

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROCKY MOUNTAIN BUILDERS &
SUPPLY, A NEVADA CORPORATION,
Appellant,
vs.
BAILEY & DUTTON,
Respondent.

No. 44193

FILED

APR 19 2006

ORDER OF REVERSAL

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Rubard*
CHIEF DEPUTY CLERK

This is an appeal from a district court judgment and a post-judgment order awarding attorney fees and costs in a construction contract action. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

The district court determined that the oral construction contract between appellant Rocky Mountain Builders & Supply ("Rocky Mountain") and respondent Bailey & Dutton was void ab initio because the total amount of repairs Rocky Mountain performed on houses at the Northgate Plaza subdivision in Reno, Nevada, exceeded the \$50,000 monetary limit on its roofing contractor's license. As a result, the district court further determined that Rocky Mountain had "no lawful right to bring or maintain any action . . . for the collection of compensation for that work or those [supplied] materials." (Emphasis added.) Because the parties are familiar with the underlying facts, we will not recount them in this order except as is necessary for our disposition.

On appeal, Rocky Mountain mainly argues that the district court's judgment should be reversed because the only sanctions authorized against a contractor acting beyond the scope of his or her license are discipline, fines, and/or imprisonment. Although Rocky Mountain's

contention is not exactly correct, we conclude that the district court erred as a matter of law in making its determination in this case.

“The construction of a statute is a question of law subject to de novo review.”¹ NRS 624.320 states that no corporation acting in the capacity of a contractor can maintain any action for the collection of compensation for the performance of any act or contract for which a license is required without proving that they were a “duly licensed contractor at all times during the performance of such act or contract and when the job was bid.” In Nevada Equities v. Willard Pease Drilling,² we noted that NRS 624.320 barred contractors who were unlicensed under Chapter 624 from maintaining an action for compensation. However, NRS 624.320 does not bar a licensed contractor, such as Rocky Mountain, who exceeds the scope of its license from maintaining “any” action for compensation. Instead, we must look to other authorities for guidance regarding Rocky Mountain’s ability to maintain an action.

Although NAC 624.640(1) voids a contract when a contractor exceeds the monetary limit placed on its license, NRS 108.222 (2003) (amended 2005) allows a licensed contractor to seek a mechanic’s lien for at least labor and materials, whether or not an agreement exists.³ Here,

¹California Commercial v. Amedeo Vegas I, 119 Nev. 143, 145, 67 P.3d 328, 330 (2003) (quoting County of Clark v. Upchurch, 114 Nev. 749, 753, 961 P.2d 754, 757 (1998)).

²84 Nev. 300, 302, 440 P.2d 122, 123 (1968) (holding that a drilling company had substantially complied with licensing scheme since it possessed general licenses and evinced no signs of financial or technical inadequacy).

³NRS 108.222 (2003) (amended 2005) stated:

continued on next page . . .

Rocky Mountain exceeded the \$50,000 monetary limit on its license, so NAC 624.640(1) voids the oral construction contract and would logically bar any action based on that contract. However, a contractor who exceeds the monetary limit on its license would not necessarily be barred from

... continued

1. Except as otherwise provided in subsection 2, a lien claimant has a lien upon the property and any improvements for which the work, materials and equipment were furnished for:

(a) If the parties agreed upon a specific price or method for determining a specific price for some or all of the work, material and equipment furnished by or through the lien claimant, the unpaid balance of the price agreed upon for such work, material or equipment, as the case may be, whether performed or furnished at the instance of the owner or his agent; and

(b) If the parties did not agree upon a specific price or method for determining a specific price for some or all of the work, material and equipment furnished by or through the lien claimant, an amount equal to the fair market value of such work, material or equipment, as the case may be, including a reasonable allowance for overhead and a profit, whether performed or furnished at the instance of the owner or at the instance of his agent.

2. If a contractor or professional is required to be licensed pursuant to the provisions of NRS to perform his work, the contractor or professional will only have a lien pursuant to subsection 1 if he is licensed to perform the work.

maintaining a non-contract action or a lien under NRS 108.222.⁴ NRS 108.222(1) may authorize Rocky Mountain to maintain a lien on non-contract grounds such as quantum meruit or unjust enrichment.⁵

Because Rocky Mountain is not necessarily barred from maintaining a non-contract action or a lien, we conclude that the district court erred in determining that Rocky Mountain was barred from maintaining any action for the compensation of work and materials. Accordingly, we

ORDER the judgment of the district court REVERSED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

⁴The term “licensed” in NRS 108.222(2) should be given a similar interpretation as in NRS 624.320.

⁵We note, however, that exceeding the licensing limits on one’s license may bar actions or liens based on even quantum meruit or unjust enrichment theories if the contractor did not substantially comply with the licensing scheme or the violation was so egregious that the public policy considerations underlying Chapter 624 are violated.

cc: Hon. Steven R. Kosach, District Judge
Douglas K. Fermoile
Beasley & Ludwig
Washoe District Court Clerk