

IN THE SUPREME COURT OF THE STATE OF NEVADA

DENNIS E. RUSK, ARCHITECT,
Appellant,
vs.
CORONADO SOUTH, LLC,
Respondent.

No. 47980

FILED

MAR 28 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order releasing mechanic's liens, entered after a show cause hearing. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

Coronado South is the owner of the real property comprising the Monarch Ridge Estates subdivision, located in Henderson, NV. Coronado hired the Stratton Group d/b/a Todd Stratton Homes to be the prime contractor on the Monarch building project. The Stratton Group was responsible for hiring architects and engineers on the project, and hired Dennis Rusk to provide architectural services for the Monarch Ridge Estates subdivision on approximately March 2, 2005, for which Rusk was not to be paid more than \$58,000.

Rusk contends that Stratton, the Stratton Group, and Coronado continued to increase the scope of Rusk's work, resulting in an additional amount due of \$221,143.73. Rusk invoiced the Stratton Group for this amount on March 15, 2006. When Stratton refused to pay Rusk the additional amount, Rusk withdrew as the architect of record for the Monarch project and refused to stamp the three remaining sets of plans to the City of Henderson. Further, as a result of Stratton's refusal to pay, Rusk filed a mechanic's lien for each of the fifteen lots in the amount of \$221,143.73 per lot. Each lien named the Stratton Group, Todd Stratton

Homes, Todd Stratton, Coronado South, and Monarch Ridge Estates as the owner(s) of the lots. Rusk properly recorded the liens on April 28, 2006, but never served the liens.

Coronado filed an application in district court for an order to show cause and an expedited hearing for release of frivolous and excessive liens under NRS 108.2275. Coronado contended that the liens were excessive and that Rusk failed to perfect the mechanics' liens by: 1) failing to serve a pre-lien notice on the owner; 2) failing to serve a fifteen-day notice of intent to lien; and 3) failing to serve the mechanics' liens.

The district court held a hearing on Coronado's application, found that Rusk failed to comply with the notice and service requirements of the mechanic's lien statutes, and granted Coronado's application. Rusk appeals the district court's order releasing the mechanic's liens.

NRS 108.2275 "governs the procedure in proceedings challenging a lien as frivolous or excessive."¹ This court has consistently held that "the mechanic's lien statutes are remedial in character and should be liberally construed; that substantial compliance with the statutory requirements is sufficient to perfect the lien if the property owner is not prejudiced."² Failure to fully or substantially comply with the

¹Crestline Investment Group, Inc. v. Lewis, 119 Nev. 365, 368 n.1, 75 P.3d 363, 365 n.1 (2003).

²Las Vegas Plywood and Lumber Inc. v. D & D Enterprises, 98 Nev. 378, 380, 649 P.2d 1367, 1368 (1982).

mechanic's lien statute renders a mechanic's lien invalid as a matter of law.³

Here, it is undisputed that no attempts were made to serve the listed owners of the property either in terms of the pre-lien notice requirement or the actual mechanic's lien itself under NRS 108.2275. Unlike the appellant in Las Vegas Plywood and Lumber Inc., who attempted to serve the lien on respondent, and, when appellant could find no suitable person to accept service, posted a copy of the lien in a conspicuous place and mailed a copy, Rusk merely recorded the lien and made no attempt to serve Coronado.⁴

Rusk failed to serve either a pre-lien notice or the actual liens on Coronado. Substantial compliance is the standard to comply with NRS 108.2275, but Rusk did not comply with any requirements of the statute, and, consequently, Rusk did not substantially comply with NRS 108.2275. Accordingly, the district court properly released the liens.

We have repeatedly held that “[a]bsent an abuse of discretion, a district court’s award of fees and costs will not be disturbed on appeal.”⁵ Specifically, the district court has discretion to award costs and fees under


³Schofield v. Copeland Lumber Yards, Inc., 101 Nev. 83, 86, 692 P.2d 519, 521 (1985).


⁴Las Vegas Plywood and Lumber Inc., 98 Nev. at 379, 649 P.2d at 1368.

⁵Parodi v. Budetti, 115 Nev. 236, 240, 984 P.2d 172, 174 (1999).

NRS 108.2275, therefore, we perceive no abuse of discretion in the district court's award of attorney fees and costs in this case.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta

cc: Hon. Kathy A. Hardcastle, District Judge
Janet Trost, Settlement Judge
Sterling Law, LLC
Kolesar & Leatham, Chtd.
Eighth District Court Clerk

⁶Crestline Investment Group, Inc., 119 Nev. at 368 n.1, 75 P.3d at 365 n.1.

MAUPIN, J., concurring in the results reached by the majority.

Maupin, J.
Maupin