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Summary of Khan v. Bakhsh, 129 Nev. Adv. Op. 57

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Khan v. Bakhsh, 129 Nev. Adv. Op. 57 (August 1, 2013)¹

CONTRACT LAW–STATUTE OF FRAUDS
PURCHASE OF BUSINESS & REAL PROPERTY-PAROL EVIDENCE RULE

Summary

Following a breach of contract dispute, the Khans appealed the district court's order excluding the use of extrinsic evidence under the statute of frauds that was presented to prove the existence of a written agreement that had been lost or destroyed.

Disposition/Outcome

The statute of frauds does not apply to a writing that is subsequently lost or destroyed, and oral evidence is admissible to prove the existence and terms of that lost or destroyed writing. The Court reversed and remanded the lower court's decision for further proceedings.

Factual and Procedural History

Bakhsh agreed to sell a restaurant to the Khans. The Khans, however, never made any payments, and Bakhsh sued. At the bench trial, the Khans presented evidence that the final terms of their agreement were in a subsequent instrument that had been either lost or stolen. Bakhsh claims the subsequent instrument never existed. The district court barred the Khans' extrinsic and parol evidence of the subsequent agreement and awarded Bakhsh liquidated damages.

Discussion

Statute of Frauds

The statute of frauds provides that the every contract for the sale of land is void unless the contract is in writing. Here, the Khans alleged that their subsequent agreement was in writing. Thus, the statute of frauds is satisfied, and the evidence is admissible. The fact that the agreement was later lost or destroyed does not change its written status.

Parole Evidence

The parol evidence rule generally bars extrinsic evidence regarding prior or contemporaneous agreements that are contrary to the terms of an integrated contract. Such evidence is admissible to prove fraud in the inducement, a subsequent alteration, or the existence of a lost or destroyed agreement. Here, the Khans should not have been barred from using parol evidence to show the agreement was induced by fraud or modified by a subsequent agreement.

¹ By Sara Stephan.

Liquidated Damages

The provision regarding liquidated damages acted as a penalty and was therefore unenforceable. Since actual damages were ascertainable, the district court erred by awarding liquidated damages.

Conclusion

Reversing the district court's order barring parol and extrinsic evidence on behalf of the Khan's to prove a fourth agreement to purchase was lost or destroyed, and parol evidence to show the third agreement was induced by fraud or modified by a subsequent agreement, the Court remands the case for the erroneously excluded evidence to be included and weighed accordingly, as well as vacating an order for liquidated damages awarded on behalf of the respondent.