IN THE SUPREME COURT OF THE STATE OF NEVADA

COLDWELL BANKER/VILLAGE REALITY, INC., A NEVADA CORPORATION; JOYCE EMORY; AND ROMNEY KERNEK,
Appellants,
vs.
MARK GOLDSBOROUGH; MASON-MCDUFFIE REAL ESTATE, INC., D/B/A PRUDENTIAL NEVADA REALITY; AND JACKLYN FLOWERS,
Respondents.

No. 42530

FILED

FEB 16 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a real estate action. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Mark Goldsborough entered into a contract to sell his home to Romney Kernek. In the transaction, Jacklyn Flowers and Mason-McDuffie Real Estate, Inc., d.b.a. Prudential Nevada Realty, (Prudential) represented Goldsborough, while Joyce Emory, who is employed by Village Realty Inc., d.b.a. Coldwell Banker/Village Realty, Inc. (Coldwell), represented Kernek. The contract was contingent on Kernek selling his house in San Jose, California, and contained a disputed seventy-two hour release clause. Goldsborough triggered the release clause on April 8, 2002. Kernek waived the contingency on April 11, 2002, but did not supply proof of financing until April 15, 2002. Goldsborough later sold the home to a third party, and Kernek sued claiming Goldsborough breached the contract. The parties are familiar with the remaining facts and we do not recite them further, except as needed.

The district court granted summary judgment to Flowers and Prudential, finding that Kernek had not complied with the seventy-two hour release clause and thereby releasing Goldsborough from the contract. We affirm the judgment of the district court and conclude that the contract contained a seventy-two hour release clause, the clause required proof of financing within seventy-two hours, and Kernek's prequalification letter did not satisfy the clause. Because Goldsborough was released from the contract, there is no underlying contract to support a claim for a commission or a claim of interference with contractual relations.

Summary judgment shall be granted where the evidence shows that "there is no genuine issue as to any material fact."[1] We construe all facts and reasonable inferences in favor of the nonmoving party.[2] We review orders granting summary judgment de novo.[3]

The parties do not dispute that a contract existed between Goldsborough and Kernek. They do, however, dispute which release clause was contained in the contract. This court also reviews a district court's interpretation of a contract de novo.[4] When a contract is clear, its terms must be given their plain meaning.[5] However, when a contract is

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[1]NRCP 56(c).

[2]Wiltsie v. Baby Grand Corp., 105 Nev. 291, 292, 774 P.2d 432, 433 (1989).

[3]Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992).

[4]NOLM, LLC v. County of Clark, 120 Nev. 736, 739, 100 P.3d 658, 661 (2004).

[5]Ringle v. Bruton, 120 Nev. 82, 93, 86 P.3d 1032, 1039 (2004).

ambiguous, "extrinsic evidence may be admitted to determine the parties' intent."[6] Summary judgment must be reversed if there is conflicting evidence[7] or issues of reasonableness exist.[8]

Paragraph 23-B was checked in the original contract, while both Kernek[9] and Goldsborough indicated that Paragraph 23-C was contemplated in the clarification of offer and counteroffer, which was signed by both Kernek and Goldsborough on March 23, 2002. Because the clarification of offer refers to the Paragraph 23-C release clause and it was the first document to be signed by both Kernek and Goldsborough, we conclude that Kernek and Goldsborough intended the Paragraph 23-C release clause to replace the Paragraph 23-B release clause.

Paragraph 23-C allowed Goldsborough to be released from the contract if certain conditions were met. First, Goldsborough had to give written notice to Kernek of Goldsborough's acceptance of another offer from a third party. Goldsborough delivered written notice of another offer to Kernek on April 8, 2002. Kernek then had seventy-two hours to waive the contingency or the contract would terminate. In addition, "[u]pon waiver of the contingency, [Kernek was to] provide evidence that funds needed to close escrow will be available and [evidence that his] ability to obtain financing is not contingent upon the sale and/or close of any

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[6]Id. (citations omitted).

[7]Mullis v. Nevada National Bank, 98 Nev. 510, 513, 654 P.2d 533, 536 (1982).

[8]Selsnick v. Horton, 96 Nev. 944, 946, 620 P.2d 1256, 1258 (1980).

[9]Kernek testified in his deposition that he understood the "standard 72 Release Clause" to refer to Paragraph 23-C of the original contract.

property." Kernek waived the contingency on April 11, 2002, however, he did not give Goldsborough proof of financing until April 15, 2002,[10] after the seventy-two hour deadline. Consequently, Goldsborough was released from the contract, unless the contract provided Kernek with more than seventy-two hours to provide proof of financing.

The time frame for the performance is determined by the nature and context of the contract.[11] In the present case, the need for immediate performance was indicated by the language "[w]ithin 72 hours." The purpose of the paragraph was to assure Goldsborough that Kernek could immediately perform. Otherwise, Goldsborough would accept the third-party offer. Goldsborough and the third party should not be required to wait an undetermined amount of time, even if reasonable, for Kernek to give the appropriate assurances. We conclude that Kernek was required to give Goldsborough proof of financing within the seventy-two hour time frame.

Kernek's letter of April 15, 2002, was not received by Goldsborough until after the seventy-two hour time frame had expired, and Kernek's letter of April 5, 2002, did not provide "evidence that funds

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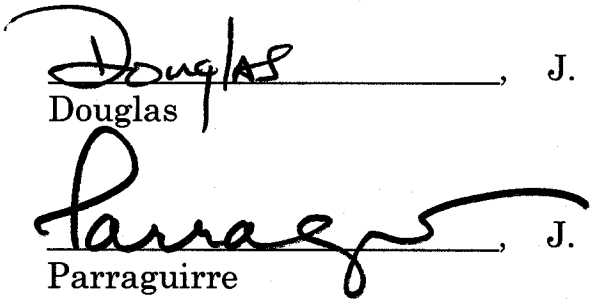
[10]Kernek's argument that the weekend should not be considered in the time frame is without merit and moot. First, the release clause specified "72 hours." Elsewhere in the contract it defined a difference between "days" and "business days," with business days excluding weekends and holidays. Therefore, the parties contemplated the exclusion of weekends in parts of the contract but did not exclude weekends in the release clause. Second, the weekend itself is beyond the time frame of seventy-two hours. It is also beyond the additional twenty-four hours allegedly allowed by Goldsborough.

[11]Denison v. Ladd Et Al., 54 Nev. 186, 193, 10 P.2d 637, 639-40 (1932).

needed to close escrow will be available" because it was "not a loan commitment." Therefore, Kernek did not satisfy the release clause and Goldsborough was released from the contract.

Without an underlying contract, Emory and Coldwell's arguments for a commission and intentional interference with contractual relations must fail. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Douglas

_____, J.
Parraguirre

cc: Hon. Brent T. Adams, District Judge
Jack I. McAuliffe, Chtd.
Walsh, Baker & Rosevear, P.C.
Rawlings Olson Cannon Gormley & Desruisseaux
Washoe District Court Clerk

BECKER, J., dissenting:

Paragraph 23-C of the contract provided that waiver of the contingency must occur within seventy-two hours of notice of a third-party offer. It did not, however, require that proof of funding be made within that same period of time. The phrase "upon waiver of contingency" is ambiguous and silent as to the time that proof of funding must be submitted. Absent evidence indicating the intent of the parties, the clause should be interpreted to provide proof within a reasonable period of time, and in this case, compliance was provided within seventy-two hours of the election to waive the contingency. I would reverse because the contract is not clear and unambiguous and, therefore, a reasonable period of time is implied by law.

Becker, J.
Becker