

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

4-4-2013

Summary of Holcomb Condo. HOA v. Stewart Venture, 129 Nev. Adv. Op. No. 18

Drew Wheaton
Nevada Law Journal

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>



Part of the **Contracts Commons**

Recommended Citation

Wheaton, Drew, "Summary of Holcomb Condo. HOA v. Stewart Venture, 129 Nev. Adv. Op. No. 18" (2013).
Nevada Supreme Court Summaries. 106.
<https://scholars.law.unlv.edu/nvscs/106>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

CONTRACTS — STATUTORY LIMITATIONS

Summary

The Court considered whether statutory limitation periods for constructional defects may be contractually modified by parties to residential unit purchase agreements. The Court examined if the district court’s dismissal of Holcomb Condominium Homeowners’ Association’s (HCHA) negligence-based claims was proper under NRS 116.4116. The Court also analyzed if a contractual reduction of the six-year limitations period of a warranty claim, as found within an arbitration agreement attached to and incorporated by a purchase contract, satisfied the “separate instrument” requirement of NRS 116.4116. Lastly, the Court looked at whether the district court erred in denying HCHA’s repeated requests to amend its complaint.

Disposition/Outcome

The Court concluded that statutory limitations periods may be reduced by contract provided there is no statute to the contrary, the reduced limitation is reasonable, and the limitation does not violate public policy.² The Court found that the district court improperly relied on NRS 116.4116 when dismissing HCHA’s negligence-based claims.³ Additionally, the Court determined that a contractual reduction of the limitations of a warranty claim, if located with an arbitration agreement that is attached to and incorporated by a purchase contract, does not satisfy the “separate instrument” requirement of NRS 116.4116.⁴ As a final point, the Court concluded that the district court’s denial of HCHA’s motion to amend was improper because the district court based its denial on the unenforceable contractual reduction provision. Therefore, the Court reversed and remanded the case to the district court.

Factual and Procedural History

Respondent Stewart Venture, LLC, in coordination with four additional respondents, developed and sold Holcomb Condominiums in 2002. In 2007, the homeowners association for Holcomb Condominiums, HCHA, served respondent with a notice of constructional defect claim. Two years later, HCHA filed a constructional defect complaint in the district court, alleging claims of negligence, negligence per se, negligent misrepresentation, and breach of express and implied warranties. Stewart Venture moved to dismiss HCHA’s complaint, stating that the complaint was time-barred by the contractual two-year limitations period located in arbitration agreements attached to the homeowners’ purchase contracts.

¹ By Drew Wheaton.

² *Holcomb Condo. HOA v. Stewart Venture*, 129 Nev. Adv. Op. No. 18 at 2 (Apr. 4, 2013).

³ *Id.* at 3.

⁴ *Id.* at 2-3.

Specifically, the first lines of the arbitration agreement stated that the agreement was part of the purchase contract. Furthermore, paragraph 19 of the purchase contract stated that the arbitration agreement was “attached” and “incorporated” into the purchase contract, and paragraph 25 required homeowner’s initials to confirm he had had received the arbitration agreement “incorporated herein and attached hereto.”⁵

The district court found that the arbitration agreements satisfied the “separate instrument” requirement of NRS 116.4116,⁶ and that the agreements were not unconscionable. Therefore, the district court dismissed HCHA’s complaint as time-barred by the two-year contractual limitations period. The district court also denied HCHA’s oral request to amend its complaint to add willful misconduct and fraudulent concealment causes of action because these actions would also be time-barred by the limitations period. Finally, the court denied HCHA’s motion for reconsideration for the same reason. HCHA appealed.

Discussion

Justice Hardesty delivered the unanimous opinion of the court.

The Court began by noting that contractual reduction of statutory limitations periods is an issue of first impression in Nevada.⁷ Citing numerous other jurisdictions and the underlying policy of freedom of contract, the Court held “that a party may contractually agree to a limitations period shorter than that provided by statute as long as there exists no statute to the contrary and the shortened period is reasonable, and subject to normal defenses including unconscionability and violation of public policy.”⁸

Moving to the issue of contractual reduction of statutory limitations periods, the Court pointed out that the district court relied on NRS 116.4116 when it dismissed HCHA’s multiple negligence-based claims. As NRS 116.4116 only applies to warranty claims and does not apply to claims of negligence, negligence per se, or negligent misrepresentation, the Court succinctly determined that the district court erred in concluding that the negligence-based claims were time barred.

Next, the Court turned to the issue of NRS 116.4116’s “separate instrument” requirement, which reads “with respect to a unit that may be occupied for residential use, an agreement to reduce the period of limitation must be evidenced by a separate instrument executed by the purchaser.”⁹ Noting that “separate instrument” lacks a statutory definition, the court examined the plain meaning of the term, citing Black’s Law Dictionary’s definition of

⁵ *Id.* at 5.

⁶ NEV. REV. STAT. § 116.4116 (2007) (“with respect to a unit that may be occupied for residential use, an agreement to reduce the period of limitation must be evidenced by a separate instrument executed by the purchaser”).

⁷ *Id.* at 7.

⁸ *Id.* at 7; *see generally* Rivero v. Rivero, 125 Nev. 410, 429, 216 P.3d 213, 226 (2009).

⁹ NEV. REV. STAT. § 116.4116 (2007).

“separate” (i.e., individual; distinct; particular; disconnected)¹⁰ and “instrument” (i.e., a written legal document that defines rights, duties, entitlements, or liabilities).¹¹ The Court then defined “separate instrument” under NRS 116.4116 as “any legal document defining rights, duties or liability that is not attached to or incorporated into the primary agreement itself.”¹²

Applying the definition of “separate instrument” to the instant case, the Court reasoned that the arbitration agreement was an instrument that defined the parties’ rights and liabilities. Furthermore, the Court pointed out that the arbitration agreement was attached to the purchase contract, and that the purchase contract’s language incorporated the arbitration agreement in three different places. As such, the Court concluded that the arbitration agreement was not distinct or disconnected from the purchase contract, and therefore not a “separate instrument” under NRS 116.4116. Based on these conclusions, the Court ruled that the district court improperly dismissed HCHA’s breach of warranty claims because the reduced limitations provision was not enforceable.

The final issue addressed by the Court involved HCHA’s argument that the district court abused its discretion by denying HCHA’s motion to amend its complaint. Based on the Court’s previous determination that the reduced limitations provision was not enforceable, the Court concluded that the district court’s reliance on the limitations provision to deny HCHA’s motion was improper.

Conclusion

First, the Court concluded that while NRS 116.4116 expressly permits parties to reduce the limitations periods for *warranty claims*, NRS 116.4116 did not apply to HCHA’s *negligence claims*; therefore, the district court erred when it relied on NRS 116.4116 to bar HCHA’s negligence claims, and the order was reversed and the case remanded to the district court to determine if the contractually modified limitations period was reasonable.¹³

Second, the Court concluded that the contractual limitations, as found in an attached arbitration agreement incorporated by the purchase contract, did not satisfy the separate instrument requirement in NRS 116.4116. Because the contractual limitations were therefore unenforceable, the district court’s denial of HCHA’s motion to amend on this basis was improper, and thus remanded to the district court.¹⁴

Third, the Court concluded that the district court’s denial of HCHA’s motion to amend was based upon the two-year contractual limitations period found in the arbitration agreement.

¹⁰ BLACK’S LAW DICTIONARY 1487 (9th ed. 2009).

¹¹ *Id.* at 869.

¹² *Holcomb*, at 11.

¹³ *Id.* at 9-10.

¹⁴ *Id.* at 13.

Because the Court found this provision unenforceable, the district court's denial was improper, and thus remanded to the district court to determine whether leave to amend should be given.¹⁵

¹⁵ *Id.* at 13-14.