

IN THE SUPREME COURT OF THE STATE OF NEVADA

MESQUITE JEREMIAH, LLC, A
NEVADA LIMITED LIABILITY
COMPANY; AND MESQUITE BR PLUS,
LLC, A NEVADA LIMITED LIABILITY
COMPANY,
Appellants,

vs.

LEGACY CONSTRUCTION &
DEVELOPMENT, INC., A NEVADA
CORPORATION; CRESCENT HARDY;
AND SCOTT BULLOCH,
Respondents.

No. 44511

FILED

APR 19 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

LEGACY CONSTRUCTION &
DEVELOPMENT, INC., A NEVADA
CORPORATION,
Appellant,

vs.

CLIFFORD REDEKOP, AN
INDIVIDUAL,
Respondent.

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment in a breach of contract and mechanic's lien foreclosure action. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Respondents Legacy Construction & Development, Crescent Hardy, and Scott Bulloch initiated the underlying action seeking foreclosure on mechanic's liens filed on property in a housing development. Legacy also sued respondent Clifford Redekop for breach of a promissory note. Appellants Mesquite Jeremiah and Mesquite BR Plus (collectively Mesquite) counterclaimed for slander of title, alleging that Legacy's liens

were wrongfully attached to Mesquite's property and exceeded the amounts owed to Legacy. The district court ruled in Legacy's favor on the slander of title claim and Redekop's favor on the promissory note claim. Both Mesquite and Legacy appeal. For the reasons below, we affirm.

Slander of Title

Mesquite argues the district court's ruling that Legacy was not liable for slander of title is erroneous because Legacy knew the liens improperly encumbered Mesquite's parcels and contained amounts exceeding what Legacy was actually owed. We conclude Mesquite's arguments lack merit.

In order to prevail on a slander of title claim, a party must prove four elements: (1) the words spoken were false; (2) the words were spoken with malice; (3) the words were disparaging to the plaintiff's title in land; and (4) the plaintiff suffered special damages as a direct and natural result of the words being spoken.¹ This court will not reweigh the credibility of witnesses on appeal and will affirm where substantial evidence supports the district court's findings, even if the evidence was conflicting.²

Although the liens arguably contained false information, substantial evidence supports the district court's finding that Legacy did not act with the requisite malice. In order to prove malice, the plaintiff must show that "the defendant knew that the statement was false or acted

¹Executive Mgmt. v. Ticor Title Ins. Co., 114 Nev. 823, 842, 963 P.2d 465, 478 (1998).

²Jacobson v. Best Brands, Inc., 97 Nev. 390, 392-93, 632 P.2d 1150, 1152 (1981).

in reckless disregard of its truth or falsity.”³ Mesquite claims Legacy knew that the lien amounts were excessive and that the liens were placed on properties where Legacy had not actually performed any work.

However, Legacy produced substantial evidence that it filed the liens in good faith. Although Mesquite demonstrated the lien amounts did not reflect the amount due at the time the lien was filed, both Crescent Hardy and Patricia Hess explained that these inaccuracies resulted from payments received after the lien process had already been initiated, a process that took over two months to complete. Hardy also testified that Legacy’s work benefited Mesquite’s parcels. Legacy’s reliance on a professional lien service provider is further evidence that it acted in good faith.⁴

Mesquite also argues Legacy maliciously refused to remove the liens after Redekop notified it the liens were false. Both Hardy and Hess, however, testified that they believed the liens were accurate and valid. Although the liens had a detrimental effect on Mesquite, Legacy was under no obligation to remove the liens simply because Redekop claimed they were invalid. Mesquite had the opportunity to challenge the liens’ validity in district court under NRS 108.2275 and failed to do so.⁵

³Rowland v. Lepire, 99 Nev. 308, 313, 662 P.2d 1332, 1335 (1983).

⁴See id. at 314, 662 P.2d at 1336 (defendant’s good faith reliance on attorney’s recommendations negated evidence of malice).

⁵ The debtor of the lien claimant . . . who believes the notice of lien is frivolous and was made without reasonable cause, or that the amount of the notice of lien is excessive, may apply by motion to the district court for the county where the property or some part thereof is located for an

continued on next page . . .

Thus, substantial evidence supported the district court's conclusion that Legacy's failure to remove the liens after being contacted by Redekop was not malicious but instead reflected its belief the liens were valid and enforceable.⁶

Breach of the promissory note

Legacy appeals the district court's ruling in Redekop's favor for breach of a promissory note, arguing that NRS 104.3308 required Redekop to prove a defense to enforcing the note once Legacy made a prima facie case of the note's validity. We disagree.

Despite the apparent reliability of Hardy's testimony regarding the liens, his testimony concerning the note was so vague and equivocal that the district court could reject it as not credible and, as a result, conclude that Legacy had not made a prima facie case that the note was valid. Hardy did not recall when the note was signed, testified that he "believed" it was executed in exchange for a lien release, and could not be sure if the lien was ever actually released. Because Legacy chose not to clarify these ambiguities by questioning Redekop about the note, its entire claim was based on this self-serving, equivocal testimony. Given Hardy's unfamiliarity with the note, the district court could declare this testimony

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order directing the lien claimant to appear before the court to show cause why the relief requested should not be granted.

NRS 108.2275(1).

⁶Because we conclude Legacy did not slander Mesquite's title, we do not reach Mesquite's alter ego claim.

not credible and conclude Legacy had failed to make a prima facie case of the note's enforceability.

Conclusion

For the foregoing reasons, we conclude that the district court did not err in concluding that Legacy did not slander Mesquite's title and that Legacy was not entitled to enforce the promissory note against Redekop. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Mark R. Denton, District Judge
Woods Erickson Whitaker & Miles LLP
Clarkson & Draper, LLC
Clark County Clerk