

IN THE SUPREME COURT OF THE STATE OF NEVADA

PADILLA CONSTRUCTION COMPANY
OF NEVADA, A NEVADA
CORPORATION,
Appellant,
vs.
R. B. & G. CONSTRUCTION CO., INC.,
A CALIFORNIA CORPORATION,
Respondent.

No. 50655

PADILLA CONSTRUCTION COMPANY
OF NEVADA, A NEVADA
CORPORATION,
Appellant,
vs.
R. B. & G. CONSTRUCTION CO., INC.,
A CALIFORNIA CORPORATION,
Respondent.

No. 52241

FILED

JUN 04 2009

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

ORDER OF REVERSAL AND REMAND

Docket No. 50655 is an appeal from a district court summary judgment in a contract action. Docket No. 52241 is an appeal from a postjudgment order awarding attorney fees and costs. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge. These cases are not consolidated.

BACKGROUND

Appellant Padilla Construction Company of Nevada, a Nevada Corporation (Padilla), filed suit in district court against respondent R. B. & G. Construction Co., Inc., a California corporation (RBG), for breach of contract and quantum meruit. Specifically, Padilla asserted that it was entitled to \$33,250 for materials and services performed on a project in which RBG was the general contractor. Thereafter, Padilla filed a motion for summary judgment. The district court granted Padilla's motion, but awarded it only \$16,821.70. The record indicates that the district court arrived at the \$16,821.70 figure by subtracting \$15,678.30 that RBG

claimed it had to pay to another construction company to repair Padilla's purportedly shoddy work from the \$32,500 contract price. The appeal in Docket No. 50655 stems from this decision. The district court subsequently awarded \$29,467.59 in attorney fees and costs to RBG. Padilla challenges that award in the appeal in Docket No. 52241.

DISCUSSION

In resolving these cases, our analysis will first address the summary judgment award at issue in Docket No. 50655. Specifically, we will address the amount that Padilla is owed under the contract price and whether the district court erred by subtracting the amount RBG claims it had to pay to repair Padilla's purportedly shoddy work in determining the award to Padilla. We then address the district court's award of attorney fees and costs challenged in Docket No. 52241.

Docket No. 50655

"This court reviews a district court's grant of summary judgment de novo, without deference to the findings of the lower court." Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). "Summary judgment is appropriate and shall be rendered forthwith when the pleadings and other evidence on file demonstrate that no genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law." Id. (internal quotations omitted); see NRCPC 56(c). "This court has noted that when reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." Wood, 121 Nev. at 729, 121 P.3d at 1029.

On appeal, Padilla first asserts that it was entitled to \$33,250—the contract price of \$32,500, plus \$750 in extra work RBG allegedly authorized. Padilla further maintains that the district court

erred in awarding it only \$16,821.70. As stated above, it appears the district court arrived at the \$16,821.70 figure after the court subtracted \$15,678.30. RBG claims it had to pay to repair Padilla's purportedly shoddy work from the \$32,500 contract price.

Contract Price

As an initial matter, we agree with the district court that the correct starting point in determining the amount that Padilla is owed is the contract price—\$32,500. “[W]hen a contract is clear, unambiguous, and complete, its terms must be given their plain meaning and the contract must be enforced as written; the court may not admit any other evidence of the parties’ intent because the contract expresses their intent.” Ringle v. Bruton, 120 Nev. 82, 93, 86 P.3d 1032, 1039 (2004). Here, the contract price agreed to by the parties is clearly \$32,500, and there is no evidence in the record to indicate that the parties agreed to change that amount to \$33,500, as Padilla contends on appeal. Accordingly, we conclude that the district court properly determined that Padilla was owed \$32,500 before the court subtracted the amount RBG was allegedly owed for repair costs.

RBG’s repair costs

With the \$32,500 contract price established as the starting point in this matter, we now turn to whether the district court erred in subtracting the \$15,678.30 that RBG claims it had to pay to repair Padilla’s allegedly shoddy work from the \$32,500 contract price. Having reviewed the record and the parties’ briefs on appeal, we conclude that pursuant to NRS 624.624, the district court was not authorized to deduct RBG’s repair costs from the \$32,500 contract price.

Nevada law applicable, to the instant case, allows a contractor to withhold payment from a subcontractor for costs and expenses needed

to correct or repair work done by the subcontractor. NRS 624.624(2) (2001).¹ A withholding of payment can only happen, however, if the contractor first complies with former NRS 624.624(3)'s written notice requirement. That provision provides, in relevant part, that if a "contractor or higher-tiered subcontractor intends to withhold any amount from a payment to be made to a subcontractor," the contractor must provide written notice to the subcontractor of the amount that will be withheld. NRS 624.624(3) (2001). This written notice must

[g]ive a reasonably detailed explanation of the reason the contractor or higher-tiered subcontractor will withhold that amount, including, without limitation, a specific reference to the provision or section of the subcontract, and any documents relating thereto, and the applicable building code, law or regulation with which the subcontractor has failed to comply.

NRS 624.624(3)(b) (2001).

In this case, Padilla maintains that RBG failed to comply with NRS 624.624's written notice requirements before withholding payment. RBG counters that it sufficiently complied with former NRS 624.624 by notifying Padilla both verbally and in writing of the problems with Padilla's work and the reasons for RBG's withholding of payment. We agree with Padilla that the written notice requirements were not fulfilled in this matter.

First, it is evident that RBG's verbal notice does not comply with former NRS 624.624's written notice requirement. The 2001 version of NRS 624.624 does not authorize a verbal alternative, or any other

¹It is undisputed that because the project in question occurred in 2002, the 2001 version of NRS 624.624 applies to the instant case.

substitute for the requirement that written notice be provided. Additionally, the two letters relied on by RBG to demonstrate that it provided sufficient written notice do not provide a “reasonably detailed explanation” of the reasons RBG withheld payment from Padilla, and thus, do not suffice to meet the written notice requirements of NRS 624.624(3)(b) (2001).² RBG contends, however, that the applicable version of NRS 624.624 only required it to provide a reason for withholding payment, and not a detailed explanation of its reasons for withholding payment. We disagree. The 2001 version of NRS 624.624 clearly indicates that the contractor must “[g]ive a reasonably detailed explanation of the reason the contractor” intends to withhold payment. NRS 624.624(3)(6) (2001). And, as set forth above, the documents relied on by RBG clearly failed to satisfy that requirement.

Given that RBG failed to comply with former NRS 624.624’s written notice requirement, we conclude that RBG was not entitled to withhold payment from Padilla, and as a result, the district court erred in deducting RBG’s claimed repair costs from the contract price of \$32,500. Accordingly, we reverse the portion of the district court’s order calculating

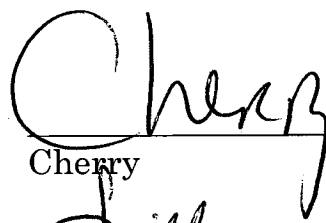
²RBG contends that it provided Padilla with a written “punch list” of items that needed to be corrected. RBG, however, has never provided that “punch list” as evidence, and thus, we are unable to determine whether that document sufficiently complied with former NRS 624.624’s “reasonably detailed explanation” requirement. Although RBG submitted an affidavit from its counsel indicating that the punch list “included correction work such as patching and application of a fog coat,” this affidavit does not suffice to demonstrate that the written notice requirement was satisfied by the “punch list.” Specifically, the affidavit does not provide sufficient information to assist us in determining whether the “punch list” complied with this requirement.


the amount owed to Padilla and remand the matter in Docket No. 50655 to the district court for further proceedings consistent with this order.³

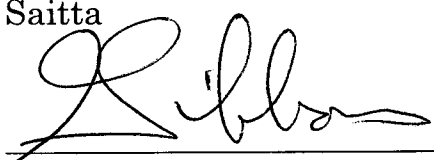
Docket No. 52241

As stated above, the district court awarded RBG \$29,467.59 in attorney fees and costs. The district court reasoned that RBG had repeatedly attempted to settle the matter before and after Padilla filed the complaint against RBG, and that RBG had made an offer of judgment to Padilla in the amount of \$20,000, an amount greater than what Padilla ultimately recovered—\$16,821.70. We conclude that our holding in Docket No. 50655 necessitates a reversal of the district court's award of attorney fees and costs to respondent in Docket No. 52241. Thus, we also reverse the district court's award of attorney fees and costs, and we remand the matter in Docket No. 52241 to the district for further proceedings consistent with this order.

It is so ORDERED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

³In light of this order, we need not consider Padilla's remaining arguments regarding the district court's summary judgment order. We further conclude that RBG's remaining arguments in support of the district court's order lacks merit.

cc: Eighth Judicial District Court Dept. 8, District Judge
William F. Buchanan, Settlement Judge
Bruce R. Mundy
Jolley Urga Wirth Woodbury & Standish
Eighth District Court Clerk