

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Purchase/Sale of Stock, Assets,
or Real Estate**

COURT MINUTES

August 23, 2021

A-18-774539-B Paradise Canyon LLC, Plaintiff(s)
vs.
Virgin Valley Water District, Defendant(s)

August 23, 2021 3:00 AM Minute Order

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

JOURNAL ENTRIES

After review and consideration of the points and authorities on file in the action currently pending, the Court determined as follows:

This Court is well aware that in general lease provisions giving the tenant perpetual renewals are disfavored. Notwithstanding, courts will enforce a lease provision that grants a tenant the right to unlimited renewals, so long as the parties' intent to create that right is explicit and clear. Thus, there must be "specific and plain language" contained in the lease that creates a right to renew on a perpetual basis. In the case at bar, the language of the lease is unambiguous, and provides as follows: "...after January 1, 2020, if Lessee continues to hold a right of first refusal as to any of the Irrigation Shares, Lessee shall have the right to continue to lease the same Irrigation Shares on a perpetual basis provided Lessee is not in breach of the lease..."

Many courts have reasoned that an unequivocal perpetual renewal provision should include terms such as "forever," "in perpetuity," or "for all time." See, Lonergan v. Connecticut Food Store, Inc., 168 Conn. 122, 357 A.2d 910 (1975); Geyer v. Lietzan, 230 Ind. 404, 103 N.E.2d 199 (1952); Bancard Servs., Inc. v. E*Trade Access, Inc., 292 F. Supp. 2d 1235 (D. Or. 2003); Rutland Amusement Company v. Seward (1968) 127 Vt. 324, 248 A.2d 731, 734; Tischner v. Rutledge (1904) 35 Wash. 285, 77 P.388, 389; and, Farone v. Mintzer (1987) 133 A.D.2d 1009, 521 N.Y.S.2d 158, 160.

This Court finds the rationale persuasive as stated by The North Carolina Supreme Court adopted where it adopted a "brightline" rule that "[u]nless a lease agreement contains the terms 'forever,' 'for all time,' 'in perpetuity' or words *unmistakably* of the same import, no perpetual lease or right to perpetual renewals may be found to have been created." See, Lattimore v. Fisher's Food Shoppe, Inc.

313 N.C. 467, 329 S.E.2d 346 (1985).

Moreover, in Bullion Monarch v. Barrick Goldstrike, 131 Nev. 99 (Nev. 2015), the Nevada Supreme court in a certified question recognized that the rule of perpetuities does not apply to contracts that are commercial in nature.

In light of the foregoing, Plaintiff's Motion for Summary Judgment as to the lease at issue creating a perpetual right of renewal is hereby GRANTED.

Counsel for Plaintiff shall prepare a detailed Order, Findings of Facts, and Conclusions of Law, based not only on the foregoing Minute Order, but also on the record on file herein. This is to be submitted to adverse counsel for review and approval and/or submission of a competing Order or objections, prior to submitting to the Court for review and signature.

CLERK'S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.