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Pardee Homes of Nevada v. Wolfram, 135 Nev. Adv. Op. 22 (July 3, 2019)

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CONTRACT LAW: ATTORNEY FEES

Summary

The Court determined that (1) any party seeking attorney fees as special damages must comply with NRCP 9(g), (2) the prevailing party in a two-party breach of contract suit is not entitled to attorney fees as special damages, and (3) any party seeking attorney fees pursuant to express contractual provisions is so entitled upon prevailing in the suit.²

Background

In the 1990s, Coyote Springs Investment, LLC (“CSI”), planned to develop land in Lincoln and Clark Counties of Nevada. Brokers Walter Wilkes and James Wolfram facilitated appellant Pardee Homes of Nevada’s (“Pardee”) land purchases from CSI. Pardee agreed to pay Wilkes and Wolfram commissions on its purchases from CSI. The contract provided that Pardee would provide the brokers with documentation pertaining to Pardee’s purchases and keep them reasonably appraised of all matters related to the commission payments. Further, the contract provided that the prevailing party on any significant issue shall be awarded reasonable attorney fees and costs.

Pardee and CSI amended their agreement multiple times, but only provided the brokers with the first two amendments. The brokers requested information from Pardee needed to verify property sales and commission amounts. The brokers filed suit against Pardee on three causes of action (1) breach of contract, (2) breach of implied covenant of good faith and fair dealing, and (3) an accounting. The district court ruled in favor of the brokers on each cause of action. The brokers did not plead nor prove attorney fees at trial. The district court awarded the brokers attorney fees on two grounds: (1) \$135,500 as special damages and (2) \$428,462.75 pursuant to the prevailing party clause in the parties’ contract. Pardee appealed, claiming that the district court erred by (1) awarding the brokers’ attorney fees as special damages, and (2) in determining that the brokers prevailed.

Discussion

Attorney fees as special damages

Nevada follows the “American Rule” where attorney fees may only be awarded pursuant to statute, rule, or agreement. Any party seeking attorney fees as special damages must affirmatively plead such pursuant to NRCP 9(g).³ Moreover, the prevailing party in a breach of contract action may not receive attorney fees. Where, as is here, a party seeking attorney fees as

¹ Michael Desmond.

² Nev. R. Civ. P. 9(g).

³ Sandy Valley Associates v. Sky Ranch Estates Owners Association, 117 Nev. 948, 959–60, 959–60 (2001).

special damages in a breach of contract action without affirmatively pleading such is not entitled to special damages.

Attorney fees pursuant to the prevailing party provision

In Nevada, parties are free to provide for the payment of attorney fees by express contractual provisions.⁴ Here, the court found the contract unambiguously provided for the prevailing party to receive attorney fees and costs. As the brokers prevailed in each cause of action, the district court did not abuse its discretion by awarding attorney fees pursuant to the contract.

Conclusion:

In Nevada, a district court may not award attorney fees as special damages in a breach of contract suit. Any party seeking attorney fees as special damages must affirmatively plead such pursuant to NRCPC 9(g).⁵ Parties are free to provide for the payment of attorney fees by express contractual provisions. As such, the Court (1) reversed the district court's award of attorney fees as special damages, (2) affirmed the district court's award of attorney fees pursuant to the contract, (3) and remanded the matter to the district court to consider additional attorney fees pursuant to the contract.

⁴ Davis v. Beling, 128 Nev. 301, 321 (2012).

⁵ Sandy Valley Associates, 117 Nev. at 959–60.