

IN THE SUPREME COURT OF THE STATE OF NEVADA

RCS PRELIMINARY LIEN SERVICE,  
Appellant,  
vs.  
CRESCENT ELECTRIC SUPPLY  
COMPANY, INC.,  
Respondent.

No. 49935

**FILED**

JUN 13 2008

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying a motion to set aside a default judgment in a lien contract dispute. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

After respondent filed its complaint, appellant demanded security costs under NRS 18.130 on March 13, 2006. Respondent posted the costs on May 12, 2006, but notified appellant on June 22, 2006. After posting the costs but before giving notice to appellant, respondent filed a notice of intent to take default on May 25, 2006. Appellant never answered respondent's complaint and respondent proceeded with the default proceedings, including the prove-up hearing, without notifying appellant. The district court entered a default judgment and denied appellant's motion to set aside the default judgment. This appeal followed.

We review a district court's denial of NRCP 60(b) relief for an abuse of discretion.<sup>1</sup> Such relief is appropriate only when the applicant has demonstrated "mistake, inadvertence, surprise, or excusable neglect," or another enumerated ground for relief.<sup>2</sup>

Having reviewed the record on appeal and the parties' briefs, we conclude that the district court abused its discretion when it denied appellant's request for NRCP 60(b) relief, as the default judgment was improperly obtained under Nevada law. After appellant filed a demand for costs, all proceedings in the underlying district court case were stayed under NRS 18.130(1), until respondent filed a foreign corporation bond on May 12, 2006. The time to answer the complaint, however, did not recommence running again until June 22, 2006, when respondent completed service on appellant.<sup>3</sup> Because respondent filed a notice of intent to take default before notifying appellant that it posted the costs, respondent's notice was filed prematurely and was ineffective. Therefore, respondent did not comply with NRCP 55 three-day notice requirements and improperly obtained a default judgment against appellant. Accordingly, as the district court abused its discretion when it denied appellant's motion to set aside the default judgment, we


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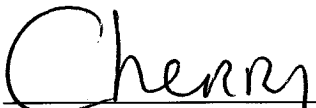
<sup>1</sup>Heard v. Fisher's & Cobb Sales, 88 Nev. 566, 568, 502 P.2d 104, 105 (1972).

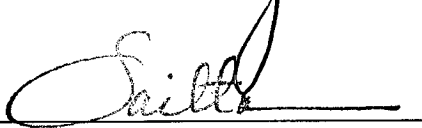
<sup>2</sup>NRCP 60(b).

<sup>3</sup>NRS 18.130(1) (stating that plaintiff shall notify defendant of the security filing or deposit, and "the defendant, after receipt of such notice, shall have 10 days or the period allowed under NRCP 12(a), whichever is longer, in which to answer or otherwise plead to the complaint").

REVERSE the district court's order and REMAND for proceedings consistent with this order.

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. David B. Barker, District Judge  
Lansford W. Levitt, Settlement Judge  
Blalock & Qualey  
Alan J. Buttell & Associates  
Eighth District Court Clerk