

FILED

31 AUG 24 10:47

1 CASE NO. 5241

2
3 ESTHER F. COLE
COUNTY CLERK

4 DEPUTY

5
6 IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF
7 NEVADA, IN AND FOR THE COUNTY OF LINCOLN

8 * * * *

9 JAMES E. WILKIN, STEVEN W. KLUMP,)
10 MICHAEL FOGLIANI, PATRICK M. KELLEY,)
MICHAEL GOODMAN, and R. KIM LEE,)
d/b/a I.F.S.)

11 Plaintiffs,

12 vs.

13 FLOYD LEE COX, HELEN DOROTHY COX,)
14 MAX McCROSKY, and SHIRLEY)
McCROSKY,)

15 Defendants and Third-Party)
16 Plaintiffs,)

17 vs.

18 FRONTIER TITLE COMPANY, a Title)
Insurance and Escrow Company,)

19 Third Party Defendants.)

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
JUDGMENT

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21 This matter having come to trial court on April 28, 1981,
22 with plaintiffs present, represented by BRUCE JUDD, of the law
23 firm of ROGERS, MONSEY, WOODBURY, BROWN & BERGGREEN, and defen-
24 dants present, represented by WILLIAM L. McGIMSEY of the law firm
25 of ALBRIGHT, McGIMSEY & STODDARD, and the court hearing all the
26 evidence and reviewing all the exhibits and good cause appearing,

27 The Court finds:

- 28 1. I.F.S. is a partnership authorized to conduct business
29 and commence legal proceedings in the State of Nevada.
30 2. On or about September 1979, KIM LEE, a partner in
31 plaintiff, I.F.S., contacted LEE COX about the purchase of cer-
32 tain real property owned by defendants FLOYD LEE COX and HELEN

1 DOROTHY COX, near Panaca, Nevada.

2 3. In November 1979, PHILIP LESLIE surveyed defendant COX's
3 real property and divided the real property into three parcels
4 pursuant to an agreement between defendant FLOYD LEE COX and
5 plaintiff.

6 4. Defendant FLOYD LEE COX objected to the completed survey
7 map which he received on or about November 17, 1979. STEVE
8 KLOMP, a partner in plaintiff, and defendant FLOYD LEE COX
9 corrected the measurements on or about November 29, 1979, at the
10 site of the real property.

11 5. On or about December 19, 1979, plaintiff paid to NEVADA
12 FIRST THRIFT \$515.00 on behalf of defendant FLOYD LEE COX in
13 order to prevent a foreclosure of defendant COX'S real property.

14 6. On or about January 3, 1981, plaintiff and defendant
15 COXES executed escrow instructions and a collection agreement for
16 the sale of one of the three parcels of real property owned by
17 defendants COXES.

18 7. On or about February 20, 1980, plaintiff and the defen-
19 dant COXES executed an amendment to the escrow instructions to
20 include an easement owned by McCROSKY BROS., of which defendant
21 MAX McCROSKY was a partner, on the real property owned by defen-
22 dant COXES. On or about February 21, 1980, defendants FLOYD LEE
23 COX and HELEN DOROTHY COX certified their correct names on the
24 escrow instructions.

25 8. On or about March 1, 1980, defendants MAX McCROSKY and
26 SHIRLEY McCROSKY agreed to lend money to defendants FLOYD LEE COX
27 and HELEN DOROTHY COX to be secured by a deed of trust on the
28 real property owned by the COXES. The defendant COXES executed a
29 deed of trust in favor of the defendant McCROSKYS on March 19,
30 1980.

31 9. On or about March 15, 1980, defendant FLOYD LEE COX in a
32 letter, directed FRONTIER TITLE COMPANY to terminate the escrow

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1 for the I.F.S. Cox real property sale.

2 10. At all times, plaintiff was ready, willing and able to
3 perform according to the real estate purchase agreement as con-
4 tained in the escrow instructions executed on January 3, 1980.

5 11. The real property to be purchased by plaintiff appre-
6 ciated by \$17,000.00 at time of trial.

7 The Court concludes as a matter of law:

8 1. The plaintiff failed to prove a sufficient case against
9 defendants McCROSKY.

10 2. Plaintiff substantially complied with NRS 602 and NRS
11 602.070.

12 3. Defendant COXES waived their right to terminate the real
13 property purchase agreement because of time delays.

14 4. Defendant COXES breached the agreement to sell real
15 property.

16 5. Plaintiffs are entitled to specific performance.

17 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

18 1. Plaintiffs complaint against defendants MAX McCROSKY and
19 SHIRLEY McCROSKY is dismissed with prejudice.

20 2. Plaintiffs are granted judgment against defendants FLOYD
21 LEE COX and HELEN DOROTHY COX who are ordered to perform
22 according to the terms of the real property purchase agreement as
23 contained in the escrow instructions dated January 3, 1980.

24 3. In the event that defendants FLOYD LEE COX and HELEN
25 DOROTHY COX fail to comply with this order of specific perfor-
26 mance within 30 days from the written notice of entry of this
27 judgment, plaintiffs are awarded judgment against defendants
28 FLOYD LEE COX and HELEN DOROTHY COX in the amount of \$17,000.00.

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1 4. Defendants FLOYD LEE COX and HELEN DOROTHY COX are
2 ordered to pay plaintiff \$1,500.00 in attorneys fees plus costs.
3 DATED this 21 day of Aug, 1981.

Marilyn H. Hoyt
DISTRICT JUDGE

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6 Submitted by:
7 ROGERS, MONSEY, WOODBURY, BROWN & BERGGREEN

8
9 By *Bruce Judd*
10 BRUCE JUDD
11 Attorneys for Plaintiff
12 723 South Third Street
13 Las Vegas, NV 89101

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17 FILED AND RECORDED AT REQUEST OF
18 MICHAEL FOGLIANI
19 FEB 9, 1983
20 AT 20 MINUTES PAST 12 O'CLOCK
21 P.M. IN BOOK 53 OF OFFICIAL
22 RECORDS, PAGE 471 LINCOLN
23 COUNTY, NEVADA.

Guarino Setzer
COUNTY RECORDER

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