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Douglas County - NV
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Page: 1 Of 6 Fee: 19.00
BK-1005 PG-01390 RPTT: 0.00



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DOUGLAS COUNTY
DISTRICT COURT CLERK

1 Case No. 00-CV-0252
2 Dept. No. II

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6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF DOUGLAS

8 JUDY LU SHALLENBERGER,
9 Trustee of the Judy Lu
10 Shallenberger Trust,
11 Dated February 29, 1984,

11 Plaintiff/
12 Counter-Defendant,

13 vs.

ORDER

14 MICHAEL BOGDANOVICH; ROSE
15 BOGDANOVICH; R. BRUCE BRAUN
16 and SUSAN T. BRAUN, husband
17 and wife; RUSKA BOGDANOVICH;
18 THE JESSEAN II FAMILY LIMITED
19 PARTNERSHIP, a Nevada limited
20 partnership; and DOES I-X,

18 Defendants/
19 Counterclaimant.

20 And Related Claims.

21 THIS MATTER comes before the court upon a Motion to
22 Enforce Settlement Agreement and to Compel Payment in Full
23 brought by Third-Party Defendant/Counterclaimant Rock Island
24 Corporation (Rock Island).

25 Facts

26 As the procedural history and underlying facts are well
27 known to all parties, the court limits its recitation thereof
28

1 to those necessary to the resolution of the instant motion.

2 On February 23, 2004, Rock Island sent Defendants/
3 Counterclaimants Michael Bogdanovich and Ruza Bogdanovich
4 (collectively, the Bogdanoviches) a letter demanding \$10,000.00
5 to resolve the lawsuit between them in its entirety. By its
6 terms, each party was to pay its own attorney fees and costs.

7 On September 28, 2004, the Bogdanoviches signed a Mutual
8 Release of All Claims under which they agreed to pay Rock
9 Island \$10,000.00, \$3,000.00 of which was payable within sixty
10 days of the entry of an order of dismissal and \$7,000.00 of
11 which, plus interest at 6% would be paid within two years of
12 the entry of order of dismissal, to be secured by a lien on the
13 property known as the Braun parcel or due upon the sale of any
14 portion thereof, whichever occurred first.

15
16 On October 4, 2004, the Bogdanoviches and Rock Island
17 filed a Stipulation for Dismissal with Prejudice of All Claims
18 between the Bogdanoviches and Rock Island.

19 To date, no payment has been made by the Bogdanoviches,
20 who have also refused to execute a deed of trust in favor of
21 Rock Island. Rock Island prays that the court compel the
22 Bogdanoviches to make payment in full (\$10,000.00) and that
23 they be ordered to pay attorney fees incurred by Rock Island in
24 enforcing this agreement.

25 The Bogdanoviches do not deny that they have refused to
26 comply with the agreement; they, however, allege that they were
27 never provided with a release signed by Rock Island and the
28

1 deed of trust presented to them contained an erroneous legal
2 description of the property to be encumbered. Moreover, they
3 allege that Mr. Victor continued to help in the prosecution of
4 the suit against them.

5 Rock Island counters that it has fully complied with the
6 terms of the settlement agreement, despite any technical
7 errors, e.g., its failure to sign the release or its inclusion
8 of an inaccurate legal description of the property in question.
9 Indeed, despite its failure to sign the release, a stipulation
10 and order dismissing all its claims with prejudice has been
11 entered by the court. Finally, it underscore the absence of
12 any evidence that Victor has aided the Plaintiffs in this case.

14 Analysis

15 Rock Island's failure to deliver a signed copy of the
16 release notwithstanding, the Bogdanoviches have received the
17 benefit of their bargain. To allow them to escape their
18 obligations under the circumstances would be unconscionable and
19 result in substantial injustice. The court finds that they are
20 estopped from maintaining a position inconsistent with one in
21 which they accepted their bargained-for benefit. *Kentucky*
22 *Hosp. Ass'n Trust v. Chicago Ins. Co.*, 978 S.W.2d 754 (Ky. App.
23 1998).

24 Despite the Bogdanoviches' asseverations to the contrary,
25 the Mutual Release of All Claims clearly requires the
26 Bogdanoviches to execute documents necessary to Rock Island's
27 obtaining a lien or security interest on the Braun parcel.
28



1 With respect to the payment of all sums owed Rock Island
2 under the settlement agreement, the court concurs with the
3 Bogdanoviches that there exists no right for such an
4 accelerated payment. That does not, however, excuse their late
5 payment of the initial \$3,000.00.

6 Insofar as the settlement agreement was signed by the
7 party against whom it is sought to be enforced, the court finds
8 that it is valid and enforceable. *Szilagyi v. Testa*, 99 Nev.
9 834, 839 (1993). Bogdanoviches' arguments are unavailing.

10 With respect to attorney fees, pursuant to NRS 18.010 and
11 NRCP 11, the court finds that the Bogdanoviches' refusal to
12 comply with their end of the agreement was unreasonable and
13 designed to harass Rock Island, the prevailing party in this
14 motion. Public policy favors the resolution and enforcement of
15 settlement agreements. *Municipality of Anchorage v. Schneider*,
16 685 P.2d 94, 98 (Alaska 1984); *Levy v. Superior Court*, 10 Cal.
17 4th 578, 592 (Cal. 1995). See also, *Lewis v. U.S.*, 17 F.Supp.
18 543, 546 (D. Colo. 1936).

19 Consequently, having reviewed the pleadings and relevant
20 documents herein, and good cause appearing, the court hereby
21 GRANTS Rock Island's Motion, directing the Bogdanoviches to pay
22 all sums due under the agreement as they originally were to
23 come due. Therefore, the Bogdanoviches are to pay Rock Island
24 \$3,000.00 not later than August 15, 2005; likewise, they are to
25 execute a deed of trust in favor of Rock Island over the
26 property in question, by the same date.
27
28



1 The court, further, invites Rock Island to submit an a
2 memorandum of attorney fees and costs expended in bringing this
3 motion.

4 IT IS SO ORDERED.

5 Dated this 1 day of ^{Hypert} ~~July~~ 2005.

6
7 Michael P. Gibbons
8 MICHAEL P. GIBBONS
9 District Judge

10 Copies served by mail this 1st day of July, 2005, to: Jeffrey
11 K. Rahbeck, Esq., P.O. Box 435, Zephyr Cove, Nevada 89448,
12 Michael Smiley Rowe, Esq., P. O. Box 2080, Minden, Nevada
13 89423; Ryan D. Russell, Esq., P. O. Box 646, Carson City, NV
14 89702.

15 Ursula K. McManus
16 Ursula K. McManus
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21
22

23 **CERTIFIED COPY**

24 The document to which this certificate is attached is a
25 full, true and correct copy of the original on file and of
26 record in my office.

27 **SEAL**

28 DATE: 10/3/05

Breed Clerk of the District Court
of the State of Nevada, and for the County of Douglas,

By J. Thaler

Deputy