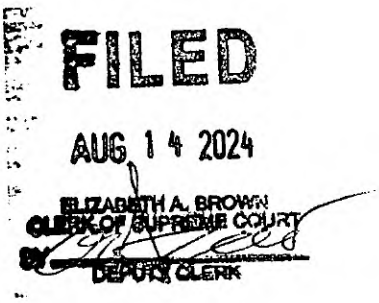
IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHMAR DECATUR 2.5, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Appellant,
vs.
KHUSROW ROOHANI, AS TRUSTEE OF THE KHURSOW ROOHANI FAMILY TRUST,
Respondent.

No. 86173



ORDER OF AFFIRMANCE

This is an appeal from a district court amended summary judgment in a real property contract action. Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.

Appellant Richmar Decatur 2.5, LLC (Richmar) purchased the subject property (the Decatur Property) for roughly $1.2 million in 2006. For reasons not relevant here, the Clark County Assessor's website showed that Richmar purchased the Decatur Property for only $465,000. In 2016, respondent Khusrow Roohani offered to purchase the Decatur Property from Richmar for $325,000. Richmar's manager, Joel Laub, negotiated the purchase agreement on Richmar's behalf through Laub's real-estate broker, Neal Anzalotti. Both Laub and Roohani signed the purchase agreement, and Roohani deposited the agreed-upon purchase price into an escrow account. Thereafter, however, Laub canceled escrow and refused to go forward with the purchase agreement. Roohani then filed the underlying breach-of-contract action seeking specific performance.

Roohani moved for summary judgment. In opposition, Richmar argued that there was no meeting of the minds sufficient to create a binding

contract because Laub believed he was selling a different property that he managed for another LLC with a similar name. Alternatively, Richmar contended that it should be excused from performing based on either a mutual or unilateral mistake. Primarily, Richmar argued that the parties were mistaken as to which property was being conveyed under the purchase agreement.

The district court initially granted summary judgment for Roohani, but Richmar filed an NRCP 52(b) motion asking the district court to amend some of its factual findings. The district court partially granted that motion and then entered an amended order again granting summary judgment for Roohani. Therein, the district court found that Laub signed the purchase agreement on behalf of Richmar for the Decatur Property as specifically identified in the purchase agreement.

We review the district court's summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). "[W]hen reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." *Id.*

Richmar primarily contends that the district court erred in rejecting its unilateral-mistake defense on the ground that Richmar/Laub believed the property subject to the purchase agreement was a property other than the Decatur Property.[1] We conclude that Richmar's unilateral-mistake defense fails.

[1]Richmar has alleged other mistakes, but the record demonstrates that those mistakes all derived from the alleged mistake about which property was the subject of the purchase agreement.

A contract is voidable based on a unilateral mistake only if the mistaken party does not bear the risk of the mistake. As this court has summarized the unilateral-mistake doctrine,

> Where a mistake of one party at the time a contract was made as to a basic assumption on which he made the contract has a material effect on the agreed exchange of performances that is adverse to him, the contract is voidable by him *if he does not bear the risk of the mistake* . . . and [ ] the other party had reason to know of the mistake or his fault caused the mistake.

Home Savers, Inc. v. United Sec. Co., 103 Nev. 357, 358-59, 741 P.2d 1355, 1356-57 (1987) (emphasis added) (internal citations and quotation marks omitted).

The district court expressly found that Richmar/Laub bore the risk of this mistake because Laub did not verify whether he was selling the Decatur Property despite knowing that he managed several similarly named LLCs. Moreover, the record undisputedly demonstrates that Anzalotti sent Laub a parcel map accurately depicting the Decatur Property along with Roohani's offer and that the purchase agreement accurately described the parcel of property being sold, i.e., the Decatur Property. Richmar suggests that it should not bear the risk of the mistake because Roohani drafted the purchase agreement, but it cites no authority for that proposition. Although we noted in *Land Baron Investments v. Bonnie Springs Family LP*, 131 Nev. 686, 694, 356 P.3d 511, 517 (2015), that the party asserting the mistake defense drafted the contract, we did not hold that the non-drafting party can never bear the risk of the mistake. And in any event, Richmar's argument ignores the fact that Laub edited the purchase agreement upon receiving it.

We conclude that the district court did not err in finding that Richmar/Laub bore the burden of the mistake, such that its unilateral-mistake defense failed. This is in line with our precedent following the Restatement (Second) of Contracts § 154, which recognizes that a court may allocate the risk of the mistake "on the ground that it is reasonable in the circumstances to do so." *See Land Baron*, 131 Nev. at 694-95, 356 P.3d at 517 (adopting the Restatement and holding that a real estate developer who purchased land without water rights bore the risk of mistake when the developer failed to account for the possibility that remotely located land might not have sufficient water for developing a subdivision); *Anderson v. Sanchez*, 132 Nev. 357, 361-62, 373 P.3d 860, 863-64 (2016) (reasoning that husband who conveyed property to wife when husband's sister allegedly had an interest in the property bore the risk of mistake because husband failed to inquire into sister's alleged interest before the conveyance).

Richmar's mutual-mistake defense also fails. *Cf. Land Baron Invs. v. Bonnie Springs Family LP*, 131 Nev. 686, 694, 356 P.3d 511, 517 (2015) (recognizing that a contract may be rescinded based upon a mutual mistake when both parties "share a misconception about a vital fact upon which they based their bargain"). Richmar relies on *Raffles v. Wichelhaus*, 159 Eng. Rep. 375 (1864), where there were two ships named "Peerless" and each party believed their contract pertained to a different Peerless ship, which was a "vital fact" upon which the parties' contract was based. But here, there was only one Decatur Property, and only Richmar/Laub was mistaken as to which property that was.

In sum, we are not persuaded that a genuine issue of material fact exists to preclude summary judgment. We therefore affirm the district court's amended order granting summary judgment for Roohani. And given

that Richmar's argument regarding the attorney fee award is premised solely on the summary judgment being reversed, we also affirm the district court's order awarding Roohani attorney fees.

It is so ORDERED.

Cadish, C.J.

Stiglich, J.

Pickering, J.

cc:

Chief Judge, Eighth Judicial District Court
Department 27, Eighth Judicial District Court
Israel Kunin, Settlement Judge
Kemp Jones, LLP
Maier Gutierrez & Associates
Eighth District Court Clerk