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### State of Nevada Dep't of Trans. v. Eighth Judicial District Court (Nassiri), 133 Nev. Adv. Op. 70 (September 27, 2017)

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## CONTRACTS: BREACH, GOOD FAITH AND FAIR DEALING

### **Summary**

The Court considered a writ of mandamus challenging district court orders denying summary judgment on a landowner's contract claims following a settlement in a condemnation action. The Court held the district court improperly ruled there were no undisputed facts when it denied the Nevada Department of Transportation's motion for summary judgment on a landowner's contract claims.

### **Background**

In 1999, the State of Nevada Department of Transportation (NDOT) began plans for the Blue Diamond Project to connect the Blue Diamond Interchange with the I-15 highway. To receive approval and federal funding from the Federal Highway Administration (FHWA), NDOT filed an "Environmental Assessment" with the FHWA which stated the Project could include a flyover in the future. The Federal Highway Administration approved the project and federal funding in 2004. NDOT then filed a condemnation action against landowner Fred Nassiri to secure 4.21 acres of adjacent land. In a settlement agreement, Nassiri exchanged the 4.21 acres for an adjoining 24.42 acres (Exchange Property) from NDOT for \$23 million dollars. However, NDOT allegedly never disclosed that the Blue Diamond Interchange could contain a flyover. In 2010, NDOT decided to build a flyover. Nassiri subsequently filed an administrative claim with the State Board of Examiners, claiming the flyover obstructed his property's visibility. The Board rejected his claim.

In 2012, Nassiri brought an action against NDOT for breach of the settlement agreement and breach of the agreement's implied covenant of good faith and fair dealing. Nassiri also fought equitable rescission of the settlement agreement due to unilateral mistake. Nassiri alleged NDOT failed to disclose plans for the flyover, and in turn, its construction interfered with the visibility of the newly acquired adjacent acres.

As a result, NDOT filed three unsuccessful motions for summary judgment against Nassiri's claims. In its first motion, NDOT argued there was no breach of contract or acts against good faith and fair dealing because the terms of the settlement agreement did not prevent them from ever building a flyover. In the second motion, NDOT argued that Nassiri's unilateral mistake did not allow for a rescission remedy, and was otherwise barred by the statute of limitations. Its third motion was filed to rebut a bench trial's findings that Nassiri's claims were not barred by the statute of limitations. NDOT petitioned the Court for a writ of mandamus to determine if the district court's denial was inappropriate.

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<sup>1</sup> By Natice Locke

## **Discussion**

### ***NDOT's petition merits our consideration***

The Court utilized its discretion to hear the petition, despite normally declining writ petitions challenging summary judgement orders, because it raised an important issue of law.<sup>2</sup>

### ***The district court erred as a matter of law by denying summary judgment on Nassiri's claims***

#### ***Standard of review***

The Court reviewed the writ de novo.<sup>3</sup> The Court also maintained that summary judgment is appropriate when the pleadings and other evidence demonstrate that no genuine interest of material fact remains, even when it pertains to a writ petition.<sup>4</sup>

#### ***NDOT did not breach the settlement agreement by building the flyover***

The Court held that NDOT was not contractually obligated to refrain from building a flyover.<sup>5</sup> While Nassiri argued that NDOT did not reserve its right to build a flyover and visibility was a component of the agreement, the Court ruled there was nothing in the agreement that expressly prohibited the flyover.<sup>6</sup> The Court rejected Nassiri's negative easement argument because Nassiri did not have a previous express covenant for the property's visibility.<sup>7</sup> Therefore NDOT was entitled to summary judgment on the breach of contract claim.<sup>8</sup>

#### ***NDOT did not breach the implied covenant of good faith and fair dealing***

Nassiri alleged that NDOT breached the implied covenant of good faith and fair dealing by (1) not constructing the Blue Diamond Interchanged without the flyover, as originally drafted, and (2) destroying the visibility of the Exchange Property who's value was appraised on its visibility.<sup>9</sup> The Court rejected Nassiri's argument and ruled that NDOT did not violate the "spirit" of the agreement because (1) the settlement agreement did not restrict NDOT's construction of a flyover; (2) the plans, which included the possibility of a future flyover, were publicly available; and (3) the settlement agreement specifically stated the appraisal did not reflect the market value, so the lack of visibility did not affect appraisal or sale values. Therefore, NDOT was entitled to summary judgment for the breach of good faith and fair dealing.<sup>10</sup>

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<sup>2</sup> NDOT v. Eighth Judicial Dist. Court (Nassiri), 133 Nev., Adv. Op. 70,7 (2017).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 8—9.

<sup>6</sup> *Id.* at 9.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 10.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

*Nassiri's unilateral mistake claim is barred by the statute of limitations*

The Court held that Nassiri's unilateral mistake claim was barred by the statute of limitations because he did not sue until four years after the settlement agreement.<sup>11</sup>

**Conclusion**

The Court was unwilling to enforce the landowner's contract claims because they included terms that were not expressly laid out in the settlement agreement. The Court granted NDOT's petition and issued a writ of mandamus vacating the district court's denial of summary judgment and instructed the district court to grant summary judgment.

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<sup>11</sup> *Id.*