

IN THE SUPREME COURT OF THE STATE OF NEVADA

MANNETTA LANE DEVELOPMENT
CORPORATION,
Appellant,
VS.
UNITED NACHTIGALL OF LAS
VEGAS PLUMBING AND
MECHANICAL, INC., A NEVADA
CORPORATION, A/K/A UNLV
PLUMBING AND MECHANICAL, INC.,
Respondent.

No. 44922

FILED

SEP 28 2006

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order affirming an arbitration award and an order denying a motion for relief from judgment under NRCP 60(b). Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge. The district court overruled the arbitration commissioner's recommendations and reinstated an arbitrator's decision awarding respondent United Nachtigall of Las Vegas Plumbing and Mechanical, Inc. (Nachtigall) \$15,000 in attorney fees in a construction subcontract dispute. Respondent Mannelta Lane Development Corporation (Mannelta) filed a motion for rehearing and/or reconsideration and relief from judgment, arguing that Nevada Arbitration Rule (NAR) 16(E) limited the arbitrator's award of attorney fees to \$3,000. Because the arbitration was subject to terms of an arbitration clause in the prime contract and subcontract, we conclude that NAR 16(E) did not apply to the arbitration to limit attorney fees, and the district court did not abuse its discretion when it reinstated the arbitrator's award.

We review a district court's award of attorney fees for an abuse of discretion.¹ The district court may not award fees or costs "unless authorized to do so by a statute, rule or contract."² At the time of this arbitration, NAR 16(E) limited the court-annexed arbitrator's award of attorney fees to a maximum of \$3,000.³ In contrast, NRS 108.237(1) entitles a prevailing mechanics' lien claimant to attorney fees and costs "without limitation." Furthermore, NRS 38.238(1), which applies to private arbitrations, permits an arbitrator to award reasonable attorney fees if the arbitration agreement so provides or if such an award would be authorized had the claim been litigated in the district court.

Nachtigall's mechanics' lien foreclosure action was not otherwise eligible for court-annexed arbitration under the NAR because the claim concerned title to real property and Manna's counterclaim exceeded \$40,000.⁴ However, parties may also arbitrate in the court-annexed program by agreement.⁵ Based upon our review of the record, the parties, the arbitrator, and the district court intended that NRS Chapter 38 and its attorney fee provision apply to the arbitration and that the assignment of the case to court-annexed arbitration was for the limited purpose of appointing an arbitrator. In its motion to stay proceedings pending the outcome of arbitration, Manna acknowledged that private,

¹U.S. Design & Constr. v. I.B.E.W. Local 357, 118 Nev. 458, 462, 50 P.3d 170, 173 (2002).

²Id.

³NAR 16(E).

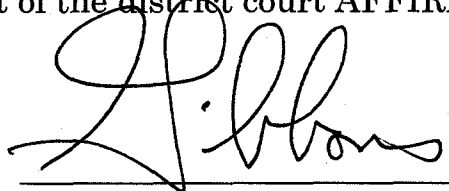
⁴NAR 3(A).

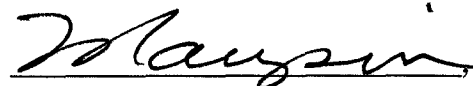
⁵NAR 3(B).

binding arbitration would be conducted under the AAA rules subject to NRS Chapter 38. We conclude that the district court did not abuse its discretion by awarding fees consistent with the plain terms of the prime contract, rather than NAR 16(E)'s limitation.

We have considered Manna's remaining arguments and conclude that they are without merit. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Nancy M. Saitta, District Judge
William C. Turner, Settlement Judge
Law Office of Eric A. Daly, LLC
Woodbury Morris & Brown
Clark County Clerk