

IN THE SUPREME COURT OF THE STATE OF NEVADA

TAYLOR INTERNATIONAL CORP.,
AND LIDO CASINO RESORT, LLC,
Appellants,
vs.
MALCOLM DRILLING COMPANY,
INC.,
Respondent.

No. 48077

FILED

MAY 07 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER VACATING JUDGMENT AND REMANDING

This is an appeal from a district court order denying a motion to show cause why a notice of mechanic's lien should not be expunged as frivolous, excessive or without reasonable cause. Eighth Judicial District Court, Clark County; David Wall, Judge.

The parties are familiar with the facts and we recount them only as necessary for our disposition.

The district court heard argument but did not take testimony on appellants' Taylor International Corp. and Lido Casino Resort, LLC's (collectively "Taylor") motion to expunge respondent Malcolm Drilling Company, Inc.'s ("Malcolm") mechanic's lien. Thereafter, the district court issued findings of fact and conclusions of law, wherein it found that, pursuant to his court's decision in California Commercial v. Amedeo Vegas I,¹ Malcolm's delay related damages were based on the parties' contract. Therefore, the district court concluded that "any damages flowing from a breach of a contractual obligation to increase the contract price (even if such obligation arises from project delays, disruption, or delay related

¹119 Nev. 143, 67 P.3d 328 (2003).

events) are direct damages, not consequential damages of the type reasonably excluded from liens under NRS 108.239.” Thus, the district court concluded that Malcolm’s lien did not include consequential damages and, accordingly, denied Taylor’s motion. The district court left the issue of the recoverable amount of the lien to be determined at trial.


Whether the parties’ contract ultimately makes delay related damages lienable appears to be a mixed question of law and fact. We review questions of law de novo and accept a district court’s findings of fact if they are supported by substantial evidence.²


The record from the hearing, which was a summary proceeding with a limited purpose, lacks the requisite depth for this court to determine the extent to which questions of fact remain, and if the district court’s findings of fact are supported by substantial evidence. Therefore, we reach no conclusion as to the district court’s findings of fact and conclusions of law. Rather, this court will defer ruling on the issues presented in this appeal until the record can be fully developed at trial through witness testimony and the trial court’s findings of fact and conclusions of law as to how it chose to classify the specific damages sought for purposes of Malcolm’s mechanic’s lien.


Accordingly we

²See D.R. Horton, Inc. v. Green, 120 Nev. 549, 553, 96 P.3d 1159, 1162 (2004) (applying the mixed standard of review to contractual unconscionability).

ORDER the judgment of the district court VACATED AND REMAND this matter to the district court for all issues to be tried at the parties' upcoming trial.³


_____, C. J.
Gibbons


_____, J.
Cherry


_____, J.
Saitta

cc: Hon. David Wall, District Judge
Lansford W. Levitt, Settlement Judge
Smith Currie & Hancock LLP/Las Vegas
Smith Currie & Hancock, LLP/Atlanta
Harrison, Kemp, Jones & Coulthard, LLP
Oles Morrison Rinker & Baker
Eighth District Court Clerk

³We note that the case is set for trial on May 19, 2008.