


IN THE SUPREME COURT OF THE STATE OF NEVADA

LG 2007 PRIVATE TRUST,
Appellant,
vs.
DHAVAL SHAH, AN INDIVIDUAL;
AND RESHMA SHAH, AN
INDIVIDUAL,
Respondents.

LG 2007 PRIVATE TRUST,
Appellant,
vs.
ZARBOD AAZAMI ZANGANEH, AN
INDIVIDUAL; AND LUXE ESTATES &
LIFESTYLES, LLC, A NEVADA
CORPORATION,
Respondents.

No. 85823
FILED
AUG 19 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK
No. 86319

ORDER OF AFFIRMANCE

These are consolidated appeals from district court orders granting summary judgment in a real property action. Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.

Appellant LG 2007 Private Trust (LG Trust) agreed to sell twelve parcels of land located at 3000 Pinto Lane in Las Vegas to respondents Dhaval and Reshma Shah (the Shahs). Co-respondent Luxe Estates and Lifestyles (Luxe) represented the Shahs in the real estate transaction. LG Trust marketed the land as a development opportunity, but the purchase agreement indicated that the sale was for residential property. The property was under contract for four months, during which LG Trust failed to deliver residential defect disclosures to the Shahs. The Shahs cancelled the contract and demanded a return of their Earnest

Money Deposit (EMD). LG Trust agreed to the contract cancellation but refused to return the EMD.

The Shahs sued for breach of contract and intentional and negligent noncompliance with NRS 113.130, which requires the seller to complete a disclosure form regarding the residential property. LG Trust sought to be indemnified by Luxe. The Shahs moved for summary judgment on all claims and the district court granted summary judgment in their favor. Luxe successfully moved for summary judgment against LG Trust's claim for indemnification. LG Trust now appeals both orders granting summary judgment, arguing: (1) it provided vacant land disclosures and the Shahs were barred from rescinding the agreement; (2) the vacant land disclosures amended the agreement; (3) it prevails under the doctrines of estoppel and novation; (4) NRS Chapter 113 does not apply to the sale; (5) there is a genuine dispute of material fact of the Shahs' intended use of the land; (6) it should retain the EMD, and (7) if the Shahs are entitled to the EMD, then Luxe should indemnify LG Trust.

The Summary Judgment Order in favor of the Shahs

We review a district court's decision to grant summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* We view all evidence in the light most favorable to the nonmoving party. *Id.*

LG Trust contends that summary judgment was inappropriate on the Shahs' breach of contract claim and statutory non-compliance claims. It further contends that it is entitled to the \$500,000 EMD. We disagree.

The Shahs' breach of contract claim

LG Trust does not contest the validity of the contract but argues that the vacant land disclosures it produced barred the Shahs from rescinding the agreement, or that the disclosures amended the underlying contract. We first review whether a valid contract existed.

A contract is formed through offer, acceptance, mutual assent, and consideration. *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). Where “a contract is clear, unambiguous, and complete, its terms must be given their plain meaning and the contract must be enforced as written; the court may not admit any other evidence of the parties’ intent because the contract expresses their intent.” *Ringle v. Bruton*, 120 Nev. 82, 93, 86 P.3d 1032, 1039 (2004). Further, absent “ambiguity or other factual complexities, contract interpretation presents a question of law that the district court may decide on summary judgment.” *Galardi v. Naples Polaris, LLC*, 129 Nev. 306, 309, 301 P.3d 364, 366 (2013) (internal quotation omitted).

Here, a written contract governs the parties’ agreements. The Shahs, through a “Residential Purchase Agreement” form, offered to purchase the subject property from LG Trust for \$8,000,000 with an EMD of \$500,000. The parties negotiated the purchase price and the purchase of a home protection plan, and ultimately LG Trust accepted the Shahs’ offer to purchase the property for \$8,250,000. The Shahs deposited \$500,000 to open escrow as consideration. Both parties signed the agreement form and the counteroffers, and initialed each page of the agreement next to the statement that “each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page[.]” Thus, we conclude that the record adequately demonstrates offer, acceptance, mutual assent,

and consideration, thereby establishing that the Shahs and LG Trust entered into a valid and enforceable written contract.

LG Trust argues that the wrong form was used, and the parties had never intended to enter into a contract for the sale of residential land. But the parties went through multiple stages of negotiations where, at any point, LG Trust could have corrected or rejected the offer if it believed the parties were contracting for the sale of vacant land. The form used clearly indicated that the Shahs intended to occupy the property as a residence and the parties even negotiated about the purchase of a home warranty. The written residential purchase agreement was clear, unambiguous, and complete. Accordingly, the four corners of the agreement control. *See Ringle*, 120 Nev. at 93, 86 P.3d at 1039.

Section 11 of the controlling agreement required LG Trust to provide a Seller Real Property Disclosure Form in accordance with NRS 113.130 within five calendar days to the Shahs. So regardless of any parties' alleged intent, within five days of acceptance, LG Trust was contractually obligated to provide to the Shahs the residential defect disclosure form. Since LG Trust did not provide the residential defect forms, it did not comply with Section 11, and it breached its agreement with the Shahs, unless the vacant land disclosures it provided can satisfy the requirements of NRS 113.150.

The Vacant Land Disclosures do not satisfy LG Trust's obligations under the contract or NRS 113.150

LG Trust relies on the vacant land disclosures that it sent to the Shahs, contending that those disclosures contained language that satisfied its obligation to provide residential defect disclosures through "another written notice" under NRS 113.150(2). Thus, according to LG

Trust, the Shahs' failure to act after receipt of the vacant land disclosures constituted a waiver of their right to cancel under NRS 113.150(3).

In making this argument, LG Trust relies on NRS 113.150(2), which provides:

If, before the conveyance of the property to the purchaser, a seller or the seller's agent informs the purchaser or the purchaser's agent, *through the disclosure form or another written notice*, of a defect in the property of which the cost of repair or replacement was not limited by provisions in the agreement to purchase the property, the purchaser may:

(a) Rescind the agreement to purchase the property at any time before the conveyance of the property to the purchaser; or

(b) Close escrow and accept the property with the defect as revealed by the seller or the seller's agent without further recourse.

(Emphasis added.) LG Trust contends that the vacant land disclosures constitute "another written notice[.]" Because this argument involves an issue of statutory interpretation, we also review it *de novo*. See *Pankopf v. Peterson*, 124 Nev. 43, 46, 175 P.3d 910, 912 (2008). We construe words in a statute by their plain meaning, *Berkson v. LePome*, 126 Nev. 492, 497, 245 P.3d 560, 563 (2010), and consider the entire statutory scheme to avoid interpretations that lead to absurd results. *State, Private Investigator's Licensing Bd. v. Tatalovich*, 129 Nev. 588, 590, 309 P.3d 43, 44 (2013).

LG Trust argues that the vacant land disclosure included a statement that "the structures on the property have no commercial value[.]" so it satisfied the exception laid out in NRS 113.150(2), thus fulfilling its obligation and prohibiting the Shahs from cancelling. But LG Trust's vacant land disclosures cannot satisfy NRS 113.150(2) and do not excuse it

from failing to provide the residential defect disclosures required by the contract.

Our analysis relies on two connected provisions under NRS Chapter 113: first, the content of the residential defect disclosure form required by NRS 113.120; and second, the purchaser's remedies for the seller's delayed or missing disclosures provided by NRS 113.150(2). NRS 113.120(1) requires residential defect disclosure forms to contain:

[A]n evaluation of the condition of any electrical, heating, cooling, plumbing, and sewer systems on the property, and of the condition of any other aspects of the property which affects its use or value, *and allows the seller of the property to indicate whether or not each of those systems and other aspects of the property has a defect of which the seller is aware.*

(Emphasis added.) The term “defect” is used throughout the statutory scheme and is defined as “a condition that materially affects the value or use of residential property in an adverse manner.” NRS 113.100(1). The language of NRS 113.150(2) demands that the seller produce “the disclosure form or another written notice, of a defect in the property”

When reading NRS 113.120 together with NRS 113.150(2), the latter still requires LG Trust to identify specific known defects in the residential structure. The vacant land disclosures contain only a blanket statement that the structures on the property have “no commercial value.” This disclosure does not identify conditions that materially affect the value or use of the property, specifically it does not evaluate any of the systems on the property. Instead, it merely provides a subjective opinion as to the economic value of the structures. Accordingly, the vacant land disclosures do not constitute residential defect disclosure forms or “another written notice” of residential defect matters and, as such, they did not trigger waiver

of the right to cancel under NRS 113.150, and do not excuse LG Trust's failure to provide the residential defect information required under the contract.

The Vacant Land Disclosures did not amend the contract

Next, LG Trust contends that the vacant land disclosures amended the underlying contract.¹ While contracts may be amended, the parties must "mutually consent to enter into a valid agreement to modify a former contract." *Clark Cnty. Sports Enters. v. City of Las Vegas*, 96 Nev. 167, 172, 606 P.2d 171, 175 (1980). LG Trust fails to demonstrate mutual consent to modify. The vacant land disclosures do not purport to amend or modify the purchase agreement and LG Trust does not point to anything in the record that would indicate the Shahs consented to amend the contract.

Finally, LG Trust argues that there is a genuine dispute of material fact as to whether the Shahs intended to purchase the land for development or as a residence. As addressed above, the Shahs' intent and contemplated use of the land is not relevant to whether LG Trust breached its contractual obligation to provide residential defect disclosures. Accordingly, we conclude the alleged factual dispute is immaterial to the underlying claim. The Shahs were thus entitled to summary judgment on their breach of contract claim.

¹LG Trust also argues that the doctrines of equitable estoppel and novation support its contentions, but its arguments are inadequate and unsupported by relevant authority. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (stating that we need not consider arguments not adequately briefed, not supported by relevant authority, and not cogently argued). Accordingly, we decline to consider these arguments.

The Shahs' statutory non-compliance claim

LG Trust contends that NRS Chapter 113 does not apply to the subject property because it does not fall within the definition of residential property, and it was not intended for occupancy by the Shahs. We conclude that these contentions are unavailing.

NRS 113.100(4) defines “residential property” as “any land . . . to which is affixed not less than one nor more than four dwelling units.” NRS 113.100(3) defines the term “dwelling unit” as “any building, structure . . . which is occupied as, or designed or intended for occupancy as, a residence[.]” (emphasis added). LG Trust confuses whether a building is “intended for occupancy” with the buyer’s intended use of the property. Here, the subject property consisted of twelve parcels with some parcels containing structures considered to be single family residences. The Shahs’ contemplated use of the properties is irrelevant to the determination of whether the structures on the property, as built and designed, were intended for residential use. NRS Chapter 113 does not factor in the buyer’s intended use when defining and categorizing residential property—what matters is whether a residence exists on the land. LG Trust never disputed that there were homes on the land. Since several of the parcels contained residential property, those parcels were subject to the residential defect disclosure requirements pursuant to NRS Chapter 113. As established, LG Trust never provided such disclosures. Accordingly, summary judgment was appropriate on the Shahs’ statutory non-compliance claims.

Damages

LG Trust asserts that it is entitled to the \$500,000 EMD as liquidated damages under the terms of the contract. We disagree.

LG Trust points to the “Buyer Default” provision of the purchase agreement, which states that if the buyer defaults in performance,

the seller may retain the EMD as liquidated damages. Here, the Shahs did not default. LG Trust defaulted by breaching the disclosure requirements of the contract; therefore, it is not entitled to liquidated damages.

Under the contract, the Shahs reserved “all legal and/or equitable rights” against LG Trust in the event of LG Trust’s default. While the provision does not explicitly provide for a return of the EMD, it does allow the buyer to recover actual damages. Further, NRS 113.150 grants the Shahs the right to cancel the sale “without penalty.” Allowing LG Trust to retain the EMD after its own breach would constitute a penalty against the Shahs for simply exercising their right to cancel the contract after LG Trust’s failure to perform. Additionally, under the cancellation provision of the contract, the buyer is entitled to a refund of the EMD if the agreement is properly cancelled in accordance with the terms of the contract. Thus, we conclude that LG Trust is not entitled to the EMD and the EMD must be released and returned to the Shahs.

The Summary Judgment Order in favor of Luxe

LG Trust separately argues that the district court improperly granted summary judgment in favor of Luxe on LG Trust’s indemnity claim. LG Trust contends that it should be indemnified by Luxe, on a noncontractual basis, because Luxe provided the form of the agreement to the parties, accepted the vacant land disclosures, and failed to cancel the transaction during the due diligence period.

LG Trust’s argument is not legally supported. First, the doctrine upon which LG Trust relies applies to torts. *See The Doctors Co. v. Vincent*, 120 Nev. 644, 650, 98 P.3d 681, 686 (2004) (“[N]oncontractual indemnity allow[s] parties extinguishing tort liabilities . . . to seek recovery from other potential tortfeasors under equitable principles.”). The Shahs’ claims do not sound in tort; rather, they alleged breach of contract and

statutory non-compliance, both non-tort claims. Second, equitable indemnity is a remedy “generally...available after the defendant has extinguished its own liability . . . by paying a judgment.” *Rodriguez v. Primadonna Co., LLC*, 125 Nev. 578, 589, 216 P.3d 793, 801 (2009). LG Trust has yet to pay any judgment. Third, the doctrine generally applies when the defendant has “committed no independent wrong” but is held liable. *Id.* Here, LG Trust independently failed to provide the appropriate disclosures required by law. And fourth, there must be a pre-existing legal relationship between the indemnitee and the indemnitor or a duty for the indemnitor to protect the indemnitee. *Pack v. LaTourette*, 128 Nev. 264, 268, 277 P.3d 1246, 1249 (2012). Here, no such preexisting legal relationship existed between LG Trust and Luxe because Luxe was the Shahs’ real estate agent, not LG Trust’s agent. Accordingly, summary judgment was appropriate in Luxe’s favor as LG Trust was unable to prove any of the elements of its claim for indemnification.

In sum, the district court’s orders granting summary judgment in favor of the Shahs and Luxe were proper. LG Trust was contractually and statutorily obligated to provide residential defect disclosures to the Shahs, and it failed to do so. Further, LG Trust failed to demonstrate that

it is legally entitled to indemnification. Accordingly, we

ORDER the judgments of the district court AFFIRMED.


_____, J.
Herndon


_____, J.
Lee


_____, J.
Bell

cc: Hon. Nancy L. Allf, District Judge
Persi J. Mishel, Settlement Judge
Reid Rubinstein & Bogatz
Alan J. Buttell & Associates
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Eighth District Court Clerk