7-30-2015

Double Diamond v. Second Jud. Dist. Ct., 131 Nev. Adv. Op. 57 (July 30, 2015)

Janine Lee
Nevada Law Journal

Double Diamond v. Second Jud. Dist. Ct., 131 Nev. Adv. Op. 57 (July 30, 2015)[1]

CONTRACTS: STATUTES OF LIMITATIONS IN HOMEOWNERS' ASSOCIATION CONTRACT TERMINATION

Summary

NRS 116.3105(2) permits homeowners associations to terminate contracts at any time if the declarant did not enter into the contract in good faith or if the contract was unconscionable to the units' owners at the time of contract formation.[2] The statute requires that an association provide at least 90 days notice of termination under this provision. The 90-day notice period in NRS 116.3105(2) does not operate as a statute of limitations nor does it shift the burden to a notice recipient to file an action. Instead, NRS 11.190 is applicable, resulting in either a four-year or six-year statute of limitations.[3]

Background

In 1996, the developer of Double Diamond Ranch Master Association ("Association"), entered into a maintenance agreement ("Agreement") with the City of Reno ("City"). In February 2012, the Association gave the City a notice of termination, pursuant to NRS 116.3105(2).[4] Specifically, the Association asserted it should not have been a party to the Agreement because the developer entered into it on the day before the Association came into being, the developer entered into the Agreement for his own benefit and the City never sought to enforce the Agreement.

In October 2013, the City brought an action for specific performance of the Agreement against the Association. The Association filed a motion to dismiss for failure to state a claim, failure to join indispensable parties, and argued the Agreement was invalid due to the Association's termination of the Agreement in February 2012. The Association further argued that NRS 116.3105(2) required the City to file a lawsuit within 90 days of receipt of a notice of termination. Lastly, the Association argued that the burden shifted to the City to bring a cause of action within 90 days if it questioned the Association's claim of unconscionability or lack of good faith.

The Second Judicial District Court ("District Court") denied the Association's motion to dismiss. The District Court held the statute did not specify when the recipient of a notice of termination under NRS 116.3105(2) must pursue legal action and the City's letter rejecting the Association's termination was sufficient to give notice to the Association that a "justiciable controversy may exist . . . ."

The Association subsequently petitioned the Nevada Supreme Court ("Court") for either a writ of mandamus, directing the District Court to vacate its order denying its motion to dismiss; or a writ of prohibition.

---

[1] By Janine Lee.
[2] NEV. REV. STAT. § 116.3105 (2).
[3] NEV. REV. STAT. § 11.190.
[4] NEV. REV. STAT. § 116.3105 (2).

Discussion

Is a Writ of Mandamus or Prohibition appropriate?

Generally, the Court declines to consider writ petitions which challenge interlocutory orders denying motions to dismiss, "because an appeal from a final judgment is an adequate legal remedy."[5] However, the Court may exercise its discretion when an important area of law needs clarification. Thus, the court exercised its discretion to hear the Association's petition for a writ of mandamus to clarify whether the 90-day notice period under NRS 116.3105(2) operates as a statute of limitations. The Court denied the alternative request for a writ of prohibition, however, as the District Court had proper jurisdiction to determine the outcome of the motion to dismiss.

The 90-day notice period in NRS 116.3105 (2) is not a statute of limitations.

As an issue of first impression, the Court considered whether the 90-day period under NRS 116.3105(2) operates as a statute of limitations as an issue of first impression and thus, reviewed the question of law de novo. Because the statute does not expressly indicate the rights and obligations of a recipient upon receipt of a termination notice under NRS 116.3105(2), the statute is ambiguous; therefore, the Court considered the intent of the enacting legislature, as well as related statutes.

Based upon its review of related statutes and legislative history, the Court determined the purpose of NRS 116.3105(2) was to address the temptation of developers to engage in self-dealing contacts. The Restatement (Third) of Contracts similarly recognizes the conflicting interests of a developer and a homeowners' association, and thus provides for associations to terminate unconscionable contracts entered into by a developer.[6] Neither the existing related statute, nor the Restatement addresses when the recipient of a termination notice must file an action against the association, however.

Therefore, the Court refused to interpret the 90-day notice period as a statute of limitations, as doing so would require the Court to "[R]ead additional language into the statute . . ."[7] Further, the Court considered the three primary purposes of statutes of limitations, concluding that none was applicable here. Instead, the customary Nevada statute of limitations pertaining to contract actions is applicable, resulting in either a four-year or six-year statute of limitations.[8]

Conclusion

Neither the language of NRS 116.3105(2) or the legislative history shows that the Legislature intended for the 90-day notice period to operate as a statute of limitations, within which the recipient of a termination notice must commence litigation. Instead, such recipient has the customary statute of limitations period, as applicable under NRS 11.190, in which to bring an action.[9] The 90-day notice period in NRS 116.3105(2) does not operate as a statute of limitations

---

[5] Double Diamond Ranch Master Ass'n v. Second Jud. Dist. Ct., 131 Nev. Adv. Op. 57 (July 30, 2015).
[6] Restatement (Third) of Prop.: Servitudes § 6.19 (2000).
[7] Double Diamond Ranch Master Ass'n v. Second Jud. Dist. Ct., 131 Nev. Adv. Op. 57 (July 30, 2015).
[8] NEV. REV. STAT. § 11.190.
[9] *Id.*

or shift the burden to a notice recipient to file an action. The District Court did not err in denying the Association's motion to dismiss and accordingly, the Court denied the writ of mandamus.[10]

[10] Judge Pickering authored a dissent (joined by Judge Cherry), asserting that the Court improperly determined this matter sufficient for extraordinary writ relief. Rather, the Court should have denied the petition for a writ of mandamus or prohibition as procedurally insufficient, without considering the merits.