

IN THE SUPREME COURT OF THE STATE OF NEVADA

CRESCENT ELECTRIC SUPPLY  
COMPANY, INC.,  
Appellant,  
vs.  
AMERICAN CASUALTY COMPANY OF  
READING, PENNSYLVANIA, A  
FOREIGN CORPORATION,  
Respondent.

No. 47158

FILED

APR 12 2007

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

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a bond claim dispute.<sup>1</sup> Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

Appellant Crescent Electric Supply Company, Inc. sold electrical supplies for a public works building project that was completed in December 2001. The general contractor, Yack Construction, Inc., acquired a payment bond for the project from respondent American Casualty Company of Reading, Pennsylvania.

Crescent filed a claim on Yack's bond with American Casualty on January 3, 2002. According to Crescent, it inquired into the status of its bond claim twice in August, 2002, and was told by American Casualty that "there will be an arbitration held on 26 September 2002. Your claim is included with [a third-party electrical contractor's claim]. This arbitration should only take one day." In his deposition, Crescent's credit manager agreed that this response from American Casualty did not state

<sup>1</sup>Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

that Crescent's claim would be paid. He also admitted that he knew of the one-year statute of limitations for filing a complaint against a bonding company and that American Casualty never asked him to refrain from filing a lawsuit against it, but that he postponed filing a complaint because of requests by Yack.

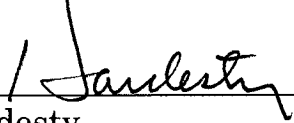
Crescent made numerous inquiries about the bond claim's status in 2003, and eventually filed a complaint against American Casualty and Yack on November 19, 2003. By stipulation, Yack was dismissed from the case. Subsequently, American Casualty filed a motion for summary judgment, arguing that Crescent's suit was precluded by the one-year statute of limitations under NRS 339.055. The district court ultimately granted American Casualty's motion for summary judgment.

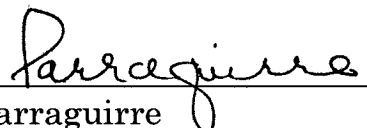
On appeal, Crescent contends that it knew of the statutory limitations period but that Yack had repeatedly asked it to postpone the commencement of litigation. Consequently, according to Crescent, genuine issues of material fact exist regarding whether American Casualty should be equitably estopped from asserting the statute of limitations as a defense. American Casualty, however, asserts that the lawsuit was barred, as a matter of law, because it was filed more than eleven months after the statute of limitations had expired. American Casualty contends that Crescent provided no legal support for its equitable estoppel argument to the district court, and that the facts do not support this claim, because the statute of limitations is a defense belonging to American Casualty, not Yack, and American Casualty never requested that Crescent forego filing its lawsuit within the limitations period. Crescent did not reply to American Casualty's argument.

We review a district court order granting summary judgment de novo.<sup>2</sup> Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law.<sup>3</sup>

As a matter of law, we conclude that Crescent failed to file its complaint within the one-year statute of limitations under NRS 339.055. We further conclude that Crescent has failed to demonstrate that genuine issues of material fact exist with respect to whether American Casualty should be equitably estopped from raising the statute of limitations as a defense.<sup>4</sup> Accordingly, we affirm the judgment of the district court.

It is so ORDERED.<sup>5</sup>

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

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<sup>2</sup>Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

<sup>3</sup>Id.

<sup>4</sup>Nevada State Bank v. Jamison Partnership, 106 Nev. 792, 799, 801 P.2d 1377, 1382 (1990) (requiring a clear showing by the party relying upon the equitable estoppel defense that it was induced by the adverse party to make a detrimental change in position).

<sup>5</sup>We deny American Casualty's request for attorney fees, which was made in its answering brief, but note that NRAP 39(a) allows costs to be taxed against appellant if the judgment is affirmed.

cc: Hon. Jessie Elizabeth Walsh, District Judge  
Robert F. Saint-Aubin, Settlement Judge  
Alan J. Buttell & Associates  
Ghanem & Sullivan  
Eighth District Court Clerk