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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BOISE TOWER ASSOCIATES, LLC, a
Washington Limited Liability Company,

Plaintiff - Appellant,

v.

WASHINGTON CAPITAL JOINT
MASTER TRUST; a Washington Trust;
WASHINGTON CAPITAL
MANAGEMENT, INC., a Washington
Corporation; BNY WESTERN TRUST
COMPANY, a California trust company as
trustee of the Washington Capital Joint
Master Trust,

Defendants - Appellees.

No. 07-35677

D.C. No. CV 03-141-S-MHW

MEMORANDUM*

Appeal from the United States District Court
For the District of Idaho
Mikel H. Williams, Magistrate Judge Presiding

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Argued and Submitted February 6, 2009
Portland, Oregon

Before: PAEZ and RAWLINSON, Circuit Judges, and COLLINS **,
District Judge.

Boise Tower Associates (“BTA”) appeal the district court’s decision granting summary judgment in favor of Washington Capital Joint Master Trust and the other defendants (“WCM”). The parties are familiar with the facts and arguments and they need not be described in this memorandum.

A district court’s grant of summary judgment is reviewed de novo. *Golden Gate Restaurant Ass’n v. City & County of San Francisco*, 512 F.3d 1112, 1116 (9th Cir. 2008). We “may affirm on any ground supported by the record.” *Dietrich v. John Ascuaga’s Nugget*, 548 F.3d 892, 896 (9th Cir. 2008).

When the undisputed facts are viewed in the light most favorable to BTA, it is clear that BTA breached the contract between BTA and WCM by failing to fulfill a condition precedent to the contract.

As the district court did, we assume without deciding that WCM anticipatorily breached the contract with BTA by asserting that, under the original contract, Mortenson was required to be party to a labor union contract under the

** The Honorable Raner C. Collins, United States District Judge for the District of Arizona, sitting by designation.

original contract. We conclude, however, that WCM effectively nullified any repudiation when it offered to extend the loan closure date in early January 2002 and BTA accepted the benefits of that extension by acknowledging it in an email to the Capital City Development Corporation (CCDC), assuring CCDC that the loan was going forward. *See Hemisphere Loggers & Contractors, Inc. v. Everett Plywood Corp.*, 499 P.2d 85, 87 (Wash. Ct. App. 1972).

With this established, we turn to WCM's argument that BTA never met the condition precedent to the contract between BTA and WCM that "as a condition of closing the loan, all work to be performed at the site of construction shall be performed by AFL-CIO building trades union labor." Prior to WCM's repudiation, BTA failed to satisfy this condition precedent of the loan commitment by having a subcontractor work on the project who was not a party to an approved labor contract. The subcontractor working on the project was not a party to an approved labor contract before the first extension date of December 31, 2001. Nor was the subcontractor working on the project party to an approved labor contract before the final extension date of January 31, 2002. Because BTA failed to satisfy this condition precedent and, in doing so, breached its contract with WCM, we need not decide whether BTA also failed to satisfy the other conditions of the contract.

AFFIRMED.