

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALISA SZAJNER,  
Appellant,  
vs.  
WELLS FARGO HOME MORTGAGE,  
INC.,  
Respondent.

No. 42622

**FILED**

APR 20 2006

*[Signature]*  
JANEY L. BLOOM  
CLERK OF SUPREME COURT  
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition. The district court did not err in granting partial summary judgment<sup>1</sup> as to Alisa Szajner's contract, negligence, and misrepresentation claims, and the district court did not err in dismissing Szajner's remaining claims during trial.<sup>2</sup>

Szajner was seeking \$212,000 in financing to facilitate her divorce settlement. Wells Fargo's loan officer put together a financing package, which included a home refinance mortgage loan, a home equity loan, and a line of credit. Wells Fargo subsequently delivered a credit approval letter to Szajner indicating that Szajner was approved for

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<sup>1</sup>See NRCP 56.

<sup>2</sup>See NRCP 50(a); NRCP 41(b).

\$212,000 in financing.<sup>3</sup> Thereafter, Szajner and Wells Fargo entered into two separate contracts for a home refinance and a home equity loan. After executing these agreements, Szajner applied for the line of credit, and was denied. Szajner rescinded the refinance and home equity loan agreements after learning that she was not approved for the line of credit that would enable her to obtain the entire \$212,000 in financing. Szajner subsequently obtained financing from Lake Tahoe American Mortgage Company.

On appeal, Szajner contends that the credit approval letter created a valid, enforceable contract wherein Wells Fargo was obligated to provide \$212,000 in financing for her divorce settlement, and that the district court erred in dismissing her claims.

The question of whether a contract exists is one of fact, requiring this court to defer to the district court's findings unless they are clearly erroneous or not supported by substantial evidence.<sup>4</sup> "The essential elements of a contract include offer, acceptance, and bargained for consideration."<sup>5</sup> An offer must be definite and certain, and must be made under circumstances evidencing the express or implied intent of the offeror that its acceptance shall constitute a binding contract. The credit approval letter stated that it was not a loan commitment, and included language indicating that credit approval was subject to withdrawal or

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<sup>3</sup>Szajner argues that she also relied on the representations of Wells Fargo's loan officer. This reliance was not sufficient to create contractual obligations.

<sup>4</sup>May v. Anderson, 121 Nev. \_\_\_, \_\_\_, 119 P.3d 1254, 1257 (2005).

<sup>5</sup>D'Angelo v. Gardner, 107 Nev. 704, 744, 819 P.2d 206, 233 (1991).

modification. The credit approval letter was not a contract.<sup>6</sup> Therefore, we hold that Wells Fargo did not breach a contract, and it was not obligated to provide \$212,000 in financing. The issues of breach of the covenant of good faith and negligence rely primarily on Szajner's breach of contract claim; we hold that these claims are without merit. While not necessarily dependent upon the contract claims, we hold that Szajner's remaining claims are also without merit. Therefore, we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.  
Douglas

Becker, J.  
Becker

Parraguirre, J.  
Parraguirre

cc: Hon. Brent T. Adams, District Judge  
Mirch & Mirch  
Scarpello & Huss, Ltd.  
Washoe District Court Clerk

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<sup>6</sup>Szajner's arguments under the doctrines of partial performance and estoppel are meritless.