

IN THE SUPREME COURT OF THE STATE OF NEVADA

JERRY DOWELL AND KIMBERLEE
DOWELL,
Appellants,
vs.
DOUGLAS BUCHANAN,
Respondent.

No. 38997

FILED

AUG 19 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Buchanan*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment in a breach of contract action.

The parties entered into an oral agreement regarding investing in Candlewick Limited Partnership, which was formed to develop real property into a mobile home park. Under the terms of the oral agreement, respondent Douglas Buchanan would transfer \$50,000.00 to appellants Jerry and Kimberlee Dowell for them to invest in Candlewick, and the Dowells would repay \$50,000.00 to Buchanan at the completion of phase one of Candlewick. Using the \$50,000.00 provided by Buchanan, combined with \$15,000.00 of their own monies, the Dowells invested a total of \$65,000.00 in Candlewick. Buchanan also separately invested \$60,000.00 in Candlewick.

Because Candlewick was never built, Jerry Dowell brought suit against Candlewick. As a result, Candlewick's assets were sold, and the investment monies were returned to the limited partners so that the Dowells received \$65,000.00 and Buchanan received \$60,000.00. Because the Dowells never returned the \$50,000.00 to Buchanan, he brought suit against the Dowells for breach of contract and quantum meruit.

After a two-day trial, the jury returned a verdict for Buchanan. The district court entered judgment on the jury verdict, ordering that Buchanan recover from the Dowells the sum of \$50,000.00 plus interest at the rate of 10.25 percent per annum, commencing May 16, 1991.

The Dowells first argue the oral agreement is void under the statute of frauds. Whether an agreement is within the statute of frauds and any exception applies is a question of law, which this court reviews de novo.¹

Here, the parties testified that the \$50,000.00 was to be returned when phase one was completed, somewhere between twenty-one months to twenty-four months later. Because the agreement, by its terms, was not to be performed within one year, it is within the statute of frauds and, thus, is required to be in writing.² Full performance by one party may remove an oral agreement from the statute of frauds.³ Because

¹SIIS v. United Exposition Services Co., 109 Nev. 28, 30, 846 P.2d 294, 295 (1993).

²NRS 111.220 provides:

In the following cases every agreement is void, unless the agreement, or some note or memorandum thereof expressing the consideration, is in writing, and subscribed by the person charged therewith:

1. Every agreement that, by the terms, is not to be performed within 1 year from the making thereof.

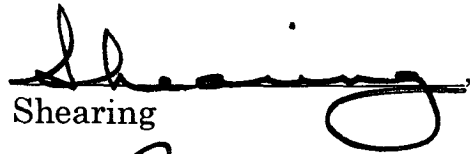
³Edwards Indus. v. DTE/BTE, Inc., 112 Nev. 1025, 1032, 923 P.2d 569, 574 (1996); see also Zunino v. Paramore, 83 Nev. 506, 509, 435 P.2d 196, 197 (1967).

Buchanan fully performed, we conclude the oral agreement may be removed from the statute of frauds.

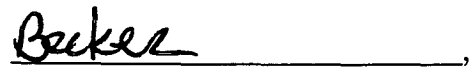
“A complete admission in court by the party to be charged should dispense with the necessity of any writing whatever.”⁴ Here, although conflicting testimony was adduced regarding whether the transfer of \$50,000.00 was a loan or an investment, the Dowells admitted, under the terms of the agreement, the \$50,000.00 was to be returned to Buchanan when phase one was completed, and the investment monies were returned. Based on the Dowells’ admission, we conclude a writing was unnecessary. Thus, we conclude the oral agreement is not void under the statute of frauds.

Next, the Dowells argue the district court erred in determining the date of accrual of pre-judgment interest. Based on Buchanan’s testimony, we conclude the district court did not err in determining that the interest accrued from May 16, 1991. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Shearing J.


Leavitt J.


Becker J.

⁴Edwards Indus., 112 Nev. at 1032, 923 P.2d at 573 (quoting 2 Arthur L. Corbin, Corbin on Contracts § 498, at 683 (1950)).

cc: Eighth Judicial District Court Department 12, District Judge
Brent D. Percival
Kolesar & Leatham, Chtd.
Clark County Clerk