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Kelly Walker
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Anvui, LLC v. G.L. Dragon, LLC, 123 Nev. Adv. Op. No. 25
(July 26, 2007)¹

CONTRACT – SUMMARY EVICTION

Summary

This case is an appeal from the district court’s order granting summary eviction and a writ of restitution and ejectment based on the breach of a commercial lease.

Disposition/Outcome

Reversed. The Nevada Supreme Court concluded that the standard of review for an order granting summary eviction is the same as the standard of review for an order granting summary judgment. The Court concluded that ambiguous language in a lease agreement constitutes a genuine issue of material fact, which is a legal defense for summary eviction. Therefore, summary eviction is inappropriate, and Dragon must pursue restitution under NRS 40.290 to 40.420.

Factual and Procedural History

Anvui, LLC (Anvui) leased a commercial building from G.L. Dragon, LLC (Dragon). According to the lease, Anvui would pay Dragon basic rent and operating costs. Section 14 of the lease states that “[s]hould [Anvui] fail to cure any monetary default within ninety (90) days after written notice has been provided, [Anvui] and [Dragon] agree to cooperate in immediate sale of [Anvui’s] operations at the highest and best price possible.”

On September 1, 2005, Anvui took possession of the property and paid all rent and costs pursuant to the lease agreement. However, Anvui’s payments began to fall behind in June 2006. Anvui owed a total of \$374,931 for the period between June and November 2006, but only paid \$126, 578.76.

Believing that Dragon would seek eviction because of the payment issue, Anvui filed a verified complaint seeking breach of contract, declaratory relief, and injunctive relief. Dragon responded and sought a writ of restitution and ejectment or summary eviction.

Anvui argued that according to Section 14 of the lease agreement, Dragon could not seek summary eviction and restitution because its only remedy in the event of a breach is to cooperate in the sale of Anvui’s business at the highest possible price. The district court disagreed and held that Anvui breached the lease and was guilty of unlawful detainer. Dragon’s request for summary eviction was granted.

¹ By Kelly Walker

Discussion

Standard of Review

The proceeding for summary eviction is similar to a summary judgment proceeding, so the standard of review should be the same. Therefore, an order for summary eviction pursuant to NRS 40.253(6) should be reviewed de novo.

Legal Defense to the Unlawful Detainer

According to NRS 40.253(6), “[summary eviction will be granted] [i]f the court determines that there is no legal defense...and the tenant is guilty of an unlawful detainer.” Anvui argued that it raised a legal defense to the unlawful detainer, so Dragon is required to follow NRS 40.290 to 40.420 to seek restitution. Therefore, Anvui argued that the district court erred in granting summary eviction. The Nevada Supreme Court agreed.

The court should look to the intent of the parties when interpreting terms of a contract.² An ambiguity exists when there is more than one reasonable way to interpret the contract.³ Furthermore, all ambiguous language should be construed against the party who drafted the contract.⁴

Here, the lease is ambiguous because it is unclear what action Dragon may take in the event Anvui defaults on its payments. Section 14 states that Dragon agrees to cooperate in the sale of Anvui’s business in the event of monetary default. However, it is unclear whether Dragon is precluded from taking other action. Anvui’s interpretation of the contract is that Dragon only remedy is to sell the business, while Dragon’s interpretation is that it can sell the business and seek restitution. The ambiguous language creates a genuine issue of material fact as to the intent of the parties, which constitutes a legal defense to summary eviction. Therefore, summary eviction was not appropriate because Anvui raised a legal defense.

Conclusion

The Court concluded that Anvui raised a legal defense to Dragon’s allegations of unlawful detainer. Therefore, the Court reversed the district court’s order granting summary eviction and a writ of restitution and ejectment. If Dragon seeks restitution, it must do so under NRS 40.290 to 40.420.

² May v. Anderson, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005).

³ NGA #2 Ltd. Liab. Co. v. Rains, 113 Nev. 1151, 1158, 946 P.2d 163, 167 (1997).

⁴ Shelton v. Shelton, 119 Nev. 492, 497, 78 P.3d 507, 510 (2003).

