

IN THE SUPREME COURT OF THE STATE OF NEVADA

W. KENT MCCLELLAND,
INDIVIDUALLY,
Appellant,
vs.
STOHUD LAND I, L.L.C., A
DELAWARE LIMITED LIABILITY
COMPANY,
Respondent.

No. 41718

FILED

JUL 11 2005

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment in an action for declaratory relief concerning rights under a real estate contract. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

FACTS AND PROCEDURAL HISTORY

Appellant W. Kent McClelland and the Howard Hughes Corporation (HHC) entered into an agreement (McClelland agreement) under which McClelland purchased land situated in the Hughes Cheyenne Center. The agreement required McClelland to commence construction of a distribution facility within two years, and complete construction within three years. The agreement granted HHC the right to repurchase the undeveloped property if McClelland failed to meet these deadlines. The agreement also contained a statement of general purposes indicating HHC's intention to limit development intensity within the commercial center.

After McClelland missed the commencement deadline, but before he missed the completion deadline, HHC sold and assigned all of its rights in the commercial center contracts to respondent Stohud Land. Apparently, HHC and Stohud inadvertently omitted the McClelland agreement from the assignment. Approximately one month before the three-year completion deadline, Stohud sent a letter to McClelland indicating its intention to exercise its assigned right of repurchase because it appeared unlikely that McClelland could meet the completion deadline. A few days before the completion deadline, HHC and Stohud executed an assignment of rights in the McClelland agreement, made effective as of the date of the assignment of rights in the other commercial center contracts. McClelland failed to complete construction by the required date, and Stohud filed a complaint for declaratory relief¹ against McClelland to enforce its assigned right to repurchase the undeveloped property.

Approximately two months after Stohud filed its complaint, Stohud moved for summary judgment. The district court denied the motion and granted McClelland's NRCP 56(f) countermotion requesting additional time to conduct discovery. During the ensuing discovery period, the parties deposed HHC representatives, who had allegedly assured McClelland that the commercial center would be developed in accordance with a master plan that allowed only large-scale businesses to occupy the center. Approximately thirteen months later, the district court granted Stohud's renewed motion for summary judgment. In this, the district

¹See NRS 30.040.

court denied McClelland's second NRCP 56(f) counter-motion to conduct additional discovery.

In granting summary judgment, the district court concluded that the terms of the McClelland agreement were unambiguous, pursuant to which Stohud possessed the right to repurchase the undeveloped property because McClelland missed both construction deadlines. McClelland appeals.

DISCUSSION

This court reviews orders granting summary judgment de novo.² "To successfully oppose a motion for summary judgment, the non-moving party must show specific facts, rather than general allegations and conclusions, presenting a genuine issue of material fact for trial."³ A genuine issue of material fact exists when a rational trier of fact could return a verdict for the non-moving party.⁴ This court construes the pleadings and proof in the light most favorable to the non-moving party, and accepts all evidence and reasonable inferences from such evidence as true.⁵

²Day v. Zubel, 112 Nev. 972, 977, 922 P.2d 536, 539 (1996).

³LaMantia v. Redisi, 118 Nev. 27, 29, 38 P.3d 877, 879 (2002).

⁴Id.

⁵Id.

On appeal, McClelland asserts that material issues of fact exist regarding whether HHC waived or abandoned its rights under the McClelland agreement, or is estopped from enforcing them due to (1) HHC's disregard of a master development plan by selling commercial center property to a real estate developer that would further subdivide the property in contravention of the plan, and (2) the initial exclusion of the McClelland agreement from HHC's assignment to Stohud of rights in the other commercial center contracts. From this, McClelland asserts that HHC's actions rendered the assignment of rights in the McClelland agreement invalid. McClelland also argues that the district court should have permitted him to conduct additional discovery under NRCP 56(f).

We conclude that the district court committed no error in granting summary judgment. First, the district court afforded McClelland sufficient time to conduct discovery, as the complaint had been on file for approximately fifteen months at the time of the renewed summary judgment motion.⁶ Second, McClelland failed to develop an issue of fact in connection with his waiver, estoppel and abandonment assertions regarding a master development plan. Even presuming that HHC representatives assured him that they would abide by this plan, the agreement specifies no consequences in the event of a breach of that assurance by HHC. However, the agreement clearly specifies that HHC

⁶Compare Halimi v. Blacketor, 105 Nev. 105, 106, 770 P.2d 531, 531-32 (1989) (stating that the district court abused its discretion in not granting a continuance when the complaint had been on file for less than one year), and Aviation Ventures v. Joan Morris, Inc., 121 Nev. ___, ___, 110 P.3d 59, 63 (2005) (concluding that it was an abuse of discretion to grant summary judgment when the respondent had filed the complaint less than eight months earlier).

had a right to repurchase the property if McClelland missed a construction deadline. Further, the agreement contains the following non-waiver language in section 4.1 concerning delays in enforcing the restrictions:

No waiver by [HHC] of a breach of any of the Restrictions by [McClelland] and no delay or failure to enforce any of the Restrictions shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other of the Restrictions.

We conclude that McClelland's waiver, estoppel and abandonment arguments turn on contract interpretation, and were therefore suitable for summary judgment.


We similarly reject McClelland's argument that HHC's assignment of rights in his agreement to Stohud was invalid,⁷ or demonstrated waiver, estoppel, and abandonment.⁸ McClelland failed to develop an issue of fact sufficient to indicate that HHC and Stohud had no intention of including his contract in the original assignment encompassing the other commercial center contracts. Rather, the record indicates that the initial exclusion of his contract was inadvertent, and


⁷McClelland asserts that Stohud gave no consideration for the assignment of HHC's rights under the agreement with McClelland. We reject this argument because the assignment document specifically states that "for Ten Dollars (\$10) and other good and valuable consideration in hand paid," HHC assigned its rights in this agreement.

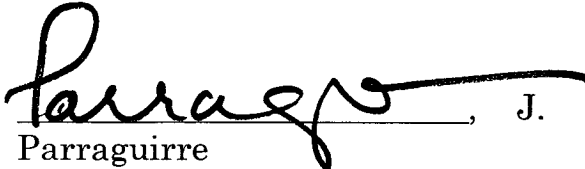
⁸McClelland asserts that HHC warranted to Stohud that none of the assigned contracts were in breach or default, and that this warranty evidences an abandonment of HHC's rights in the McClelland agreement. We conclude that this provision alone is insufficient to establish that HHC abandoned its rights under this agreement.

that Stohud and HHC ultimately effected the assignment of its rights per the contract.⁹ Therefore, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. Kathy A. Hardcastle, District Judge
Foley & Foley
O'Reilly & Ferrario, LLC
Clark County Clerk

⁹We have considered McClelland's remaining assignments of error and conclude that they lack merit.