

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEY MANAGEMENT, INC., A NEVADA
CORPORATION,
Appellant,
vs.
JOHN PAZZAGLI AND MARCELLE
PAZZAGLI, CO-TRUSTEES OF THE
PAZZAGLI FAMILY LIVING TRUST
DATED APRIL 1, 1996,
Respondents.

No. 39562

FILED

AUG 25 2003

JANETTE W. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from a district court order awarding attorney fees to John and Marcelle Pazzagli (the Pazzaglis).

Key Management, Inc. purchased residential property in Reno from the Pazzaglis, acting in their capacities as co-trustees of the Pazzagli Living Trust. Thereafter, Key Management sued the Pazzaglis, alleging that the Pazzaglis failed to disclose certain defects on the property. The district court concluded, and we agreed on appeal, that Key Management failed to sufficiently establish that the Pazzaglis were aware of the defects, and that Key Management should have had the property professionally inspected.

Following the district court's ruling in favor of the Pazzaglis, the Pazzaglis filed a motion for an award of attorney fees. The district court found that a provision in the offer and acceptance agreement allowed for attorney fees to be awarded to the prevailing party in any action based on the agreement. Therefore, the district court awarded the Pazzaglis \$35,495.50 in attorney fees.

Absent an abuse of discretion, this court will not disturb a district court's award of attorney fees on appeal.¹ However, a district court is not permitted to award attorney fees unless authorized to do so by a statute, rule, or contract.²

In awarding attorney fees, the district court relied on NRS 18.010(1), which permits an award of attorney fees when governed by an express or implied agreement. The district court found that the attorney fees provision in the offer and acceptance agreement warranted the award of attorney fees. We disagree.

In First Commercial Title v. Holmes,³ this court stated that a cause of action must be based on an agreement in which there is a provision for the award of attorney fees to the prevailing party in order to collect attorney fees under NRS 18.010(1). In this instance, the attorney fees provision specifically applies only in the event that one of the parties to the contract is required to obtain the services of an attorney to enforce the agreement. However, Key Management did not bring a cause of action to enforce the agreement; instead, its complaint only alleged failure to disclose conditions on the property pursuant to NRS Chapter 113. Indeed, the district court's decision pertained to whether the Pazzaglis engaged in tortious behavior by failing to comply with the property disclosure statute, but did not address whether the Pazzaglis breached the offer and acceptance agreement.

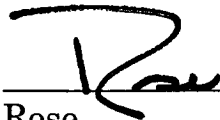
¹U.S. Design & Constr. v. I.B.E.W. Local 357, 118 Nev. ___, ___, 50 P.3d 170, 173 (2002).


²Id.

³92 Nev. 363, 365, 550 P.2d 1271, 1272 (1971).

Accordingly, we conclude that the district court erred in awarding the Pazzaglis attorney fees because Key Management's cause of action was not brought to enforce the offer and acceptance agreement. Because there is no basis for awarding attorney fees, we

ORDER the judgment of the district court REVERSED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. Jerome Polaha, District Judge
John C. Hope Jr.
Steve E. Wenzel
Washoe District Court Clerk