

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARDSON CONSTRUCTION INC.,  
A NEVADA CORPORATION,  
Appellant,  
vs.  
THE STATE OF NEVADA EX REL.  
OFFICE OF THE STATE TREASURER;  
AND BRIAN K. KROLICKI IN HIS  
CAPACITY AS TREASURER OF THE  
STATE OF NEVADA,  
Respondents.

No. 51534

**FILED**

**MAY 05 2009**

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment in an action brought under the unclaimed property act, NRS 120A.<sup>1</sup> Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Appellant Richardson Construction Inc. argues that the district court erred in granting the State's motion for summary judgment because there was a genuine issue of material fact and the district court misapprehended the applicable law. We disagree and conclude that the district court correctly determined that Richardson was not an owner under the unclaimed property act and thus its remaining claims are moot.

"This court reviews a district court's grant of summary judgment de novo . . ." Wood v. Safeway, Inc., 121 Nev. 724, 729,

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<sup>1</sup>Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this case.

121 P.3d 1026, 1029 (2005). Summary judgment is proper when, viewing the evidence in the light most favorable to the non-moving party, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Id. “On appeal from a summary judgment, this court may ‘be required to determine whether the law has been correctly perceived and applied by the district court.” Calloway v. City of Reno, 116 Nev. 250, 256, 993 P.2d 1259, 1263 (2000) (quoting Mullis v. Nevada National Bank, 98 Nev. 510, 512, 654 P.2d 533, 535 (1982)).

Richardson hired a subcontractor that subsequently went out of business, leaving many of its workers unpaid. The Nevada Labor Commissioner brought an administrative action, pursuant to NRS 608.150, on behalf of the subcontractor’s employees to recover the unpaid wages. Richardson and the Commissioner entered into a settlement agreement pursuant to which Richardson paid \$38,000 to the Commissioner for the unpaid wages.

The Commissioner used the settlement money to pay those employees who made claims. Then, the Commissioner forwarded the remaining balance to the administrator of unclaimed property, the State Treasurer (Administrator), pursuant to NRS 607.170(3), as presumptively abandoned property.

Richardson subsequently filed a claim with the Administrator under the unclaimed property act for return of the unclaimed settlement money. When the Administrator failed to act on the claim, Richardson filed a claim in district court to recover the unclaimed settlement money. The district court granted the State’s motion for summary judgment, concluding that *res judicata*

precluded Richardson from relitigating its entitlement to the unclaimed settlement money and that it did not qualify as an NRS 120A.100 "owner" of the unclaimed settlement money.

Richardson argues the district court erroneously concluded that Richardson was not the owner of the unclaimed settlement money. Richardson argues that because it gave the Commissioner the money that was eventually forwarded to the Administrator, Richardson has satisfied the definition of "owner," pursuant to NRS 120A.100.

The unclaimed property act states that all money received that is subsequently transferred to the State General Fund, "remains subject to the valid claims of holders pursuant to NRS 120A.590 and owners pursuant to NRS 120A.640." NRS 120A.620(5)(b). NRS 120A.100 defines an owner as:

[A] person who has a legal or equitable interest in property subject to this chapter or the person's legal representative. The term includes, without limitation, a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant or payee in the case of other property.

Richardson is not an owner as defined in NRS 120A.100. Richardson is not a depositor, beneficiary, creditor, claimant, or payee. Richardson paid the \$38,000 to the Commissioner pursuant to the settlement agreement, making Richardson the previous owner of the money. Richardson was not an owner of the funds once it paid the money to satisfy the settlement agreement with the Commissioner.

Richardson's argument overlooks the nature of the funds which make up the unclaimed property. By virtue of the settlement, Richardson acknowledged that its subcontractor had failed to pay its employees' wages, thereby making Richardson liable under NRS 608.150 for the unpaid wages. Pursuant to the settlement agreement, Richardson paid \$38,000 to the Commissioner and discharged the NRS 608.150 claim for unpaid wages. Richardson's argument, in effect, would set aside the prior agreement with the Commissioner.

The unclaimed property transferred to the Administrator represents the as-yet-unpaid wages of the subcontractor's employees. Even though some of the settlement money went unclaimed, the funds still belong to the unpaid employees. If an unpaid employee were to come forward, the unclaimed property division would pay that employee using the unclaimed funds.<sup>2</sup> See NRS 120A.620(5)(b).

Richardson is not an owner as defined in NRS 120A.100. Thus, the district court properly granted the State's motion for summary judgment.<sup>3</sup> Accordingly, we

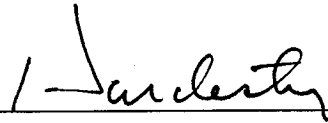
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<sup>2</sup>The Administrator has paid claims made by the subcontractor's unpaid employees after receiving the remaining unclaimed settlement money from the Commissioner.

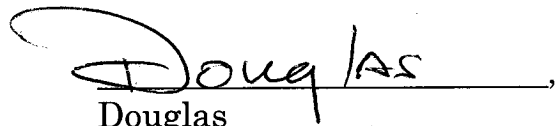
<sup>3</sup>Richardson argues the district court erred in its application of claim preclusion principles and the settlement agreement between Richardson and the Labor Commissioner does not bar its action to recover the unclaimed money. It is irrelevant whether or not claim preclusion applies since, pursuant to NRS 120A.100, Richardson was not an owner of the unclaimed settlement money. Consequently, we do not address this issue.

*continued on next page . . .*

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Susan Johnson, District Judge  
Lansford W. Levitt, Settlement Judge  
Parker, Nelson & Associates  
Attorney General Catherine Cortez Masto/Carson City  
Eighth District Court Clerk

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*... continued*

Additionally, Richardson points out multiple issues it claims are genuine issues of material fact which preclude the entry of summary judgment. Given the fact Richardson was not an owner of the unclaimed settlement money, there are no genuine issues of material fact and the State was entitled to judgment as a matter of law.