

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROYAL KINGS COURT I, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,
Appellant,

vs.

WILLIAM PETER PECCOLE AND
WANDA RUTH PECCOLE FAMILY
LIMITED PARTNERSHIP, A NEVADA
LIMITED PARTNERSHIP DATED
DECEMBER 31, 1992; AND WANDA
PECCOLE, AN INDIVIDUAL,
Respondents.

No. 37104

FILED

MAR 29 2002

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

ORDER OF AFFIRMANCE

This is an appeal from an order granting summary judgment¹ to respondents, William Peter Peccole and Wanda Ruth Peccole Family Limited Partnership and Wanda Peccole ("the Peccoles"), denying appellant's motion to disqualify respondents' counsel and to strike an affidavit, and removing any lis pendens filed by appellant. Appellant Royal Kings Court I, LLC ("Royal") executed an option agreement to purchase undeveloped property from the Peccoles in three equal phases. When Royal failed to deposit funds in the escrow account by the contractual deadline date, the Peccoles subsequently canceled the agreement. Because Royal was unable to fund the real estate project in

¹Although the district court's order granted the respondents' motion to dismiss appellant's lawsuit under NRCP 12(b)(5), the court apparently treated the motion as a summary judgment motion. Both parties characterize the district court's action as a grant of summary judgment.

compliance with the option agreement, we conclude that the district court properly granted summary judgment to the Peccoles.

Summary judgment is appropriate only when, based upon the pleadings and discovery on file, no genuine issue of material fact exists for trial.² The non-moving party must produce specific facts by competent evidence that demonstrate the presence of a genuine issue for trial.³ We review orders granting summary judgment de novo.⁴

Relying upon the Peccoles' alleged revocation of acceptance of Royal's financing despite personal guarantees by Royal's principals,⁵ Royal argues that the Peccoles are estopped from rejecting the terms of the Kennedy funding proposal. Estoppel consists of the following elements:

"(1) the party to be estopped must be apprised of the true facts; (2) he must intend that his conduct shall be acted upon or must so act that the party asserting estoppel has the right to believe it was so intended; (3) the party asserting estoppel must be ignorant of the true state of facts; (4) he must have relied to his detriment on the conduct of the party to be estopped."⁶

²See NRCP 56(c).

³See Elizabeth E. v. ADT Security Systems West, 108 Nev. 889, 892, 839 P.2d 1308, 1310 (1992) (citing Michaels v. Sudek, 107 Nev. 332, 334, 810 P.2d 1212, 1213-14 (1991)).

⁴See Kopicko v. Young, 114 Nev. 1333, 1336, 971 P.2d 789, 791 (1998) (citing Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992)).

⁵No executed personal guarantees are present in the record.

⁶NGA #2 Ltd. Liab. Co. v. Rains, 113 Nev. 1151, 1160, 946 P.2d 163, 169 (1997) (quoting Cheger, Inc. v. Painters & Decorators, 98 Nev. 609, 614, 655 P.2d 996, 998-99 (1982)).

We have noted that estoppel prevents a party who voluntarily thwarts the occurrence of a condition from obtaining contractual relief based on the nonoccurrence of the condition.⁷

We conclude that Royal has failed to present prima facie evidence supporting each element of estoppel. The Peccoles promptly notified Royal of their cancellation of the agreement shortly after Royal failed to perform under the contract by depositing funds in escrow. The record further indicates that the Peccoles did not contribute to or cause Royal's inability to comply with the contractual terms as written.

Similarly, we conclude that Royal's inability to meet its contractual obligations prior to the project's closing date discharged the Peccoles' obligation to convey the property.⁸ Therefore, Royal's claim for specific performance must fail.

Finally, because the district court properly granted summary judgment, the disqualification of attorney Phillips and exclusion of Gilles Pageau's affidavit are moot issues.⁹ We have considered Royal's

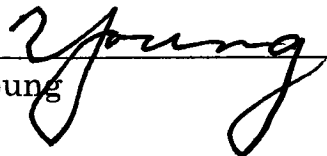
⁷See id. at 1161, 946 P.2d at 169; see also Broussard v. Hill, 100 Nev. 325, 330, 682 P.2d 1376, 1379 (1984).

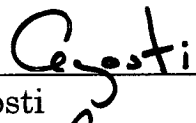
⁸See NGA #2 Ltd., 113 Nev. at 1159, 946 P.2d at 168.


⁹See NCAA v. University of Nevada, 97 Nev. 56, 58, 624 P.2d 10, 11 (1981) ("A moot case is one which seeks to determine an abstract question which does not rest upon existing facts or rights.").

remaining claims, and conclude that they lack merit. Having reviewed and considered the parties' arguments, we

ORDER the decision of the district court AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Lee A. Gates, District Judge
Law Offices of Richard McKnight, P.C.
William R. Phillips
Clark County Clerk