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Summary of Galardi v. Naples Polaris, LLC, 129 Nev. Adv. Op. 33

A. J. Hames
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CONTRACTS – REAL ESTATE OPTIONS, TRADE USAGE, AND INDUSTRY CUSTOM

Summary

This dispute arose out of a written option contract. Under the contract, respondent Naples Polaris (Naples) had the right to purchase Las Vegas real property from appellants Jack Galardi and Birdie, LLC (together, Galardi), for \$8 million “cash.” The property was subject to a deed of trust securing approximately \$1.3 million in debt. The issue was whether the option contract required Galardi to deliver clear title, or whether Naples would take title subject to the \$1.3 million debt. Trade usage and industry custom were used to interpret the contract, even though it was unambiguous.

Disposition/Outcome

Because the contract did not specifically require the optionee, Naples, to take property subject to the existing indebtedness, the Court affirmed the ruling of the court below and placed responsibility for the \$1.3 million on Galardi.

Facts and Procedural History

Naples acquired its option rights by assignment from Galardi’s lessee, French Quarter, a nonparty. The deed of trust securing the \$1.3 million debt predated the option. French Quarter then filed for bankruptcy protection, and the bankruptcy trustee lined up a fourth party to acquire both the property and Naples’ newly acquired option. The price was enough to pay off the \$1.3 million encumbrance, give Galardi an \$8 million option price, and generate surplus funds for Naples and French Quarter’s creditors.

Naples and Galardi were unable to agree on whether the \$1.3 million debt should come out of Naples’ or Galardi’s share of the sale proceeds. The option contract was in writing and included an integration clause. The contract was silent as to preexisting encumbrances. It said simply, “Buyer [Naples] shall pay all costs of transfer and closing whereby Seller [Galardi] shall receive full purchase price.”

Both sides argued that the option contract was unambiguous and favored its position. Galardi argued that “costs of transfer and closing” encompassed preexisting indebtedness; Naples contended that “costs of transfer and closing” only referred to transaction costs, not encumbrances. Thus, according to Naples, if Galardi meant for Naples to take title subject to preexisting encumbrances, he needed to write the option contract to say so specifically.

At trial, Naples offered evidence of trade usage. Specifically, he showed that closing costs, as understood in the real estate industry, do not normally encompass preexisting indebtedness.

¹ By A.J. Hames

² *Anvui, LLC v. G.L. Dragon, LLC*, 163 P.3d 405, 407 (Nev. 2007).

Additionally, Naples presented evidence that whenever real property is transferred, it is always given free and clear of encumbrances, unless the agreement specifically states otherwise.

Galardi did not dispute the evidence, instead arguing that trade usage could only be considered to solve an ambiguity. Galardi also attempted to offer evidence that he understood the terms in a different way than was common in the industry. The district court disagreed with Galardi, deemed the contract unambiguous in light of trade usage, and granted summary judgment to Naples.

Discussion

Chief Justice Pickering wrote the opinion of the Court, with Justices Hardesty and Saitta concurring.

A contract is ambiguous if its terms may reasonably be interpreted in more than one way.² The Court noted that the former common-law rule required ambiguity before trade usage and industry custom could be applied. Modernly, however, courts consult trade usage and custom not only to determine the meaning of an ambiguous provision, but also to determine whether a contract provision is ambiguous in the first place. Accordingly, the Court concluded that ambiguity is *not* required before evidence of trade usage can be used to interpret contract terms.

Summary judgment may be entered when the adverse party fails to “set forth specific facts showing that there is a genuine issue for trial.”³ Here, Naples presented evidence of trade usage. If Galardi had presented admissible evidence to contradict and rebut this evidence, a genuine issue of material fact may have arisen and defeated summary judgment. However, Galardi failed to put forth such evidence, attempting instead to offer evidence that he understood the terms in a different way. This evidence not only failed to establish a genuine issue for trial, but it contradicted the option contract’s express terms. Evidence of trade usage does not open the door to a party’s subjective understanding of a contract’s terms when such understanding contradicts express terms.

Conclusion

The Court affirmed the district court’s ruling, holding that trade usage and industry custom are allowed in interpreting an option contract, even though the contract is unambiguous. For the option contract to require the optionee to take the property subject to existing indebtedness, it must so state. The Court held that responsibility for the \$1.3 million debt was properly placed on Galardi's side of the ledger.

² Anvui, LLC v. G.L. Dragon, LLC, 163 P.3d 405, 407 (Nev. 2007).

³ Nev. R. Civ. P. 56(e).