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Summary

The Court clarified two issues: (1) *Sandy Valley Associates v. Sky Ranch Estates Owners Association*’s 2 effect on the law regarding the recovery of attorney fees as special damages; and (2) the extent to which *Horgan* retreated from *Sandy Valley*’s discussion about the grounds for recovering attorney fees as special damages.

Disposition

The decision in *Horgan v. Felton* 4 should not be read to mean that a party in any matter that relates to real property must prevail on a slander of title claim in order to recover attorney fees as special damages. Rather, *Horgan* only applies in a special type of civil action that is brought by a party: an action to clarify or remove a cloud on title. 5

Factual and Procedural History

The Plaintiff purchased a home from developer Christopher Homes Ridges, LLC (“CHR”) pursuant to a contract (“the Agreement”) wherein CHR agreed to convey good marketable title to the Plaintiff at the close of escrow.

CHR hired Christopher Homes, LLC (“CH”) as a general contractor who subsequently hired K&D Construction (K&D) as a subcontractor for various services. CHR failed to timely or fully pay K&D and as a result K&D recorded a lien on various properties, one of which was the Plaintiff’s.

K&D filed a civil suit against CHR, CH and the Plaintiff to recover on the liens through foreclosure. In answer, the Plaintiff filed a cross-claim against CHR for a breach of contract claim. Under this claim, the Plaintiff tried to recover attorney fees and costs that she allegedly incurred in defending herself against K&D’s action.

The district court relied on *Horgan* and found that, as a matter of law, the Plaintiff could not recover attorney fees as special damages because she did not prove slander of title. As a result, the Plaintiff filed an appeal challenging the district court’s determinations regarding the recovery of attorney fees as special damages.

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1 By Allison Vitangeli
2 117 Nev. 948, 35 P.3d 964 (2001).
4 Id. at 123 Nev. 583–86, 170 P.3d 986–88.
5 Id.
Discussion

The Plaintiff argued that the district court erred in its reading of Horgan in favor of CHR arguing that it does not bar a party from recovering attorney fees as special damages when the civil action incidentally pertains to title to real property. Instead, the Plaintiff asserted Horgan only prohibits a grant of attorney fees that stem from an action in which a claimant tries to remove a cloud on title but fails to prove slander of title. Next, the plaintiff asserted the attorney’s fees as special damages sought did not arise from an action to remove a cloud on title but rather from CHR's breach of contract. Liu then argues that Sandy Valley permits the recovery of attorney fees as special damages that arise from a breach of contract and thus her attorney fees claim was not barred as a matter of law. The Court reviewed the legal issues presented by these arguments de novo.6

Horgan's partial abrogation of Sandy Valley

The Court first pointed out that attorney fees are generally not recoverable “absent authority under a statute, rule, or contract.”7 However, “as an exception to the general rule,” attorney fees may be awarded “as special damages in limited circumstances.”8 Next the court summarized the three significant statements that are found in Sandy Valley which concern the grounds for recovering attorney fees as special damages.9 First, attorney fees may be recovered as special damages if they are pleaded according to NRCP 9(g) and are a “natural and proximate consequence of the injurious conduct.”10 Second, the court stated that attorney fees are recoverable as special damages when they arise from a third-party legal dispute as a result of a breach of contract.11 Third, the Sandy Valley court stated that in actions concerning a cloud on title to real property “[a]ttorney fees may . . . be awarded as damages in those cases in which a party incurred the fees . . . in clarifying or removing a cloud upon the title to property.”12

Next, the Court went on to discuss how the Horgan court revisited Sandy Valley and retreated from the third statement above that concerns an award of attorney fees in cloud-on-title actions.13 There, the court stated “in cases concerning title to real property, attorney fees are only allowable as special damages in slander of title actions, not merely when a cloud on the title to real property exists.”14 The Court did not read this statement to the exclusion of the rest of the opinion.15 Rather, the Court analyzed the remainder of the Horgan opinion, and found that it is clear the case did not hold that a party in any matter that relates to title to real property must prevail on a slander of title claim in order to recover attorney fees as special damages.16 Rather,

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6 See Thomas v. City of N. Las Vegas, 122 Nev. 82, 90, 127 P.3d 1057, 1063 (2006) (providing that a denial of attorney fees is generally reviewed for abuse of discretion but that de novo review applies when an attorney fees matter concerns questions of law).
8 123 Nev. at 583, 170 P.3d at 986.
9 117 Nev. at 956–57, 35 P.3d at 969–70.
10 Id.
11 Id. at 957, 35 P.3d at 970.
12 Id.
13 123 Nev. at 579, 588, 170 P.3d at 983, 988.
14 123 Nev. at 579, 583, 170 P.3d at 983, 983.
that the *Horgan* court specifically referred to actions meant only to clarify or remove a cloud-on-title.\(^{17}\)

In such circumstances, the Court concluded that a “plaintiff may recover as damages the expense of legal proceedings necessary to remove a cloud on the plaintiff’s title” when he or she prevails on a slander of title claim.\(^{18}\) The *Horgan* court came to this conclusion by primarily relying upon authorities that permit the award of attorney fees as special damages to parties who brought claims to clarify or remove a cloud on title, accrued attorney fees in bringing those claims, and prevailed on a slander of title claim.\(^{19}\) Thus, the *Horgan* court’s holding applies to actions where a plaintiff seeks recovery of attorney fees that were accrued from pursuing an action to clarify or remove a cloud-on-title. Moreover, the *Horgan* court was not concluding that a slander of title claim is a prerequisite to recovering attorney fees as special damages in *all* civil actions that relate to title to real property.\(^{20}\) Rather, it is only a prerequisite to a party’s recovery of attorney fees that were sustained in asserting claims to clarify or remove a cloud-on-title, such as declaratory or equitable relief claims.\(^{21}\)

In the present case, the Court pointed out that the Plaintiff incurred attorney fees by defending against K&D’s civil action that was a result of CHR’s breach of the Agreement not from a claim seeking declaratory or equitable relief. Therefore, the Court agreed with the Plaintiff’s argument in that the attorney fees claim asserted by the Plaintiff was not in the purview of *Horgan*’s requirement that a party who brought an action to clarify or remove a cloud-on-title must prove slander of title in order to recover the attorney fees that he or she incurred in the action.\(^{22}\)

*The portion of Sandy Valley that Horgan did not overturn*

Finally, in light of the above discussion, the Court held that it maintained that “a party to a contract may recover from a breaching party the attorney fees that arise from the breach that caused the former party to accrue attorney fees in defending himself or herself against a third party’s legal action.” Specifically, the Court found that the *Horgan* decision did not retreat from *Sandy Valley*’s conclusion on the first and second statements referenced above.

**Conclusion**

In the present case, the Court held that *Sandy Valley* permits, and *Horgan* does not bar, Liu’s claim to recover attorney fees as special damages that were purportedly sustained in defending herself against K&D’s suit, which was allegedly caused by CHR’s breach of the

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\(^{17}\) *Id.*

\(^{18}\) *Id.*

\(^{19}\) *See id.* at 584–86, 170 P.3d at 987–88 (citing: *Wright v. Rogers*, 342 P.2d 447, 449, 457 (Cal. Ct. App. 1959) (providing that in an action to remove a cloud on title, the plaintiff may recover attorney fees as special damages if he or she prevails on a slander of title claim)).

\(^{20}\) *See* 123 Nev. at 579, 583–86, 170 P.3d at 983, 986–88.

\(^{21}\) *Id.*

\(^{22}\) *Id.*
Agreement. Accordingly, the Court reversed the district court’s findings of fact, conclusions of law and judgment on Liu’s claim and remanded the matter for further proceedings.23

23 The Court also instructed the district court to make a determination on whether the evidence before it proved that CHR’s breach of the Agreement caused Liu to accumulate the attorney fees in defending her interest against K&D’s suit. This was a question of fact that was inappropriate to determine for the first time on appeal.