

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATT CONSTRUCTION, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY,  
Appellant,

vs.

CAESAR'S PALACE REALTY CORP., A  
NEVADA CORPORATION,  
Respondent.

No. 49055

**FILED**

MAY 06 2008

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

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment, certified as final under NRCP 54(b), in a mechanic's lien and contract action. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

Appellant Matt Construction, LLC argues that the district court erred in granting summary judgment to respondent Caesar's Palace Realty Corporation; it contends that the district court erroneously determined that despite the exemption in NRS 108.245(5), it was required to serve Caesar's with a notice of right to lien under NRS 108.245. We conclude that this argument is without merit.<sup>1</sup>

---

<sup>1</sup>See Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (providing that this court reviews a district court's grant of summary judgment de novo, without deference to the findings of the lower court).

NRS 108.245 provides in pertinent part:

1. Except as otherwise provided in subsection 5, every lien claimant, other than one who performs only labor, who claims the benefit of NRS 108.221 to 108.246, inclusive, shall, at any time after the first delivery of material or performance of work or services under his contract, deliver in person or by certified mail to the owner of the property a notice of right to lien in substantially the following form:

....

2. Such a notice does not constitute a lien or give actual or constructive notice of a lien for any purpose.

....

5. A prime contractor or other person who contracts directly with an owner or sells materials directly to an owner is not required to give notice pursuant to this section.

Matt Construction argues that because Caesar's would be considered as the owner of the Forum Shops under NRS 108.22148,<sup>2</sup> the

---

<sup>2</sup>NRS 108.22148 provides pertinent part:

1. "Owner" includes:

(a) The record owner or owners of the property or an improvement to the property as evidenced by a conveyance or other instrument which transfers that interest to him and is recorded in the office of the county recorder in which the improvement or the property is located;

(b) The reputed owner or owners of the property or an improvement to the property;

(c) The owner or owners of the property or an improvement to the property, as shown on the

*continued on next page . . .*

exemption under NRS 108.245(5) was applicable. As to having a direct contract with Caesar's, Matt Construction contends that Newport Clock Gallery, LLC's agency relationship under NRS 108.22104<sup>3</sup> with Caesar's established a direct contract for purposes of NRS 108.245(5).

Further, Matt Construction argues that under this court's holding in Fondren v. K/L Complex, Ltd.,<sup>4</sup> Caesar's knowledge of the contract for tenant improvements and its failure to file a notice of non-

---

*... continued*

records of the county assessor for the county where the property or improvement is located;

(d) The person or persons whose name appears as owner of the property or an improvement to the property on the building permit;

(e) A person who claims an interest in or possesses less than a fee simple estate in the property.

<sup>3</sup>NRS 108.22104 provides: "Agent of the owner' means every architect, builder, contractor, engineer, geologist, land surveyor, lessee, miner, subcontractor or other person having charge or control of the property, improvement or work of improvement of the owner, or any part thereof."

<sup>4</sup>106 Nev. 705, 709-10, 800 P.2d 719, 721 (1990) (holding that where a lessor of commercial premises has knowledge that the lessee had contracted to have remodeling work done on the premises, and where the lessor fails to file a notice of non-responsibility, a mechanic's lien on that property could be enforced against the lessor, even though the subcontractors who sought to enforce the liens failed to deliver a pre-lien notice to the lessor).

responsibility under NRS 108.234<sup>5</sup> established a direct contract for purposes of NRS 108.245(5). Specifically, as to knowledge, Matt Construction argues that Caesar's agency relationship with Newport Clock Gallery, LLC and Forum Shops, LLC under NRS 108.22104 imputed the latter parties' knowledge of the contract for tenant improvements onto Caesar's.

---

<sup>5</sup>NRS 108.234 provides in pertinent part:

1. Except as otherwise provided in subsection 2, every improvement constructed, altered or repaired upon property shall be deemed to have been constructed, altered or repaired at the instance of each owner having or claiming any interest therein, and the interest owned or claimed must be subject to each notice of lien recorded in accordance with the provisions of NRS 108.221 to 108.246, inclusive.

2. The interest of a disinterested owner in any improvement and the property upon which an improvement is constructed, altered or repaired is not subject to a notice of lien if the disinterested owner, within 3 days after he first obtains knowledge of the construction, alteration or repair, or the intended construction, alteration or repair, gives notice that he will not be responsible for the improvement by recording a notice in writing to that effect with the county recorder of the county where the property is located and, in the instance of a disinterested owner who is:

(a) A lessor, the notice of nonresponsibility shall be deemed timely recorded if the notice is recorded within 3 days immediately following the effective date of the lease or by the time of the execution of the lease by all parties, whichever occurs first.

Caesar's responds and argues that the exemption contained within NRS 108.245(5) did not apply in this case; it argues that Matt Construction's failure to serve it with a notice of right to lien under NRS 108.245 precluded Matt Construction from exercising its lien. Caesar's contends that Matt Construction's reliance on Fondren is misplaced because unlike that case, Caesar's did not have knowledge as to the contract for tenant improvements.

We conclude that the district court did not err in granting summary judgment to Caesar's. While Newport Clock Gallery, Inc. had leased property from Forum Shops, LLC, Newport Clock Gallery, LLC had not entered into this lease. Thus, when Newport Clock Gallery, LLC entered into its contract for tenant improvements with Matt Construction, there was no direct contract with Caesar's because Newport Clock Gallery, LLC had no ownership under NRS 108.22148 in the leased premises; the lease was entered into by a separate entity—Newport Clock Gallery, Inc. Consequently, we conclude that there was no agency relationship between Caesar's and Newport Clock Gallery, LLC under NRS 108.22104 when Newport Gallery, LLC entered into its contract with Matt Construction because Newport Gallery, LLC had no charge or control of the leased premises; additionally, this lack of agency relationship prevented the imputation of knowledge onto Caesar's.<sup>6</sup> Therefore, the exception under

---


<sup>6</sup>While the Forum Shops, LLC's knowledge with regards to the contract for tenant improvements may impute knowledge onto Caesar's, any imputation of knowledge of this type would nevertheless not establish a direct contract for purposes of NRS 108.245(5) because Newport Clock Gallery, LLC had no charge or control of the leased premises for purposes of NRS 108.22104. See Fondren, 106 Nev. at 709-10, 800 P.2d at 721.

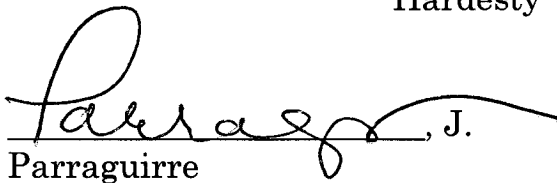
NRS 108.245(5) would not apply in this case because Matt Construction did not have a direct contract with Caesar's for its contract for tenant improvements. As a result, we conclude that the district court did not err in finding that Matt Construction's failure to provide a notice of right to lien to Caesar's under NRS 108.245 prevented Matt Construction from foreclosing its lien upon Caesar's.

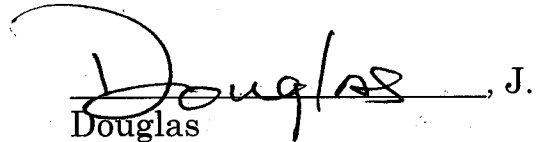
Additionally, we conclude that Caesar's failure in not filing a notice of non-responsibility under NRS 108.234 has no bearing to our decision because Matt Construction's failure to serve Caesar's with a notice of right to lien under NRS 108.245 nonetheless prevented Matt Construction from foreclosing its lien upon Caesar's.

Therefore, we conclude that the district court did not err in granting summary judgment to Caesar's. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
Hardesty, J.

  
Parraguirre, J.

  
Douglas, J.

cc: Hon. Timothy C. Williams, District Judge  
Israel Kunin, Settlement Judge  
Howard & Howard  
Jones Vargas/Las Vegas  
Eighth District Court Clerk