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## Material Breach Releases Obligation To Third Party Beneficiaries

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Yesterday, the Nevada Supreme Court held that one party's material breach of a contract releases the non-breaching party's contractual obligation to a third-party beneficiary. *Cain v. Price*, 134 Nev. Adv. Op. 26 (2018). In this case, the contract was a settlement agreement. The Settlement Agreement provided that C4 Worldwide, Inc. would pay \$20 million to Peggy and Jeffrey Cain within 90 days. In return, the Cains agreed to release C4 and its officers. When C4 failed to pay, the Cains sued C4 and six of its officers. Two of the officers moved for summary judgment based on the release included in the settlement agreement. The Nevada District Court granted summary judgment for the two officers and the Cains appealed.

The Nevada Supreme Court found that the Cains were bound by their promise until C4 materially breached the contract. At that time, the Cains were released from their promise not to sue C4's officers. There were two complications, however.

The first arose from the Cains' election to enforce a default judgment against C4. The District Court reasoned that the Cains had thereby elected to honor the terms of the settlement agreement and be bound by its terms, including the release of C4's officers. The Nevada Supreme Court disagreed, deeming the \$20 million judgement to be as damages and not as award of specific performance.

The second complication was the existence of a California choice-of-law provision in the settlement agreement. However, the parties seemed to have ignored this issue and the Nevada Supreme Court deemed it waived by mutual consent of the parties. It therefore applied Nevada law throughout its opinion.

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