

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEROY G. BLACK, AS TRUSTEE OF  
THE I.D.A. BLACK'S 1992 FAMILY  
TRUST,  
Appellant,  
vs.  
ARVIS C. FORREST, TRUSTEE FOR  
THE ARVIS C. AND ANNA L.  
FORREST TRUST, DATED MAY 20,  
1971 AS TOTALLY AMENDED  
AUGUST 8, 1996,  
Respondent.

No. 40375

**FILED**

SEP 03 2004

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

ORDER OF AFFIRMANCE

This is an appeal from a final judgment entered after a bench trial in a contract dispute concerning real property. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

This appeal involves the validity of a subordination agreement ("2000 Subordination Agreement") entered into by The Jones Trust U/T/D 11/2/78 and The M.D. Close Real Estate Company (collectively "J&C") and The Arvis C. and Anna L. Forrest Trust, dated May 20, 1971, as totally amended August 8, 1996 ("The Forrest Trust").

J&C originally sold two adjacent parcels of property and took a first deed of trust in security. The purchasers experienced difficulty in paying the balance of the purchase price. A plan was developed in which a motel would be constructed on one parcel, enhancing the value of the property and providing revenue to pay off J&C. A construction loan was obtained to accomplish this result. As a condition of the loan, J&C was required to enter into a subordination agreement with the new lender.

The property never realized its potential and additional refinancing and subordination agreements were executed. J&C agreed to

the additional subordination agreements because it believed it stood a greater chance of fully recovering its investment, and a foreclosure of the first deed of trust would wipe out its interest in one of the two parcels.

With the threat of foreclosure pending once again, J&C executed what is referred to in the record as the 2000 Subordination Agreement in exchange for subordinating its interest in the property to another lender, The Forrest Trust. As a result, The Forrest Trust took a first position deed of trust on the property.

Subsequently, The I.D.A. Black's 1992 Family Trust ("The Black Trust") purchased the property and J&C's interest in the property. Appellant Leroy Black, trustee for The Black Trust, filed a declaratory relief action seeking a judicial declaration that the 2000 Subordination Agreement was void due to lack of consideration and mutual mistake and that respondent Arvis Forrest, trustee for The Forrest Trust, did not have a valid first position deed of trust against the property. Following a bench trial, the district court found in favor of Forrest.

On appeal, Black challenges the district court's findings regarding the validity of the 2000 Subordination Agreement based on lack of consideration and mutual mistake.<sup>1</sup> A district court's findings will not be disturbed on appeal unless they are clearly erroneous and not based on substantial evidence.<sup>2</sup> Black's main argument is that a previous 1998 subordination agreement was void and, therefore, at the time of the 2000 Subordination Agreement negotiations, J&C held a first position deed of

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<sup>1</sup>We conclude that Black, as a real property owner, had standing to challenge the validity of the 2000 Subordination Agreement, which cast a cloud of suspicion over his title.


<sup>2</sup>Gibellini v. Klindt, 110 Nev. 1201, 1204, 885 P.2d 540, 542 (1994).

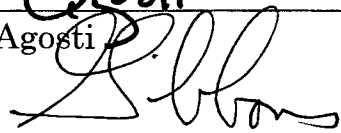
trust as to both properties and mistakenly entered into the 2000 Subordination Agreement thinking it held a second position. While evidence suggests that J&C may have had a cause of action to void the 1998 agreement, the agreement was not void on its face. Therefore, at the time of the 2000 Subordination Agreement, the 1998 agreement was valid. This factor could be considered by the district court in its evaluation of the evidence.

In this case, even considering arguably inadmissible parole evidence, the district court found that the 2000 Subordination Agreement was supported by adequate consideration and that that no mutual mistake existed. Substantial evidence supports these findings. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Mark R. Denton, District Judge  
Ellsworth Moody & Bennion Chtd.  
Gerrard Cox & Larsen  
Clark County Clerk