

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHIRLEY FEENSTRA, BY AND
THROUGH HER CONSERVATOR,
ROBERT FEENSTRA,
Appellant,
vs.
PRO-MAX CORPORATION, A NEVADA
CORPORATION,
Respondent.

No. 40612

FILED

APR 21 2006

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court judgment, certified as final under NRCP 54(b), finding that appellant and her husband Peter Feenstra, now deceased, could not raise a defense of equitable estoppel as they failed to prove by a preponderance of evidence that they detrimentally relied on respondent's conduct. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

The district court rendered its judgment after a bench trial on remand from this court's decision in Pro-Max Corp. v. Feenstra.¹ In Pro-Max, Pro-Max Corporation and other plaintiffs had filed an action for declaratory relief against Shirley Feenstra and other defendants.² The

¹117 Nev. 90, 16 P.3d 1074 (2001).

²Peter Feenstra, now deceased, was a respondent in the previous appeal, as was Shirley Feenstra, Peter's wife.

main issue of that litigation was whether promissory notes issued by Pro-Max to the defendants had expired under NRS 106.240.³

In Pro-Max, Feenstra argued that Pro-Max should be estopped from asserting the statute's expiration provisions, because Pro-Max had represented to the district court in an unrelated divorce proceeding that the notes would be paid.⁴ Feenstra further argued that the district court erred when it denied her the opportunity to present evidence regarding the estoppel issue at trial.⁵

In Pro-Max, this court explained that NRS 106.240's conclusive presumption that real estate property debts are extinguished ten years after they become due clearly and unambiguously applies, without limitation, to all debts secured by deeds of trust on real property.⁶ Nevertheless, this court, in Pro-Max, further concluded that the district court had prevented Feenstra from presenting evidence on whether estoppel applied and remanded the case to the district court for further proceedings.⁷

³Pro-Max, 117 Nev. 90, 16 P.3d 1074.

⁴Id. at 95, 16 P.3d at 1078.

⁵Id. at 96, 16 P.3d at 1078.

⁶Id. at 97, 16 P.3d at 1079.

⁷Id.

On remand, after finding that Feenstra could not successfully assert a defense of equitable estoppel, the district court ruled in Pro-Max's favor and concluded that the notes issued to Feenstra were now satisfied, and that the lien securing the notes was discharged under NRS 106.240. In this appeal, Feenstra argues that the district court erred when it determined that Pro-Max was not equitably estopped from relying on NRS 106.240 and that the statute voided Pro-Max's obligation to her.

This court has previously established the four elements of equitable estoppel as follows: (1) the party to be estopped must be apprised of the true facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting estoppel has the right to believe it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; and (4) he must have relied to his detriment on the conduct of the party to be estopped.⁸ Whether the party seeking to establish equitable estoppel has met his or her burden is generally a question of fact.⁹ The decision to apply equitable estoppel is committed to the district court's sound discretion, and the court's decision is therefore reviewed under an abuse of discretion standard.¹⁰

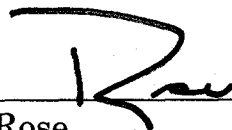
⁸Matter of Harrison Living Trust, 121 Nev. __, __, 112 P.3d 1058, 1062 (2005).

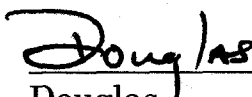
⁹Id. at __, 112 P.3d at 1061.

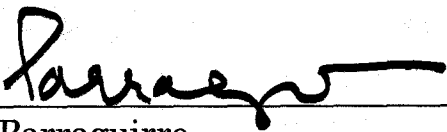
¹⁰Id.

The record before us demonstrates that substantial evidence supports the district court's finding that Feenstra did not detrimentally rely on Pro-Max's conduct. Further, this finding of fact supports the district court's legal conclusion that in the absence of such reliance, Feenstra cannot successfully claim that Pro-Max was precluded from asserting that promissory notes had expired under NRS 106.240. We thus conclude that the district court properly determined that the notes that Pro-Max's issued to Feenstra are now satisfied, and that the lien securing the notes was discharged under NRS 106.240.

Accordingly, we ORDER the judgment of the district court AFFIRMED.


_____, C. J.
Rose


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. Brent T. Adams, District Judge
Robert Feenstra
Shirley Feenstra
Robison Belaustegui Sharp & Low
Washoe District Court Clerk