IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS ASSOCIATES, A GENERAL PARTNERSHIP,
Appellant,
vs.
WILSHIRE PLAZA DEVELOPMENT COMPANY,
Respondent.

No. 37292

FILED

MAY 14 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Las Vegas Associates ("LVA") appeals the district court's grant of judgment in favor of Wilshire Plaza Development Company in an action brought by Wilshire to enforce a real estate contract.[1]

First, LVA asserts that the district court erred by failing to apply the doctrine of laches to bar Wilshire's claim to certain payments due.

The doctrine of laches may be invoked as an equitable defense when one party's delay works to the disadvantage of another party, and the delay causes a change of circumstances that makes the grant of relief to the delaying party inequitable.[2] However, when the statute of

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[1]In its notice of appeal, LVA states that, in addition to the final judgment, it is also appealing the district court's December 13, 2000, order denying its motion to amend the findings of fact and conclusions of law. While a motion to amend tolls the time in which an appeal may be taken, an order denying such a motion is not independently appealable. See Uniroyal Goodrich Tire v. Mercer, 111 Nev. 318, 320 n.1, 890 P.2d 785, 787 n.1 (1995). Accordingly, we do not have jurisdiction over that portion of LVA's appeal.

[2]Carson City v. Price, 113 Nev. 409, 412, 934 P.2d 1042, 1043 (1997).

limitations has not run, especially strong circumstances must exist in order for the doctrine of laches defense to succeed.[3] On appeal, this court will uphold a lower court's factual findings so long as those findings are supported by substantial evidence.[4]

Here, there was substantial evidence to support the district court's conclusion that laches did not preclude Wilshire from collecting on the payments LVA missed in 1979. Although LVA was probably placed at a disadvantage by the lack of notice that it had missed the 1979 payments, the lack of notice is more correctly attributed to Beatrice and Po Chang in their previous roles as partners of LVA, and not to Wilshire as a partnership. As partners of LVA, Beatrice and Po Chang owed a fiduciary duty to the rest of LVA's partners to disclose relevant information affecting LVA, but they failed to do so.[5] Accordingly, it was not Wilshire's delay that worked to the disadvantage of LVA; it was Beatrice and Po Chang's breach of their partnership duties that worked to the disadvantage of LVA. Additionally, although Wilshire's collection was delayed due to the difficulty in calculating a final payoff amount, Wilshire timely asserted its rights under the contract after the final payment became due. Moreover, LVA was as responsible for the delay in collection as Wilshire. Therefore, we conclude that there was substantial evidence

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[3]Building & Constr. Trades v. Public Works, 108 Nev. 605, 611, 836 P.2d 633, 637 (1992).

[4]Yamaha Motor Co. v. Arnoult, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998).

[5]See Clark v. Lubritz, 113 Nev. 1089, 1095-96, 944 P.2d 861, 865 (1997).

to support the district court's finding that Wilshire's claim was not barred by the doctrine of laches.

Second, LVA asserts that the district court erred by crediting its $77,040.77 payment to Wilshire only once, because the prior course of performance between the parties demonstrated that the parties agreed that LVA would be credited twice for each "wrap" payment it made.

While there was conflicting evidence as to the parties' intent, there was still substantial evidence to support the district court's conclusion that LVA's $77,040.77 payment should only be credited once. Substantial evidence is evidence that a reasonable factfinder could accept as sufficient to support a conclusion.[6] Here, the district court reached its conclusion after performing a reasonable analysis of a letter LVA sent along with the $77,040.77 payment that suggested that the payment should only be credited once. Accordingly, there was substantial evidence to support the district court's conclusion that LVA should only be credited once for the payment.

Third, LVA asserts that Wilshire breached the terms of the parties' uniform real estate contract when it deducted $2,975.40 for taxes, insurance and assessments from LVA's payment. LVA contends that if money was owed for these expenses, then, under the contract, Wilshire should have paid whatever was owed for taxes from its own pocket and then demanded reimbursement for those amounts according to the parties' contract.

Since the facts are not in dispute as to this issue, the determination of whether the parties' contract permitted Wilshire to make

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[6]Prabhu v. Levine, 112 Nev. 1538, 1543, 930 P.2d 103, 107 (1996).

the deduction presents a question of law.[7] The relevant sections of the agreement are paragraphs eleven and fourteen. Paragraph eleven states:

> 11. The Buyer agrees to pay all taxes and assessments of every kind and nature which are or which may be assessed and which may become due on these premises during the life of this agreement. . . .

Paragraph fourteen states:

> 14. In the event the Buyer shall default in the payment of any special or general taxes, assessments or insurance premiums as herein provided, the Seller may, at his option, pay said taxes, assessments and insurance premiums or either of them, and if Seller elects so to do, then the Buyer agrees to repay the Seller upon demand, all such sums so advanced and paid by him, together with interest thereon from date of payment of said sums at the rate of ¾ of one percent per month until paid.

Here, the plain language of paragraphs eleven and fourteen of the uniform real estate contract do not prohibit a deduction like the one made by Wilshire, nor do they expressly require that a seller resort to the remedy listed under paragraph fourteen. Accordingly, the contract is ambiguous to the extent that it is unclear whether the parties intended to preclude Wilshire from making deductions for the payment of taxes, insurance and assessments.[8] Nonetheless, the intent of the parties to permit such deductions is apparent from the fact that the parties agreed to

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[7]See Musser v. Bank of America, 114 Nev. 945, 947, 964 P.2d 51, 52 (1998).

[8]See Margrave v. Dermody Properties, 110 Nev. 824, 827, 878 P.2d 291, 293 (1994) (holding that a contract is considered ambiguous when it is reasonably susceptible to more than one interpretation).

similar deductions on other occasions.[9] Additionally, we conclude that it is more reasonable to interpret the contract as permitting the deductions, because doing so grants the parties another method for avoiding the harsh result of foreclosure.[10] Therefore, we conclude that the district court did not err by finding that Wilshire was permitted to make the deduction for taxes, assessments and insurance.

Finally, LVA asserts that the district court erred by not concluding that a 1982 separation agreement between the Chang and Lin families released LVA from arrearages that were past due under its contract with Wilshire. We disagree.

As a general rule, partners are agents of the partnership and may bind their partnerships by their actions.[11] However, partners may not bind their partnerships when they lack actual authority to do so, and the party with whom they are dealing has knowledge of this lack of authority.[12] Here, the record indicates that the Chang and Lin families, as partners of Wilshire and LVA, lacked actual authority to bind their partnerships under their respective partnership agreements. Additionally, there was substantial evidence to support the conclusion

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[9]See United Services Auto Ass'n v. Schlang, 111 Nev. 486, 493, 894 P.2d 967, 971 (1995) (holding that when a contract is ambiguous, parol evidence is admissible to explain its meaning).

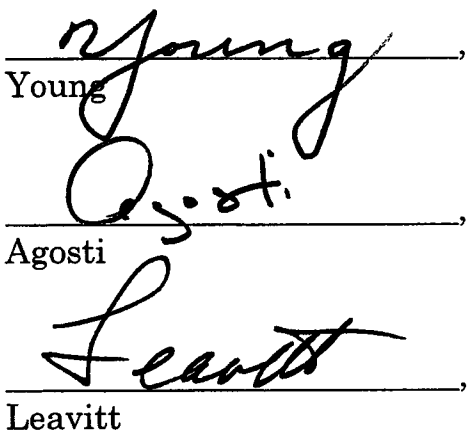
[10]See Dickenson v. State, Dep't of Wildlife, 110 Nev. 934, 937, 877 P.2d 1059, 1061 (1994) (holding that a fair and reasonable interpretation of a contract is preferable to one that results in a harsh and unreasonable contract).

[11]NRS 87.090.

[12]Id.

that the Chang and Lin families had knowledge of this mutual lack of actual authority.[13] Accordingly, there was substantial evidence to support the district court's conclusion that the 1982 separation agreement between the Chang and Lin families did not affect the contract between Wilshire and LVA. Therefore, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Young

_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. James C. Mahan, District Judge
Durham Jones & Pinegar
Smith Larsen & Wixom
Woods, Erickson, Whitaker & Miles, LLP
Clark County Clerk

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[13]For instance, the closely intertwined nature of LVA and Wilshire prior to 1982; Po Chang's testimony that the Lin and Chang families never intended to bind LVA and Wilshire; and the fact that Wilshire and LVA continued to abide by the terms of the original contract all support the district court's conclusion that the separation agreement did not affect the contract between LVA and Wilshire.