

IN THE SUPREME COURT OF THE STATE OF NEVADA

DON E. CHARPENTIER AND MARSHA
L. CHARPENTIER,
Appellants,
vs.
ROBERT DALTON AND JOYCE
DALTON,
Respondents.

No. 37858

FILED

DEC 11 2002

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

ORDER OF AFFIRMANCE

This is an appeal from the district court judgment in favor of Robert and Joyce Dalton on theories of breach of contract and breach of the implied warranty of habitability. Don and Marsha Charpentier challenge the district court's ruling on two grounds: (1) the district court erred in concluding that they breached the purchase agreement because the court failed to recognize that the "option three" facsimile modified the repair provisions of the purchase agreement; and (2) the district court erroneously applied the implied warranty of habitability. We conclude that both arguments are without merit.

The Charpentiers first argue that their obligation to repair under the purchase agreement was eliminated through a subsequent "modification" of the agreement, the "option three" facsimile. We disagree. First, we note that the Charpentiers are not asserting mere contract modification, but are rather asserting that they "delegated their duty" to repair the home pursuant to the "option three" facsimile. Recognizing this, we conclude that the Charpentiers were still bound to perform their

own obligations to the Daltons under the purchase agreement¹ because the “third option” facsimile did not amount to the novation² required to shift the Charpentiers’ duty of repair to Mark Nielsen.³

The Charpentiers next argue that the district court erroneously applied the implied warranty of habitability. We conclude that substantial evidence supports the district court’s decision to apply the implied warranty of habitability under the circumstances.⁴

Accordingly, we

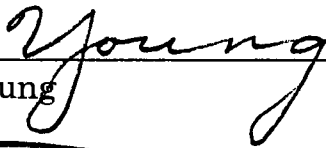
¹See 3 Restatement (Second) of Contracts § 318(3) (1981) (“[N]either delegation of performance nor a contract to assume the duty made with the obligor by the person delegated discharges any duty or liability of the delegating obligor.”); Claude D. Rohwer & Gordon D. Schaber, Contracts in a Nutshell § 176, at 381 (4th ed. 1997) (“A delegator remains liable for the performance of his contract duties despite the fact that the delagatee has assumed them.”).


²See United Fire Insurance Co. v. McClelland, 105 Nev. 504, 508, 780 P.2d 193, 195-96 (1989) (observing that to create a novation, among other requirements, all parties must agree to a new, valid contract, and the intent of the parties to do so must be clear and unequivocal).

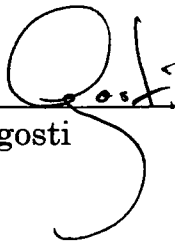
³We conclude that the Charpentiers’ remaining arguments regarding the modification lack merit.

⁴See Trident Construction v. West Electric, 105 Nev. 423, 427, 776 P.2d 1239, 1241 (1989) (“Where the trial court, sitting without a jury, makes a determination predicated upon conflicting evidence, that determination will not be disturbed on appeal where supported by substantial evidence.”).

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Young


_____, J.
Rose


_____, J.
Agosti

cc: Hon. Jerome Polaha, District Judge
Bradley Paul Elley
Rogers & Shadek
Washoe District Court Clerk