

IN THE SUPREME COURT OF THE STATE OF NEVADA

SAXTON INCORPORATED, A NEVADA CORPORATION; AND LAKE TONOPAH LIMITED PARTNERSHIP, A NEVADA LIMITED PARTNERSHIP,

Appellants,

vs.

VOA NATIONAL HOUSING CORPORATION, A LOUISIANA NOT-FOR-PROFIT CORPORATION,

Respondent.

No. 36412

FILED

DEC 05 2001

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

ORDER OF AFFIRMANCE

Appellants Saxton Incorporated and Lake Tonopah Limited Partnership (referred to collectively as "Saxton") argue on appeal that the district court's order clarifying its previous judgment was error; however, Saxton divides this argument into three sections.¹ First, Saxton argues that its delivery of issued stock constituted compliance with the original order of judgment. Second, Saxton argues that the district court's decision was improper under various provisions of the Nevada Rules of Civil Procedure. Third, Saxton argues that the district court's order of clarification violates its substantial rights.

Saxton's arguments lack merit. We conclude that the original order of judgment contemplated that Saxton deliver registered stock, not merely issued stock. In addition, VOA's motion to clarify the original order of judgment was timely and the district court's decision clarifying the judgment was correct.

First, Saxton argues that the district court's original judgment simply required physical delivery of Saxton stock and said nothing about registering the stock it issued to VOA. Additionally, Saxton argues that issued stock, as opposed to registered stock, can be sold, but that the sale

¹We construe the district court order clarifying the prior judgment as arguably altering the meaning of the prior judgment. Therefore, we construe the district court order of clarification as an amended order from which Saxton timely appeals. See Morrell v. Edwards, 98 Nev. 91, 92, 640 P.2d 1322, 1324 (1982).

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of such stock is restricted. Finally, Saxton argues that while the purchase agreement may have required registration, the order of judgment supercedes the agreement. We disagree.

Neither party disputes that issued (or unregistered) stock and registered stock are different. Unregistered stock is restricted and cannot be immediately traded. The restrictions placed on unregistered stock greatly affect the value of the stock because the holder is largely unable to respond to market fluctuations affecting the value of the unregistered stock.²

We conclude that the parties intended, the purchase agreement required, and although not expressly stated in the original order of judgment, the district court contemplated that the original order of judgment required Saxton to deliver registered stock, not merely issued stock. The correspondence and other communications between the parties repeatedly call for the registration of the stock. In addition, VOA's position, that the original order of judgment incorporated the terms of the purchase agreement, is supported by the fact that the purchase agreement was attached as an exhibit to the judgment. Rather than create a lengthy and complex order of judgment, it appears that the district court intended that VOA draft a short order which could be supplemented by reference to the attached purchase agreement.

Second, Saxton argues that the district court lacked jurisdiction to amend its original order of judgment because VOA's motion was filed more than ten days after the entry of the original judgment. Specifically, Saxton argues that VOA's motion for clarification was either an improper NRCP 59(e) motion or an improper motion under NRCP 60(a).³ In response, VOA argues that its motion for clarification was proper as either a "special motion" or a motion for clarification, either of which can be brought at any time.⁴

²See Personalized Media Communications v. Starsight Telecast, Inc., No. 99 CIV. 0441, 2000 WL 1457079, at *3 (S.D.N.Y. Sept. 28, 2000).

³NRCP 59(e) states, in relevant part, that a motion to "alter or amend the judgment shall be served not later than 10 days after service of written notice of entry of the judgment."

⁴VOA also argues that Saxton waived this argument because it was raised for the first time on appeal; however, because Saxton's argument challenges the jurisdiction of the district court, it can be considered for the

continued on next page . . .

We conclude that Saxton's argument lacks merit and that VOA's motion for clarification was proper as either a "special motion" or as an NRCP 60(a) motion to correct a clerical error.

Although not routinely described with specificity in the rules of practice, motions for clarification or interpretation are commonly considered in the district courts. Generally, there is no time restriction imposed by the rules for bringing such a motion.⁵ On at least one occasion, our court has endorsed the use of "special motions" by stating:

For a century, our settled law has been that any "special" motion involving judicial discretion that affects the rights of another, as contrasted to motions "of course," must be made on notice even where no rule expressly requires notice to obtain the particular order sought⁶

NRCP 60(a) provides for the correction of judgments that result from oversight or omission. This court has interpreted NRCP 60(a) to mean that "[a] clerical error is a mistake in writing or copying."⁷ Generally, a clerical error occurs where there is a "failure to make the judgment truly speak the determination which has been made."⁸

We conclude that because the parties intended, the purchase agreement required, and the district court contemplated that the original order of judgment required delivery of registered and not merely issued stock, either a "special" motion or an NRCP 60(a) motion were proper vehicles under which to compel Saxton's compliance. Moreover, the motion was filed at the earliest point in time at which it could have been

. . . continued

first time on appeal. See Parks Et Al. v. Garrison, 57 Nev. 480, 482, 67 P.2d 314, 316 (1937).

⁵See, e.g., Holcombe v. Holcombe, 576 A.2d 1317, 1319 (Conn. App. Ct. 1990); Kunzler v. O'Dell, 855 P.2d 270 (Utah Ct. App. 1993) (deciding motion for clarification although such a motion was not provided for in the Utah rules of practice).

⁶Maheu v. District Court, 88 Nev. 26, 34, 493 P.2d 709, 713 (1972).

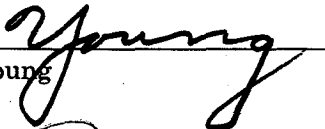
⁷Marble v. Wright, 77 Nev. 244, 248, 362 P.2d 265, 267 (1961).

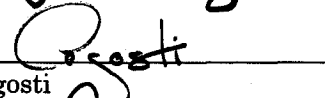
⁸See Channel 13 of Las Vegas v. Ettlenger, 94 Nev. 578, 580, 583 P.2d 1085, 1086 (1978).

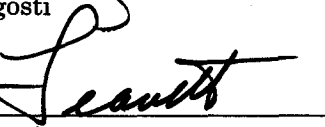
filed; namely, when VOA learned that Saxton did not intend to register the stock by the May 15, 2000 deadline.⁹

Having concluded that Saxton's arguments on appeal lack merit, we

ORDER the judgment of the district court AFFIRMED.

 J.
Young

 J.
Agosti

 J.
Leavitt

cc: Hon. Valorie Vega, District Judge
Newman Morris & Dachelet, Ltd.
Beckley Singleton Jemison Cobeaga & List
Clark County Clerk

⁹Saxton's final argument on appeal is that the district court erred in applying the terms of the "amended judgment" nunc pro tunc because it is tantamount to an ex post facto law. Saxton cites no authority for this argument. We conclude that the district court's order of clarification did not change Saxton's obligations and therefore did not impinge on its rights, because Saxton was always obligated to deliver registered stock. The district court's order simply clarified what Saxton previously agreed to; and therefore, Saxton cannot claim it lacked notice. Especially relevant to our conclusion is Saxton's own statement that clarification by a court was anticipated and welcomed by Saxton. ("Saxton had conferred with counsel and concluded that the Judgment prepared by VOA appeared to not specifically require registration and, therefore, was at least subject to an ambiguity that would properly be the subject for clarification by the Court.").