

***Bell v. Leven*, 120 Nev. Adv. Rep. 43, 90 P.3d 1286 (Nev. 2004)¹**

CONTRACT LAW – DURATION OF PERPETUAL CLAUSES

Summary

Appeal from a declaratory judgment from the Eighth Judicial District Court in which the court held that a contract for services that contained a perpetual duration clause was enforceable for a reasonable period of time.²

Disposition/Outcome

Reversed. The Supreme Court of Nevada ruled that a contract for service containing a perpetual duration clause is enforceable when the language of the contract clearly shows that the contract is to have a perpetual duration.

Factual and Procedural History

In 1992, Sandy Leven entered into an agreement with Richard Bell in which Leven would seek cooperative real estate agents for Liberty Realty. According to the terms of the contract, Bell was to pay Leven \$50 for each agent that was procured. The contract contained a perpetual duration clause that stated that the contract was for a perpetual term until terminated by the consent of parties. Leven formed a general partnership with her husband and he drafted a new royalty agreement in 1997 that modified the existing contract. Bell never signed the new royalty agreement but abided by the new terms expressed in the 1997 agreement. In 1998, Bell wrote a letter to Leven stating that he would not continue to pay Leven under the contract because he believed that Leven was not doing any of the work that procured the new agents. Bell also stated that he would bring litigation to recover past payments for services that he believed were not performed under the contract. Leven responded that Bell was in breach of contract for refusing to pay him for procured agents.

Bell requested a declaratory judgment to determine the rights of the parties under the contract. The court stated that the 1992 contract remained in force and that Leven ratified the 1997 Amendment to the contract through his actions. The court then concluded however, that the perpetual duration clause did not have a legal duration and therefore the contract was to remain in force for a reasonable period of time. The court instructed the jury to determine what a reasonable period of time was under the agreements. The jury found in favor of the respondent Bell and awarded \$386,000 in damages. Both sides appealed the determination of the trial court regarding the duration of the contract.

Discussion

¹ By Jeff Hall

² *Bell v. Leven*, 120 Nev. Adv. Rep. 43, 90 P.3d 1286, 1287 (Nev. 2004).

On appeal, Bell contended that the court should have instructed the jury to determine whether he gave reasonable notice of his intent to terminate the contract instead of instructing the jury to determine whether the contract lasted for a reasonable period of time. Leven argued that the district court was wrong by holding that the perpetual duration clause of the contract was invalid as a matter of law.

The court began to resolve this question by looking to the law in other jurisdictions. The court cites opinions from Oregon, Missouri, and the Fifth Circuit, all holding that such clauses are enforceable if the intention to make the duration of the contract perpetual is unequivocal from the language of the contract.³ The court then states that public policy considerations lean toward not enforcing contracts that contain a perpetual obligation. However, the court found that the policy of giving meaning to every word in a contract prevails in this situation. A contract that clearly stated the party's intention to be bound in a perpetual agreement will be enforced according to its terms.

The contract between Bell and Leven stated that the contract would endure perpetually or be terminated by mutual agreement of the parties. The district court did not give plain meaning to the language provided in the contract. The jury should have been instructed to determine whether the contract was terminated for cause and if not, to calculate damages according to the perpetual duration of the contract.

Conclusion

Contracts for services that contain perpetual duration clauses are enforceable in Nevada if the intent of the parties is clear from the language of the contract. The court will generally look to not enforce such provisions. However, the court should give meaning to all the words in a contract and if those words include an unambiguous perpetual duration clause, it will be enforced accordingly.

³ See *Paul Gabrilis, Inc. v. Dahl*, 961 P.2d 865 (Or. 1998), *Preferred Phys. Mut. v. Risk Retention Etc.*, 961 S.W.2d 100, (Mo. Ct. App. 1998), *Delta Services & Equipment v. Ryko Mfg. Co.*, 908 F.2d 7 (5th Cir. 1990).