

IN THE SUPREME COURT OF THE STATE OF NEVADA

COLD SPRINGS 2000, A NEVADA
CORPORATION,
Appellant,
vs.
UTILITIES INC. OF NEVADA, A
NEVADA CORPORATION,
Respondent.

No. 41569

FILED

MAR 17 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting respondent summary judgment on appellant's claim for declaratory judgment and respondent's counterclaim for breach of contract. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

FACTS

Appellant Cold Springs 2000 develops residential real estate in Northern Nevada. This dispute involves a Cold Springs development known as Woodland Village. In 1996, Cold Springs purchased surface property and water rights in an area north of Reno. The surface property included an approved tentative subdivision map within which some lots had already been finished. The water rights were listed in the Reno Park Water Company budget as being owned for the benefit of the tentative subdivision map. On May 5, 1997, Cold Springs and Reno Park entered into an Annexation Agreement. Under that agreement, Cold Springs agreed to convey its water rights to Reno Park in exchange for water service to the subdivision. The transfer was necessary to prove that Cold Springs had sufficient available water to supply its project. Reno Park's policy was to hold the water rights as part of a "water service budget" program.

On December 31, 1997, respondent Utilities Inc. of Nevada (UIN) purchased all of Reno Park's assets, including its water supply and distribution system. The Public Utilities Commission of Nevada (PUCN) approved this acquisition. As part of the acquisition agreement, UIN agreed to assume all of Reno Park's obligations under existing developer contracts. At the time of the acquisition, UIN's Rule 20 governing water rights was amended. Amended Rule 20 does not contain the "water bank" policy upon which Cold Springs relies.

Pursuant to the Annexation Agreement,¹ Cold Springs conveyed its Woodland Village water rights to UIN, via unconditional deed, on March 16, 2000. When Cold Springs began construction on Woodland Village, it requested reconveyance of 150 acre-feet of water for dust abatement and other construction purposes. UIN refused to reconvey, stating that the water rights had been unconditionally transferred. Cold Springs pumped water from another source to satisfy its dust abatement needs. In November 2000, Cold Springs sued, seeking a declaratory judgment that UIN held its water rights "in trust" pursuant to Reno Park's water service budget program.

On December 19, 2000, UIN moved to dismiss the case. The district court denied that motion. On June 25, 2002, UIN filed a counterclaim for breach of contract, claiming that Cold Springs violated the Annexation Agreement by pumping water for dust abatement rather than buying the water from UIN. On January 13, 2003, UIN moved for summary judgment on both claims. Cold Springs opposed the motion,

¹The Annexation Agreement required Cold Springs to convey water rights, at no cost, as a condition of water service to the annexed property.

arguing that summary judgment was inappropriate because genuine issues of material fact existed on both claims. On May 12, 2003, the district court granted summary judgment on both claims. Cold Springs timely appealed the district court's order.

DISCUSSION

Standard of review

We review orders granting summary judgment de novo.² Summary judgment is appropriate when, after an examination of the record viewed in a light most favorable to the non-moving party, no genuine issues of material fact remain and the moving party is entitled to judgment as a matter of law.³

No genuine issue of material fact remains as to ownership of the disputed water rights

Cold Springs argues that a genuine issue of material fact exists with regard to whether UIN held the water rights for Cold Springs' benefit as part of Reno Park's "water bank" system. We disagree.

All conveyances of real estate, including the transfer of water rights, must satisfy the Statute of Frauds.⁴ The Statute of Frauds requires that the transfer be in writing, express the consideration for the transfer, and be signed by the party against whom enforcement is sought.⁵

²Dermody v. City of Reno, 113 Nev. 207, 210, 931 P.2d 1354, 1357 (1997).

³NRCF 56(c); Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 713-14, 57 P.3d 82, 87 (2002).

⁴NRS 111.240; 17-05 Op. Att'y Gen. 9 (1917).

⁵NRS 111.210(1).

On March 16, 2000, Cold Springs conveyed 649 acre-feet of water to UIN via unconditional deed. The deed noted that Cold Springs conveyed not only the water rights, but also its interest in reversion, remainder, rents or profits appurtenant to the water rights. The deed further noted that the conveyance was made "for good and valuable consideration," and transferred the water rights to UIN "and to its successors and assigns forever." Robert J. Lissner, Cold Springs Vice President, signed the deed. Thus, the deed satisfies the Statute of Frauds and unconditionally conveyed 649 acre-feet of water rights to UIN.

Cold Springs argues that it should have been allowed to introduce numerous documents regarding agreements between Cold Springs, Reno Park, and UIN to demonstrate Cold Springs' subjective intent when it transferred the water rights. We disagree.

Initially, we note that even if Reno Park's water bank policy governed the transaction between UIN and Cold Springs, Cold Springs could not meet the provisions established by that policy for the return of water rights. Pursuant to its water bank policy, Reno Park would only reconvey water rights if it determined that the water reservation or budget was no longer appropriate because of a change of land use, a change in the master plan, or the parcel was removed from Reno Park's service territory. None of those factors are present in this case. Therefore, even if the water bank policy applied to UIN as argued, Cold Springs was not entitled to reconveyance under the policy.

Further, the parol evidence rule prohibits the district court's consideration of evidence that varies or contradicts a written agreement.⁶ Parol evidence will not be considered where the parties have entered into a clear and unambiguous agreement,⁷ because prior negotiations and agreements are deemed to be merged into the written agreement.⁸ In this case, Cold Springs drafted and signed a clear and unambiguous deed that transferred water rights to UIN. Any prior agreements or negotiations between Cold Springs, Reno Park, and UIN were inadmissible under the parol evidence rule because those agreements merged into the clear, unambiguous deed.⁹

Nevertheless, parol evidence may be admitted to contradict the deed where the proponent of such evidence can prove independent facts constituting fraud or mistake.¹⁰ Cold Springs does not allege fraud or mistake in this case and presented no independent facts below which would substantiate a claim of fraud. Accordingly, we hold that the district court properly refused to consider parol evidence that contradicted the clear and unambiguous deed. Further, the district court did not err in

⁶Daly v. Del E. Webb Corp., 96 Nev. 359, 361, 609 P.2d 319, 320 (1980).

⁷Crow-Spieker #23 v. Robinson, 97 Nev. 302, 305, 629 P.2d 1198, 1199 (1981).

⁸Tallman v. First Nat. Bank, 66 Nev. 248, 257, 208 P.2d 302, 306-07 (1949).

⁹Crow-Spieker #23, 97 Nev. at 305, 629 P.2d at 1199.

¹⁰Tallman, 66 Nev. at 258, 208 P.2d at 307.

granting summary judgment to UIN because no genuine issue of material fact remains as to the ownership of the water rights.

Cold Springs' proper remedy was to seek re-conveyance through the Public Utilities Commission

NRS 704.668(1) states that a public utility that serves 3,000 customers or less may not transfer any of its real property that is "necessary in the present or future performance" of water service contracts without the approval of the Public Utilities Commission (PUC). Water rights are considered real property.¹¹ Accordingly, UIN could not validly transfer or re-convey water rights to Cold Springs without the PUC's approval.¹² Furthermore, a plaintiff must generally exhaust administrative remedies before it can file a claim in district court.¹³ NRS 704.668 prevented UIN from transferring water rights to Cold Springs without prior approval from the PUC. Thus, Cold Springs should have filed a claim with the PUC to seek approval for the transfer; a transfer of water rights without such approval would have been void in any event.¹⁴

No genuine issue of material fact remains as to breach of the contract

Cold Springs argues that summary judgment was improper because resolution of the breach of contract issue necessarily requires consideration of Cold Springs' ownership interest in the water rights. We disagree.

¹¹17-05 Op. Att'y Gen. 9 (1917).

¹²NRS 704.668(2).

¹³First Am. Title Co. v. State of Nevada, 91 Nev. 804, 806, 543 P.2d 1344, 1345 (1975).


¹⁴NRS 704.668(2).


The Annexation Agreement states that Cold Springs agreed not to acquire water from any other source within UIN's service territory. Cold Springs concedes that it pumped water from another source within UIN's service territory for dust abatement. Under these facts, we conclude that the district court properly granted summary judgment to UIN. Even viewed in the light most favorable to Cold Springs,¹⁵ the undisputed evidence shows that Cold Springs pumped water from an outside source. Thus, summary judgment was appropriate because no genuine issue of material fact remains as to Cold Springs' breach of the Annexation Agreement.¹⁶

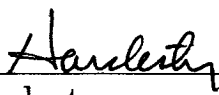
CONCLUSION

We conclude that the district court properly granted summary judgment for UIN. No genuine issues of material fact exist as to the ownership of the water rights, and parol evidence was inadmissible below to contradict the unambiguous, unconditional deed. Further, no genuine issue of material fact exists as to Cold Springs' breach of the Annexation Agreement. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

¹⁵Hidden Wells Ranch, 83 Nev. at 145, 425 P.2d at 601.

¹⁶Margrave, 110 Nev. at 827, 878 P.2d at 293.

cc: Hon. Steven R. Kosach, District Judge
Mark H. Gunderson, Ltd.
Lionel Sawyer & Collins/Reno
Washoe District Court Clerk