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Rose, LLC., v. Treasure Island, LLC., 135 Nev. Adv. Op. 19 (Jun. 6, 2019)¹
CONTRACTLAW: DEFAULT NOTICE REQUIREMENTS; CIVIL PROCEDURE: NRCP 19
REQUIRED PARTIES

Summary

The Court found that (1) strict compliance with contract notice requirements is unnecessary if the defaulting party receives actual notice and no prejudice resulted from failure to comply strictly with the contract terms; and (2) a party is not necessary under NRCP 19 unless the other parties to the litigation cannot obtain complete relief in that party's absence.

Background

Treasure Island and Rose entered into a ten-year lease for space inside of Treasure Island's hotel/casino that was turned into a Señor Frog's restaurant. The lease provided that Rose would be given ten days after receiving notice of default to cure any alleged breach of the lease. The parties amended the lease a number of times through mutual agreement. One such amendment at issue here is the fifth amendment, which provided, among other things, (1) for Señor Frog's and its counsel to be included among those receiving notice under the lease; and (2) a new provision "for the benefit of Señor Frog's" as a subtenant.

Approximately a year after the introduction of the fifth amendment, Rose failed timely to make its rent payment. Treasure Island sent notice about the missed payment to Rose and its counsel via email. When Rose failed to cure the default within ten days, Treasure Island sent a notice-of-termination to Rose and Señor Frog's. Señor Frog's counsel emailed Treasure Island indicating that it would be unaffected by the default, effectively disclaiming any rights or causes of action it may have had against Treasure Island. Treasure Island sued Rose, claiming breach of the lease agreement and seeking declaratory relief. Rose counterclaimed, alleging breach of contract and breach of the implied covenant of good faith and fair dealing, and seeking a declaratory judgment. After a bench trial—during which the president of Señor Frog's testified and expressed no concern at not being a party to the litigation—the district court ruled in favor of Treasure Island and concluded that it had properly terminated the lease. Rose appealed, arguing that Treasure Island's notice of default was legally deficient for failure to strictly comply with the lease terms and therefore invalidated the termination of the lease; and that the judgment is void because a necessary party, Señor Frog's, was not joined to the action in violation of NRCP 19.

Discussion

Termination of the lease

The Court held that the termination of the lease was valid because Rose received actual notice of the default despite Treasure Island's failure to strictly comply with the lease terms, and Rose did not suffer any prejudice as a result. In coming to this conclusion, the court briefly reviewed a split between jurisdictions as to whether strict compliance or substantial compliance with notice requirements is necessary to effectuate a valid termination of a lease. *See, e.g., Metro. Transp. Auth. v. Cosmopolitan Aviation Corp.*, 471 N.Y.S.2d 872, 873 (App. Div. 1984);

¹ By Ben Coonan.

contra Kimmel v. Cockrell, 317 N.E.2d 449, 451 (Ind. Ct. App. 1974). The court found that even in strict-compliance jurisdictions, when the breaching party has received actual notice such that they suffer no prejudice by being notified in a manner other than that specified in the contract, “the point is to ensure that the defaulting party actually receives the information to which it is entitled, not to penalize the noticing party for minor technical failures that caused no prejudice to any other party.”

Whether Señor Frog’s is a necessary party under NRCP 19

Rose argues that the judgment is void because the district court and Treasure Island failed to join Señor Frog’s as a necessary party. Rose asserts that Señor Frog’s is a necessary party under NRCP 19 because it is a third-party beneficiary to the prime lease, and any termination would affect its rights in the sublease as well. Treasure Island responds that Rose waived its ability to raise this argument by failing to make it earlier in the litigation, and that in any event Señor Frog’s is neither a party nor a third-party beneficiary to the lease, and the declaratory judgment it seeks would not affect any possible claims from Señor Frog’s.

The Court explains the two ways for a necessary party’s absence to be raised: by the alleged necessary party itself, or by someone other than the alleged necessary party such as the Court or one of the other parties. Because Señor Frog’s indicated by its counsel’s email to Treasure Island that it did not intend to participate in the litigation and would not be affected by it, the question becomes whether at this stage another party may seek reversal on the grounds that Señor Frog’s was not joined despite its lack of interest. This question, the Court says, has two components: whether Señor Frog’s absence can still be raised by an existing party at this stage in the litigation, and if so whether joinder of Señor Frog’s is required by NRCP 19.

A. Whether Rose has waived its right to challenge the absence of Señor Frog’s

The Court concludes that Rose has not waived its right to challenge the absence of Señor Frog’s. In general, the NRCP tracks its federal counterpart in both substance and application, with Nevada applying federal law when the procedural rules are similar. But with respect to NRCP 19, the Nevada Supreme Court does not follow federal law on the question of whether a challenge to the absence of a necessary party may be waived under Rule 19.

In most federal courts, if the absence of a necessary party is not raised below it is deemed waived on appeal. The policy rationale for this is to avoid the tactical use of Rule 19 by a party who knew throughout the litigation that a party was necessary but waited until appeal to raise the issue in an attempt to “engineer a reversal on grounds it knew existed all along but purposely hid.” The Nevada Supreme Court, however, has ruled that a necessary party’s absence under NRCP 19 may be raised for the first time on appeal. The Court finds that Nevada’s policy goals are somewhat different, prioritizing the avoidance of “piecemeal litigation” over the potentially tactical use of Rule 19. Treasure Island argues that the risk of such piecemeal litigation is virtually nonexistent because Señor Frog’s has effectively disclaimed any interest it has in participating in this action. Nevertheless, the Court concludes that despite this evidence, Nevada’s interpretation of NRCP 19 forbids the conclusion that Rose has legally waived any right to challenge the absence of Señor Frog’s as a necessary party.

B. Whether Señor Frog's is a necessary party under NRCP 19

Under NRCP 19, a party is necessary if the court cannot accord complete relief to the existing parties in its absence, or the alleged necessary party claims an interest in the litigation such that disposing of the case in its absence would either (1) impair its ability to protect that interest; or (2) subject an existing party to substantial risk of multiple or inconsistent obligations because of that interest.² The Court explains that while NRCP 19 provides for the joinder of necessary parties, it does not create any causes of action. Thus, for a party to be joined under NRCP 19, it must have a claim against one of the existing parties, or one of them must have a claim against it. Treasure Island argues that Señor Frog's is merely a subtenant, such that its only claims could be against Rose. Rose counters that in addition to being a subtenant, Señor Frog's is a third-party beneficiary to the principal lease, giving it claims against both Rose and Treasure Island.

C. Whether Señor Frog's is merely a subtenant or is also a third-party beneficiary to the principal lease

The Court holds that Señor Frog's is not a third-party beneficiary to the principal lease because neither Treasure Island nor Rose signed the principal lease for the sole benefit of Señor Frog's. Rose relies on language from the fifth amendment stating that the new notice provisions were "for the benefit" of Señor Frog's, arguing that this language evidences a clear intention that Señor Frog's be a third-party beneficiary to the principal lease. The Court rejects this argument finding that (1) the overall structure of the lease does not evince an intention to make Señor Frog's both a subtenant under the sublease and a third-party beneficiary under the principal lease such that it would retain rights as a third-party beneficiary even in the event of its eviction as a subtenant; and (2) the notice provisions do not give Señor Frog's any rights to cure a default by another party that would give rise to any independent causes of action.

D. Whether Señor Frog's, as a subtenant, was a necessary party

Here the court concludes that Señor Frog's was not a necessary party because it claimed no interest in the litigation, and the existing parties could be accorded complete relief on their claims in its absence. The court found that Señor Frog's presence in the litigation was legally irrelevant to resolve either Treasure Island's claim for declaratory judgment that termination of the lease was valid, or Rose's claim praying for nullification of the lease termination. The only potential claims that Señor Frog's could have would be as a subtenant against Rose, but any litigation thereof would not leave Rose with multiple or otherwise inconsistent obligations, rendering Señor Frog's an unnecessary party under NRCP 19. Furthermore, the Court found that if Rose was inconvenienced by any additional litigation caused by Señor Frog's absence from this action, it was brought about by Rose itself—the only party against whom Señor Frog's could have any claims, and thus the only party with any incentive to join Señor Frog's in the first place.

² Nev. R. Civ. Pro. 19(a)(1).

Conclusion

The Court concluded that Rose was not prejudiced by any failure of Treasure Island to comply strictly with the notice requirements because it received actual notice, and that Señor Frog's was not a necessary party under NRCP because the existing parties could obtain complete relief in their claims without joining Señor Frog's. The Court therefor affirmed the district court's decision.