

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 24 2015

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

BULLION MONARCH MINING, INC.,

Plaintiff - Appellant,

v.

BARRICK GOLDSTRIKE MINES, INC.,

Defendant - Appellee.

No. 11-15479

D.C. No. 3:09-cv-00612-ECR-
VPC

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Edward C. Reed, Senior District Judge, Presiding

Argued and Submitted May 16, 2012
Submission Withdrawn June 13, 2012
Resubmitted April 22, 2015

San Francisco, California

Before: THOMAS, McKEOWN, and W. FLETCHER, Circuit Judges.

We certified two questions of law to the Nevada Supreme Court in an order filed June 13, 2012. *Bullion Monarch Mining, Inc. v. Barrick Goldstrike Mines, Inc.*, 686 F.3d 1041 (9th Cir. 2012). We certified the following questions:

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

1. Under Nevada law, does the Rule Against Perpetuities apply to an area-of-interest provision in a commercial mining agreement?
2. If the Rule Against Perpetuities does apply, is reformation available under Nevada Revised Statute § 111.1039(2)?

Id. at 1044.

The Nevada Supreme Court answered the first question in an opinion filed March 26, 2015. *Bullion Monarch Mining, Inc. v. Barrick Goldstrike Mines, Inc.*, No. 61059 (Nev. Mar. 26, 2015). The Court answered our first question in the negative, concluding under Nevada law that the Rule Against Perpetuities does not apply to the payment of area-of-interest royalties. *Id.*, slip op. at 4. Because it concluded the Rule does not apply, the Court did not answer the second question. *Id.* at 11.

The district court based its summary judgment ruling in favor of Barrick on its conclusion that the Rule Against Perpetuities applied, and that it voided the area-of-interest royalty agreement that served as the basis for Bullion's claim. *Bullion Monarch Mining, Inc. v. Barrick Goldstrike Mines, Inc.*, No. 3:09-cv-00612-ECR-VPC, 2011 WL 484295, at *8 (D. Nev. Feb. 7, 2011). However, the Nevada Supreme Court has now contradicted the district court's conclusion. Accordingly, we reverse and remand for further proceedings in the district court.

REVERSED and REMANDED.