DESTINATION COURT OF ARBITRATION

AI LUCKY	**)**	
v.	**)**	**Case No. 3276-4**
NELSON RICE	**)**	

DECISION

The parties in this matter have appeared and presented their evidence in open court. The court now enters these findings of fact and conclusions of law and awards judgment as follows.

FINDINGS OF FACT

The following facts are established by the record:

> At Lucky Curio, owned by AI Lucky, Nelson Rice found a nonfungible token containing readings of 2 poems by Glimmer (formerly known as Devoid), a female porpoise who had learned to speak with an artificial voice. Rice paid the asking price of $60. Given the price, Rice assumed the NFT was not logged in the block chain.
>
> Lucky, the owner of the curio shop, had also assumed the NFT was not genuine because of the low price he paid – less than $60. AI Lucky, an experienced merchant, often paid for appraisals of curios he thought might be valuable, but Lucky did not appraise this NFT.
>
> Intrigued, Rice played the works at home. The artist always recorded her readings on Earth under arctic water—after all the ice melted. All her poems were in the nature of Lewis Carroll's "The Hunting of the Snark" – lyrical, but nonsensical. Rice was charmed by the sound and rhythm. He then researched the artist and checked the blockchain ledger. The ledger had forked when a third work was added to the original two works. The token was genuine.
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> Confirming the value of Glimmer's work, Going Going, the auction house, sold the NFT at auction for $1,072,060.
>
> Expecting to share in the confirmed value, AI Lucky sued Rice to rescind or reform the sale contract on the grounds of mutual mistake, unconscionability, reasonable expectations, and fair dealing.

JURISDICTION

This court has subject matter jurisdiction over the tort and contract claims asserted and personal jurisdiction over the parties. Nelson Rice is a resident of Destination subject to general jurisdiction. *See* ***Out Transport v. AI Hunter, et al.,*** Destination Case No. 3276-2.

CONCLUSIONS OF LAW

I. The Contract is Enforceable

The contract governs because the parties had a meeting of the minds on the sales price. The seller cannot rescind the transaction based on a mistaken valuation of the goods sold if "he is aware, at the time the contract is made, that he has only limited knowledge with respect to the facts to which the mistake relates but treats his limited knowledge as sufficient." Restatement (Second) of Contracts §154(b). This situation indicates not just a mistake but "conscious ignorance." The buyer is entitled to enforce the contract.

A. There Was Mutual Agreement on the Contract Terms

To be enforceable, a contract requires "an offer, an acceptance, consideration, and sufficient specification of terms so that the obligations involved can be ascertained." *Savoca Masonry Co. v. Homes & Son Constr. Co.*, 112 Ariz. 392, 394, 542 P.2d 817, 819 (1975). In addition, an enforceable contract must be between competent parties, Restatement (Second) of Contracts § 12, and not against public policy. *Id.* § 178 (contracts unenforceable on public policy grounds). *See* ***EX Corp. v. Out Transport, et al.***, Destination Case No. 3276-1.

> Parties are generally 'free to contract as they please," *Shattuck v. Precision-Toyota, Inc.*, 115 Ariz. 586, 588 [, 566 P.2d 1332] (1977) (*quoting Naify v. Pacific Indem. Co.*, 76 P.2d 663, 667 (Cal. 1938)), and when entered into voluntarily, courts will enforce a contract's provisions, *1800 Ocotillo, LLC v. WLB Group, Inc*, 219 Ariz. 200, 202 ¶ 8 [, 196 P.3d 222] (2008).

Bridges v. Nationstar Mortgage LLC, 253 Ariz. 532, 534, 515 P.3d 1270, 1272 ¶9 (2022).

> "Society [ ] broadly benefits from the prospect that bargains struck between competent parties will be enforced."

1800 Ocotillo, 219 Ariz. at 202, ¶ 8, 196 P.3d at 224 (citing Restatement (Second) of Contracts § 178 comment b).

Consideration for a contractual promise or exchange does not require equivalence in the values exchanged. Restatement (Second) of Contracts § 79.

> Any performance which is bargained for is consideration, Restatement (Second) of Contracts § 72, and courts do not ordinarily inquire into the adequacy of consideration. *Id.*; Restatement (Second) of Contracts § 78, comment a.

Carroll v. Lee, 148 Ariz. 10, 13-14, 712 P.2d 923 (1986).

It is undisputed that the parties were competent to enter into a contract. Al Lucky agreed to sell Nelson Rice the Glimmer NFT for $60. There was a meeting of the minds.

The exchange of the NFT for $60 was consideration for the contract despite the difference in value. A contract was made. Unless there are grounds for rescission, the sales price set in the contract is binding.

B. There Was No Mutual Mistake

A party can rescind a contract if a mutual mistake as to a "basic assumption on which both parties made the contract" has "such a material effect on the agreed exchange of performances as to upset the very bases of the contract." Restatement (Second) of Contracts § 152 comments a & b (1979); *Renner v. Kehl*, 150 Ariz. 94, 97, 722 P.2d 262, 265 (1986).

A party seeking to void a contract based on a mutual mistake must prove

> (1) the parties made a mistake about a basic assumption on which they made the contract, (2) the mistake had a material effect on the exchange of performances, and (3) the party seeking avoidance does not bear the risk of mistake.

Hall v. Elected Officials' Ret. Plan, 241 Ariz. 33, 42, ¶ 25, 383 P.3d 1107, 1116 (2016) (citing Restatement (Second) of Contracts § 152(1) (1981)).

In *Renner v. Kehl*, both the buyers and the sellers believed there was an adequate water supply to commercially grow jojoba on the land sold, a basic assumption underlying formation of the contract. There was insufficient water. The Arizona Supreme Court concluded the parties' failure to thoroughly investigate the water supply did not preclude rescission when "the risk of mistake was not allocated among the parties." *Renner,* 150 Ariz. at 97 n. 2, 722 P.2d at 265 n. 2. The contract was properly rescinded. *Id*.

A party cannot rescind a contract if the party seeking relief bears the risk of the mistake. A party bears the risk of the mistake when "he is aware, at the time the contract is made, that he has only limited knowledge with respect to the facts to which the mistake relates but treats his limited knowledge as sufficient." Restatement (Second) of Contracts § 154(b). This situation indicates not just a mistake but "conscious ignorance." *Estate of Nelson v. Rice*, 198 Ariz. 563, 12 P.3d 238 (App. 2000)(Estate did not hire a qualified appraiser and consciously ignored the possibility that the Estate's assets might include fine art); *See Klas v. Van Wagoner*, 829 P.2d 135, 141 n. 8 (Utah App.1992) (real estate buyers hired architects, decorators, and electricians to examine realty, but failed to appraise the home, and knew they "had only 'limited knowledge' with respect to the value of the home").

Al Lucky had the opportunity to discover the authenticity of what he was selling and failed to do so; instead, he ignored the possibility that the NFT was valuable when he set the price. Under these circumstances, Al Lucky was a victim of his own folly, and it was reasonable for the court to allocate the burden of his mistake to Lucky. Lucky is not entitled to rescind the contract.

If Al Lucky did not bear the risk of undervaluing the NFT, Rice would have to show Lucky was grossly negligent or acting in bad faith to prevent rescission for mutual mistake. Restatement (Second) of Contracts § 157. We need not determine if Al Lucky was grossly negligent (or resolve a potential disputed issue of fact) because Lucky accepted the risk of underpricing by not seeking expert advice knowing there was a risk the NFT was genuine.

II. Al Lucky's Remaining Claims Are Without Merit

A. Unconscionability

An unconscionable contract is unenforceable. Restatement (Second) of Contracts § 153; *see Id.*, § 208 (unconscionable defined). The determination of a contract's unconscionability is a matter of law. *Maxwell v. Fidelity Financial Services, Inc*., 184 Ariz. 82, 87, 907 P.2d 51, 56 (1995).

> "Unconscionability includes both procedural unconscionability, i.e., something wrong in the bargaining process, and substantive unconscionability, i.e., the contract terms *per se*."

Phoenix Baptist Hosp. & Medical Ctr., Inc. v. Aiken, 179 Ariz. 289, 293, 877 P.2d 1345, 1349 (App.1994), *quoting Pacific Am. Leasing Corp. v. S.P.E. Bldg. Sys*., 152 Ariz. 96, 103, 730 P.2d 273, 280 (App.1986).

Procedural unconscionability addresses problems in contract formation, such as deception or refusal to negotiate. S. Williston & R. Lord, Contracts §18.10 (4th Ed. 2000). There is no evidence of procedural unconscionability. There was no deception or coercion.

Substantive unconscionability involves the actual terms of the contract and the relative fairness of the parties' obligations. Indicia of substantive unconscionability include one-sided terms that oppress or unfairly surprise an innocent party, an overall imbalance in the obligations and rights imposed by the bargain, and significant cost-price disparity. *Maxwell*, 184 Ariz. at 89. Unconscionability is determined as of the time the parties entered into the contract. *Id.*; A.R.S. § 47-2302 (the Arizona equivalent to UCC Article 2 § 302).

An unconscionable term is one a reasonable man would not offer and "an honest and fair man would not accept." Restatement (Second) of Contracts §208 comment b.

"Evidence showing that one party failed to negotiate a better deal than actually achieved does not, as a matter of law, establish that the agreement of the parties was unconscionable." *Salt River Project v. Westinghouse Electric Corp.,* 143 Ariz. 437,t 447, 694 P.2d 267, 277 (App. 1983), *aff'd in pertinent part*, 143 Ariz. 368, 694 P.2d 198 (1984).

Whether a contract is unconscionable is a question of law. *Clark v. Renaissance West, LLC*, 232 Ariz. 510, 512, 307 P.3d 77, 79 ¶8 (App. 2013) ("An unconscionable contract is unenforceable.")

While Rice benefited dramatically from the bargain, AI Lucky set the price and had the opportunity to investigate the provenance of the NFT. Rice paid the price Lucky set. While the results of the transaction may seem unconscionable to AI Lucky in hindsight, the terms of the contract certainly were not. The seller named a price, and the buyer paid that price, for a specific item (the NFT). *Estate of Nelson v. Rice*, 198 Ariz. 563, 568, 12 P.3d 238, 243 (App. 2000).

> "Courts should not assume an overly paternalistic attitude toward the parties to a contract by relieving one or another of them of the consequences of what is at worst a bad bargain . . . and in declaring the [contract] at issue here unconscionable, we would be doing exactly that." *Pacific Am. Leasing* [*Corp. v. S.P.E. Bldg. Sys*.], 152 Ariz. [96] at 103, 730 P.2d [273] at 280 [(App. 1986)], *quoting Dillman and Assocs., Inc. v. Capitol Leasing Co.*, 110 Ill.App.3d 335, 66 Ill. Dec. 39, 442 N.E.2d 311, 317 (1982*)*.

Estate of Nelson, 198 Ariz. at 568, 12 P.3d at 243. *See also Consumers Int'l Inc. v. Sysco Corp.*, 191 Ariz. 32, 951 P.2d 897 (App. 1998).

B. Reasonable Expectations

Adhesion contracts, such as insurance policies or software licenses, are presented on a "take it or leave it" basis – the contract has lengthy provisions that are not negotiable. Contract law has developed the doctrine of reasonable expectations to allow the non-drafting party to avoid unexpectedly harsh terms in the adhesion contract documenting the transaction. *Darner Motor Sales, Inc. v. Universal Underwriters Ins. Co.*, 140 Ariz. 383, 389-94, 682 P.2d 388, 394-400 (1984).

The reasonable expectations doctrine has no application here. Rice expected to obtain the NFT. Lucky expected to receive $60. The offer was not "take it or leave it."

C. Good Faith and Fair Dealing

Every contract has an implied obligation of good faith and fair dealing. *Wells Fargo Bank v. Az. Laborers, Teamsters and Cement Masons Local No. 395 Pension Trust Fund,* 201 Ariz. 474, 490, 38 P.3d 12, 28 (2002); Restatement (Second) of Contracts § 205. This implied covenant "arises by virtue of a contract relationship" and prohibits "a party from doing anything to prevent other parties to the contract from receiving the benefits and entitlements of the agreement." *Rawlings v. Apodaca*, 151 Ariz. 149, 153-54, 726 P.2d 565, 569-70 (1986).

A breach of the implied covenant occurs if a party:

> Exercises its discretion "in a way inconsistent with [the other] party's reasonable expectations;" or
>
> Acts "in ways not expressly excluded by the contract's terms but which nevertheless bear adversely on the [other] party's reasonably expected benefits of the bargain."

Bike Fashion Corp. v. Kramer, 202 Ariz. 420, 404, 46 P.3d 431, 435 (App. 2002). The implied covenant cannot contradict an express term of the contract. *Id*.

The only disputed contract term was the price, which is an express term that cannot be altered by the implied covenant of good faith and fair dealing.

D. Unjust Enrichment

To prove unjust enrichment, Lucky must show (1) an enrichment, (2) an impoverishment, (3) a connection between the enrichment and impoverishment, (4) the absence of justification for the enrichment and impoverishment, and (5) the absence of a remedy at law. *Wang Elec., Inc. v. Smoke Tree Resort, LLC*, 230 Ariz. 314, 318, ¶ 10, 238 P.3d 45, 49 (App. 2012).

"[U]njust enrichment does not apply to an agreement deliberately entered into by the parties, 'however harsh the provisions of such contracts may seem in the light of subsequent happenings.'" *Johnson v. Am. National Ins. Co.*, 126 Ariz. 219, 223, 613 P.2d 1275, 1279 (App. 1980), *quoting Durham Terrace, Inc. v. Hellertown Borough Auth.*, 394 Pa. 623, 148 A.2d 899 (1959).

Rice is entitled to the benefit of the bargain embodied in the contract. Rice was not “unjustly enriched.”

It is hereby ordered, adjudge, and decreed awarding judgment for Rice. There is no legal basis for recission of the sales contract.

The Clerk is ordered to enter judgment in accordance with the foregoing.

/s/ AI Judge