

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT J. BOEDDEKER,
INDIVIDUALLY AND D/B/A RJB
SYSTEMS TECHNOLOGIES, INC., A
NEVADA CORPORATION,
Appellant,
vs.
JAYNES CORPORATION, A NEW
MEXICO CORPORATION,
Respondent.

No. 52026

FILED

JUL 20 2010

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

ORDER OF AFFIRMANCE

This is an appeal, under NRS 108.2275(8), from a district court order releasing a mechanic's lien. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Appellant RJB Systems Technologies Inc. (RJB) contends that the district court erred in discharging its expired notice of lien on two alternative grounds: (1) the district court did not have the authority to discharge the lien because it was purportedly not the subject of the underlying lawsuit, or, alternatively, (2) even if the district court had the authority to discharge the lien, the matter should have been stayed pursuant to the parties' mediation agreement. For the following reasons, we disagree with both of RJB's contentions and affirm the district court's order releasing the expired lien.

The district court had the authority to discharge the lien

RJB contends that the district court did not have the authority to discharge its expired lien in the underlying litigation because NRS

108.2275(5) obligates a party seeking to discharge a lien to file a separate cause of action.

This court reviews questions of statutory interpretation de novo, and, unless a statute is ambiguous, gives effect to the plain meaning of the statute. See, e.g., We the People Nevada v. Secretary of State, 124 Nev. 874, 881, 192 P.3d 1166, 1170 (2008).

For the following reasons, we conclude that NRS 108.2275(5) does not require a party seeking to discharge a lien to file an independent cause of action.

NRS 108.2275(5) merely states that “[i]f, at the time the application is filed, an action to foreclose the notice of lien has not been filed, the clerk of the court shall assign a number to the application and obtain from the applicant a filing fee of \$85.” That subsection does not indicate that a party must file a separate cause of action.

Furthermore, NRS 108.2275(1) indicates that a debtor of the lien claimant may apply by motion to discharge a lien. See NRS 108.2275(1) (“The debtor of the lien claimant or a party in interest in the property subject to the notice of lien who believes the notice of lien is frivolous . . . may apply by motion to the district court for the county where the property or some part thereof is located [to discharge a lien].” (emphasis added)); see also NRS 108.2275(2) (setting forth what must be included in the motion to discharge a lien). Accordingly, we conclude that the district court had the authority to release RJB’s expired lien.

The district court did not err by refusing to require mediation on this issue

RJB argues that the district court erred by refusing to direct this issue to mediation pursuant to the parties’ agreement requiring mediation as a condition precedent to any other form of dispute resolution. We disagree because the district court’s decision to release the expired lien

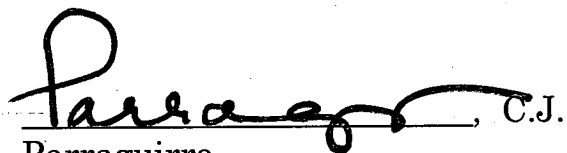
was a procedural matter and not subject to the parties' mediation agreement.

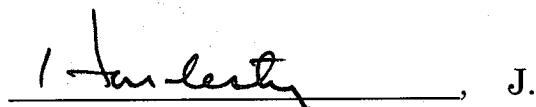
Because RJB failed to foreclose on its notice of lien within the six-month statutory time limit, the expired lien had no legal effect. See NRS 108.233(2) (“[A] notice of lien shall be deemed to have expired as a lien against the property after the lapse of the 6-month period provided in [NRS 108.233(1)].” (emphasis added)); A.F. Constr. Co. v. Virgin River Casino, 118 Nev. 699, 704, 56 P.3d 887, 890 (2002) (“[A] lien does not bind the improvement or property for a longer period than 6 months after [it] has been recorded” (internal quotations omitted)). As a result, we cannot conclude that the district court erred in refusing to direct this procedural matter to mediation.¹

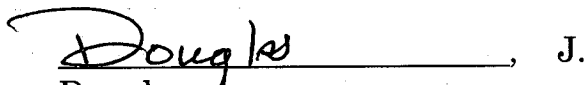
¹To the extent that RJB argues that the parties' mediation agreement should toll the six-month time period for filing a foreclosure action, we conclude that this argument is without merit. The six-month time period may be tolled only when the lien claimant and the person in interest in the property sign a written instrument and record the instrument with the county recorder's office within the six-month time period. See NRS 108.233(1)(b). Otherwise, a party cannot contract away a statutory obligation to bring a foreclosure action within six months. See, e.g., NRS 108.2453(1) (“[A] person may not waive or modify a right, obligation or liability set forth in the [mechanic's lien statutes].”). Here, the mediation agreement was not signed by the most integral entity who had an interest in the property—the Las Vegas Housing Authority—and was never recorded. Therefore, the parties' mediation agreement cannot be considered a writing sufficient to toll the six-month time period for enforcing a lien.

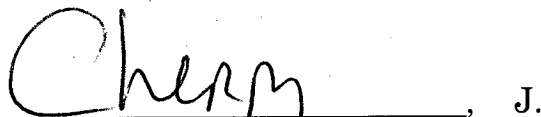
Accordingly, we conclude that the district court did not err in discharging RJB's expired lien and, therefore,


ORDER the judgment of the district court AFFIRMED.



Parraguirre, C.J.

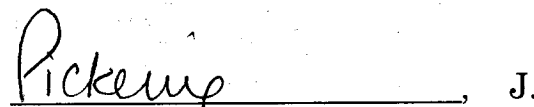

Hardesty, J.


Douglas, J.


Cherry, J.


Saitta, J.


Gibbons, J.


Pickering, J.

cc: Hon. Mark R. Denton, District Judge
Ara H. Shirinian, Settlement Judge
Parker, Nelson & Associates
Snell & Wilmer, LLP/Las Vegas
Eighth District Court Clerk