

2-25-2016

# Hoke v. Neyada, Inc. Appellant's Brief 2 Dckt. 43343

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IN THE SUPREME COURT FOR THE STATE OF IDAHO

MARIAN G. HOKE, an individual, and,  
MARIAN G. HOKE as trustee of THE HOKE  
FAMILY TRUST U/T/A dated February 19,  
1997,

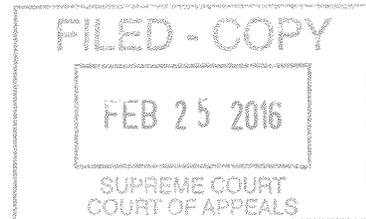
Plaintiffs/Respondents,

vs.

NEYADA, INC., a Nevada corporation,

Defendant/Appellant.

Supreme Court Docket No.: 43343



Appellant's Reply Brief

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Appeal from District Court of the Third Judicial District  
in and for Canyon County  
The Honorable George A. Southworth, District Judge, Presiding

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Brian L. Webb  
Brian Webb Legal  
839 E. Winding Creek Dr. Ste. 102  
Eagle, Idaho 83616  
(208) 331-9393  
Fax: (208) 331-9009  
Attorney for Appellant

Laura E. Burri  
Morrow & Fischer, PLLC  
332 N. Broadmore Way, Ste. 102  
Nampa, Idaho 83687  
(208) 475-2200  
Fax: (208) 475-2201  
Attorney for Respondents

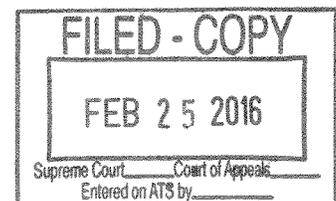


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STATUTES AND OTHER AUTHORITIES

N/A

I. REPLY

1. *The Option contains an independently valid legal description.*

The Respondent (“Marian”) argues that the case of *Garner v. Bartschi*, 139 Idaho 430, 80 P. 3d 1031 (2003), holds that a tax parcel number is insufficient as a matter of law to satisfy the statute of frauds. This is an incorrect reading of *Garner*. Cases have held that a tax parcel number may satisfy the statute of frauds. The issue in *Garner* was that it was incomplete and therefore insufficient. *Id.* at 435-436, 1036-1037.

Indeed, the *Garner* court referenced *City of Kellogg v. Mission Mountain Interests Ltd., Co.*, 135 Idaho 239, 16 P.3d 915 (2000), which cited to *Haney v. Molko*, 123 Idaho 132, 844 P.2d 1382 (Ct.App.1992), in which the Court of Appeals concluded that property descriptions indicating section number, township and range and tax parcel numbers were adequate to convey title. The court reasoned that by referring to the legal descriptions of the tax parcel numbers that were provided, it was possible for someone to identify exactly what property was being conveyed. *Id.* at 136, 844 P.2d at 1386. In other words, a tax parcel number is a sufficient method to satisfy the statute of frauds. This is a consistent reading of *Garner* where it held that as a general rule, a legal description is sufficient so long as quantity, identity or boundaries or property can be determined from the face of the instrument or by reference to extrinsic evidence to which it refers. *Garner*, at 435, 1036.

This case at bar is more akin to *Haney* than to *Garner*. The Option contains the following legal description:

That certain mobile home park known as Hoke Mobile Home park, consisting of 14 mobile home lots, and 13 mobile homes, as more fully described in Exhibit “A” attached hereto.

(R. Vol. I, p. 61). Exhibit A reads: “**07-3N-2W NW PORTNER SUB TX 2 IN LT 9,, TX 05292 & 05293 IN BLK 9**” (R. Vol. I, p. 65) (emphasis added). The Option references a township, range, and tax parcel numbers. Each could independently satisfy the statute of frauds. Extrinsic evidence of the township/range description and tax parcel numbers are properly admissible and should have been allowed by the district court.

Further, under the case of *Allen v. Kitchen*, 16 Idaho at 144, 100 P. 1052 (1909), evidence of the city and state of the “Hoke Mobile Home park” is also admissible to apply the description contained in the writing to the lands as marked and bounded. The statute of frauds has, for over a century, allowed for evidence to be admitted for the purpose of identifying the land described and applying the description to the property. This is because there is no adding to a description insufficient and void on its face in this case. *Kitchen*, 16 Idaho at 144, 100 P. 1052 at 1055 (1909). The failure to omit a city and state does not necessary render a legal description void. Indeed, reference to the “park” is merely an allowable reference to a generally known point, place, or locality from which a complete description could be had. *Id.* It is permissible under the statute of frauds.

In summary, the district court did not allow for the exercise of locating the legal description in the Option on the ground with reference to the tax parcel numbers, township/range description, and mobile home park. Instead it merely took Marian’s statement that the metes and bounds description contained in the Complaint was the only way to describe the land. This was reversible error.

2. **The Option and Lease contain valid legal descriptions by reference.**

Even if the Option, standing alone, does not contain a legal description that complies with the statute of frauds, this deficiency is cured by multiple references to the Lease. In her reply brief, Marian does not address the issue of incorporation of the legal descriptions in the Lease by reference in the Option. Yet it may likely be the critical issue in this appeal.

The case law is clear that a legal description is complete if the “quantity, identity or boundaries of property can be determined from the face of the instrument, **or by extrinsic evidence to which it refers.**” *Ray v. Frasure*, 146 Idaho 625, 629, 200 P.3d 1174, 1178 (2009). (emphasis added). The parties apparently do not dispute this law. Further, there is no dispute that the Option references the Lease and that the Lease references the Option.

Here, the district court failed to address the sufficiency of the legal description in the Option when supplemented by reference to the allowable property descriptions in the Lease. By reference to the Lease, the following description supplements the description in the Option:

1. Demised Premises: The Lessor does hereby lease to the Lessee that certain mobile home park, formerly known as Hoke Mobile Home Park, consisting of 14 mobile home lots, and 13 mobile homes, situated on 1.96 acres of land located at 16987 Portner Rd. in Nampa, Idaho together with the personal property as Described in Exhibit “A” attached hereto.

Parcel Number: [Parcel Number of Each Mobile Home]

Site Address: [Address including city and state for each lot]

Owner Name: [Each Owner’s Name]

Legal Description: [Township Range Description, Lot Parcel Number, Mobile Home Type, VIN Number, and Title Number for each property].

(R. Vol. I, pp. 54, 58-60). An issue of fact exists as to whether the descriptions noted above comply with the statute of frauds. The district court failed to determine whether the quantity, identity and/or boundaries of the land could be identified with the descriptions above.

Moreover, it appears that the district court applied the same standard to a lease as to an option. As a related matter, the standard for a legal description in a lease is less than that of a purchase and sale agreement or option. *See Wing v. Munns*, 123 Idaho 493, 499, 849 P.2d 954 (Idaho App. 1992)(*rev'd on other grounds*). The finding was also in error.

At a minimum, an issue of facts exists as to whether the description in the Option is valid as a matter of law. For the district court to conclude that it was invalid without allowing extrinsic evidence was reversible error. The documents do not need to speak for themselves if they reference other sources.

3. ***The doctrine of partial performance applies to remove the Lease and Option from the statute of frauds.***

Marian contends that partial performance does not apply because payments made to escrow after being notified that she wanted to void the transactions was superfluous. However, in this case, there is much more. Marian turned over possession of the park on November 15, 2014, after opening escrow with Idaho Escrow, with signatures, pursuant to the Option. (R. Vol. I, pp. 250-251). Marian gave NeYada a bill of sale for the only two mobile homes in her name. (R. Vol. I, pp. 27-30). She paid NeYada \$1,610.00 for November's rents. (R. Vol. I, pp. 50, 113). Marian signed the notice of past due lot rents. (R. Vol. I, pp. 250-251). NeYada posted late notices and new leases on the doors of the other tenants in the park. *Id.* They opened new accounts, paid the past-due taxes on the mobile homes, and registered the mobile homes in its name. *Id.* They hired a property management company for the park and performed an eviction. *Id.* Further, NeYada made its payments under the Lease. (R. Vol. I, p. 51). Most of these actions were made before being notified by counsel. Under these circumstances, an issue of fact exists as to whether partial performance precludes her from asserting the statute of frauds as a defense.

**II. CONCLUSION**

For the foregoing reasons, NeYada requests the Court reverse the district court's decision on summary judgment, vacate the judgments against NeYada, including the judgment of attorney's fees, and remand the matter with directions to the district court.

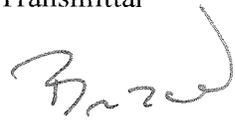
DATED this 25<sup>th</sup> day of February, 2016.

  
\_\_\_\_\_  
BRIAN L. WEBB

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 25<sup>th</sup> day of February, 2016, I caused to be served a true copy of the foregoing by the method indicated below, and addressed to those parties marked served below:

<u>Served</u>	<u>Party</u>	<u>Counsel</u>	<u>Means of Service</u>
<input checked="" type="checkbox"/>	Plaintiff	Laura E. Burri Morrow & Fischer, PLLC 332 N. Broadmore Way, Ste. 102 Nampa, Idaho 83687 Fax: (208) 475-2201	<input checked="" type="checkbox"/> U.S. Mail, Postage Paid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Fax Transmittal

  
\_\_\_\_\_  
Brian L. Webb