781, 587 P.2d 1329, 1330 (1978)).

<sup>5</sup>Pickett v. Comanche Construction, Inc., 108 Nev. 422, 426, 836 P.2d 42, 44 (1992) (quoting Dixon v. Thatcher, 103 Nev. 414, 415, 742 P.2d 1029, 1029 (1987)).

cc: Hon. Mark R. Denton, District Judge  
Lionel Sawyer & Collins/Las Vegas  
William E. Cooper Law Offices  
Woods, Erickson, Whitaker & Miles, LLP  
Clark County Clerk