

IN THE SUPREME COURT OF THE STATE OF NEVADA

PHOENIX GARDENS OF NEVADA,
LLC, A NEVADA LIMITED LIABILITY
COMPANY,
Appellant,
vs.
HUGHES WATER & SEWER, LTD.,
D/B/A STANDARD WHOLESALE, A
HUGHES SUPPLY CO.,
Respondents.

No. 52263

FILED

MAR 01 2010

TRACE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART, AND
REMANDING

This is an appeal from a district court judgment in a mechanic's lien action. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

Appellant Phoenix Gardens of Nevada, LLC, contends that the district court erred in computing the amount of judgment and attorney fees awarded to respondent Hughes Water & Sewer, Ltd. While we agree that Hughes was improperly awarded \$522 in attorney fees, and therefore the award should be reduced accordingly, we conclude that Phoenix's remaining arguments fail.¹

Amount of judgment—lien release issue

Phoenix argues that the district court erred in computing the amount of judgment because Hughes should not have been awarded monies resulting from unpaid invoices that were dated prior to the date of

¹After careful review, we also conclude that Phoenix's various other challenges to the district court's judgment are equally without merit.

the signed lien releases. According to Phoenix, NRS 108.2457, Nevada's statute pertaining to lien releases, provides that a lien release applies to all outstanding invoices up to and including the date of the release. We disagree.

The four lien releases at issue in this case were drafted pursuant to NRS 108.2457(5)(b), which provides that "[w]here the lien claimant has been paid in full or a part of the amount provided for in the progress billing, the waiver and release of the amount paid must be in [the form provide for under this statute]." NRS 108.2457(5)(b) requires that the form contain, among other things, the "Invoice/Payment Application Number" and the "Payment Amount." The form must further state, in relevant part, that,

The undersigned has been paid and has received a progress payment in the above-referenced Payment Amount for all work, materials and equipment the undersigned furnished to his Customer for the above-described Property and does hereby waive and release any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above-described Property to the following extent:

This release covers a progress payment for the work, materials and equipment furnished by the undersigned to the Property or to the Undersigned's Customer which are the subject of the Invoice or Payment Application, but only to the extent of the Payment Amount or such portion of the Payment Amount as the undersigned is actually paid, and does not cover any retention withheld, any items, modifications or changes

pending approval, disputed items and claims, or items furnished that are not paid.

Id. (emphasis added).

Reviewing this issue de novo, we conclude that the plain language of the NRS 108.2457(5)(b) form does not release all claims up to and including the date of the release. See Sheriff v. Burcham, 124 Nev. ___, ___, 198 P.3d 326, 329 (2008) (stating that this court reviews issues involving statutory interpretation de novo and will not look beyond the plain meaning of the statute unless the language is ambiguous). Instead, the release only pertains to the “Invoice or Payment Application” that is the subject of the form.

Therefore, because Hughes was not awarded any monies resulting from the four signed releases, the district court’s award was proper in this respect.

Attorney fees

Phoenix contends that the district court’s attorney fee award of \$33,076.27 was unreasonable because the case did not proceed to trial, there were no depositions, and the attorney fees represented 40% of the lien amount.

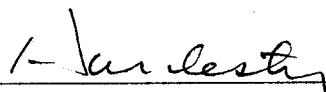
This court reviews a district court’s award of attorney fees under NRS 108.237 for an abuse of discretion. See Barney v. Mt. Rose Heating & Air, 124 Nev. ___, ___, 192 P.3d 730, 733 (2008). Under NRS 108.237(1), “the prevailing lien claimant [shall be awarded] . . . reasonable attorney’s fees, the costs for representation of the lien claimant in the proceedings, and any other amounts as the court may find to be justly due and owing to the lien claimant.” In determining the appropriate amount of attorney fees, the district court should consider the following factors: (1) the qualities of the advocate, (2) the character of the work to be done, (3)


the work actually performed by the lawyer, and (4) the result. See Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

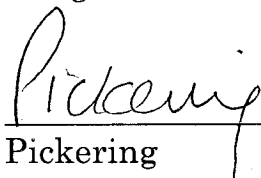
It appears that the district court considered the applicable Brunzell factors in determining the appropriate amount of attorney fees to award Hughes. Even though this case did not proceed to trial, it is evident from the record that Hughes had to compile a fairly significant amount of documentation (which included the comparison of Hughes's invoices with Silver Star employee time cards to rebut Phoenix's contention that Hughes did not deliver the materials to the project) in support of its motion for summary judgment. As such, we cannot conclude that the district court abused its discretion in granting Hughes \$33,076.27.

Nevertheless, as both parties concede, the district court should not have awarded Hughes \$522 of the \$33,076.27 awarded because those fees related to a separate interpleader action. Accordingly, we,

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART and REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Timothy C. Williams, District Judge
Ara H. Shirinian, Settlement Judge
Lionel Sawyer & Collins/Las Vegas
Marquis & Aurbach
Eighth District Court Clerk