

FILED

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JASON HALPERN,

Plaintiff-Appellant,

v.

GARY THARALDSON,

Defendant-Appellee.

No. 17-15722

D.C. No.

2:15-cv-02037-JCM-PAL

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Argued and Submitted October 17, 2018
San Francisco, California

Before: HAWKINS and HURWITZ, Circuit Judges, and EATON,** Judge.

In this contract action, Jason Halpern appeals from a grant of summary judgment in favor of Gary Tharaldson on Halpern's anticipatory repudiation claim.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** Richard K. Eaton, Judge of the United States Court of International Trade, sitting by designation.

We have jurisdiction under 28 U.S.C. § 1291. We review *de novo*, *Glenn v. Wach. Cty.*, 673 F.3d 864, 870 (9th Cir. 2011), and affirm.

Halpern had the option, upon payment of a specified sum of money, to enter a joint venture with Tharaldson. It is undisputed, however, that Halpern never exercised his option or tendered any payment thereunder. Accordingly, he failed to satisfy the condition precedent to his participating in a joint venture, and thus, under the facts of this case, the district court did not err in granting Tharaldson's motion for summary judgment. *See 135 E. 57th St. LLC v. Daffy's Inc.*, 934 N.Y.S.2d 112, 115 (N.Y. App. Div. 2011) (option itself does not create interest in subject of option contract; no rights accrue until option is exercised).

Tharaldson's motion to strike (Dkt. #40) is denied as moot.

AFFIRMED.