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Elk Point Country Club HOA v. K. H. Brown, LLC, 138 Nev. Adv. Op. 60 (Aug. 18, 2022)¹

CONTRACT LAW: INTERPRETATION OF HOA BYLAWS IN CONNECTION WITH NRS
116.340(1)(A) – TRANSIENT COMMERCIAL USE OF UNITS WITHIN PLANNED
COMMUNITIES

Summary

When a planned communities’ governing documents restrict real property use to residential use only, NRS 116.340(1)(a) permits a real property owner to use real property for transient commercial use so long as the governing documents of the community do not prohibit such use.² Transient commercial use is the use of property, for remuneration, as transient lodging, if the term of occupancy is thirty days or less—i.e., short-term rentals.³ It is a reversible error to interpret bylaws and governing documents as prohibiting rentals when they use the terms “tenants” and “renters” throughout.

Background

Appellant Elk Park Country Club Homeowners’ Association (“EPCC”) is a common interest community in Douglas County. EPCC operates like an HOA. The 100 individual units are owned by the individual members. And the EPCC holds title to all other real property in the community. Individual members do not enjoy ownership rights or interests in EPCC’s real property, but they do have a license to access and use the common areas.

EPCC permitted its individual members to use their units as short-term rentals. EPCC’s current governing documents consist of its 2005 Amended Bylaws and the recorded EPCC Homeowners’ Rules, Regulations, and Guidelines.

Respondents K.J. Brown LLC, Timothy D. Gilbert, and Nancy Avanzino Gilbert are members of EPCC. Respondents filed a lawsuit against EPCC for violations of NRS Chapter 116, and various contract and tort theories of liability. Subsequently, they moved to enjoin EPCC from allowing its members to use their units for short-term rentals. The district court granted the preliminary injunction. It found that EPCC’s governing documents did not permit the use of units as a short-term rental or as a long-term rental. The court further found that the use of the term “tenant” in the bylaws did not include renters.

Discussion

Appellant argues that the district court erroneously concluded that respondents had a likelihood of prevailing on the merits of their complaint because its findings that the bylaws prohibited the use of units as either short-term or long-term rentals conflicts with NRS 116.340(1)(a).

¹ By Alexander C. Provan.

² NEV. REV. STAT. 116.340(1)(a) (2003).

³ NEV. REV. STAT. 116.340(4)(b) (2003).

As a threshold matter, the Court decided whether NRS 116.340(1)(a) applied. EPCC's bylaws state that "[t]he property of Unit Owners shall be used for single family residential purposes only." NRS 116.340(1)(a) states, "one or more units within a planned community that are *restricted to residential use* by the declaration may use that unit . . . *for a transient commercial use*⁴ only if . . . [t]he governing documents . . . do not prohibit such use."⁵ Respondents did not argue that the phrase "single family residential purposes only" has a meaning distinct from the phrase "restricted to residential use" as used in NRS 116.340(1)(a). Therefore, without deciding the specific meaning for purposes of this appeal, the Court assumed that the two phrases are equivalent and NRS 116.340(1)(a) applies. Further, the Court concluded that "restricted to residential use only" cannot be construed as a prohibition of rentals in and of itself, as the statute states those limited to such use may engage in rentals absent a further prohibition in governing documents.

Next, the Court turned toward interpreting EPCC's bylaws and rules to determine if a prohibition of rentals exists. When interpreting a contract, the Court "looks to the language of the agreement and the surrounding circumstances,"⁶ and "enforces" the contract "as written" if the "language of the contract is clear and unambiguous."⁷

The Court could not find an explicit or implicit prohibition of using units as short-term rentals in the governing documents. First, the bylaws' plain language does not prohibit unit rentals. While the bylaws' preamble does state that EPCC cannot operate "its properties or facilities with the view of providing profit to its Unit Owners," it does not prohibit EPCC members from profiting from their units. Second, the bylaws use numerous references to member's "tenants" and "guests." The Court interpreted these references as providing backing for defining "tenant" according to its plain meaning.⁸ Third, EPCC's rules support the Court's interpretation of "tenants" as "renters" as they explicitly refer to renters throughout the document – i.e., "[m]embers are responsible for the actions and behavior of their renters and guests." Therefore, the Court held that the district court abused its discretion by concluding that respondents showed a reasonable likelihood of success on the merits.⁹

Finally, the Court responded to two of respondents' arguments. First, the bylaws' preamble does not clearly prohibit the operation of units as profit centers for their owners, as the text only refers to EPCC's common properties and facilities. Second, the Court comments that respondents waived the argument that EPCC is not a common-interest community governed by NRS Chapter 116 because they did not raise the argument below. Further, respondents' contention that EPCC violated NRS Chapter 116 constitutes a judicial admission regarding whether EPCC is a common-interest community.

⁴ Transient commercial use is the use of property, for remuneration, as transient lodging if the term of occupancy is 30 days or less – i.e., short-term rentals. NEV. REV. STAT. 116.340(4)(b) (2003).

⁵ NEV. REV. STAT. 116.340(1)(a) (2003) (emphasis added).

⁶ *Am. First Red. Credit Union v. Soro*, 131 Nev. 737, 739, 359 P.3d 105, 106 (2015) (quoting *Redrock Valley Ranch, LLC, v. Washoe County*, 127 Nev. 451, 254 P.3d 401 (2011)).

⁷ *Davis v. Beling*, 128 Nev. 301, 321, 278 P.3d 501, 515 (2012).

⁸ Someone who pays rent for the temporary use and occupation of another's land under a lease or similar arrangement. *Tenant*, *Black's Law Dictionary* (11th ed. 2019).

⁹ The Court did not address EPCC's remaining argument regarding irreparable harm as the holding is dispositive of the issue of if the preliminary injunction was properly entered.

Conclusion

When a planned communities' governing documents restrict real property use to residential use only, NRS 116.340(1)(a) permits a real property owner to use real property for transient commercial use so long as the governing documents of the community do not prohibit such use. Here, EPCC's governing documents, while restricting use to "single family residential use only," did not explicitly or implicitly prohibit transient commercial use as the documents refer to both "tenants" and "renters" throughout. Accordingly, the district court was reversed, and the preliminary injunction was abrogated.