

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRI DELTA, INC., A NEVADA
CORPORATION,
Appellant,
vs.
LAND DEVELOPMENT, INC., A
NEVADA CORPORATION,
Respondent.

No. 53542

FILED

SEP 17 2010

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

ORDER OF AFFIRMANCE

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

FACTS

This case involves several parties to a residential development project, including: (1) Land Development, the owner of the project; (2) American West Development, the general contractor performing work on the project; and (3) Tri Delta, the supplier of block materials for the project. Tri Delta sent pre-lien notices to American West for delivered materials. Tri Delta did not notify the owner of the project, Land Development, of its right to lien pursuant to NRS 108.245. Months later, Tri Delta had not been paid, and therefore, it served a 15-day notice of intent to lien on Land Development and subsequently recorded its notice of lien in the amount of \$117,946.30 plus interest against Land Development.

Tri Delta initiated a lien foreclosure action against Land Development. In its answer, Land Development argued Tri Delta's claims were barred by the failure to give timely pre-lien notice pursuant to NRS 108.245. At the bench trial, at the end of Tri Delta's case presentation,

Land Development moved for judgment as a matter of law. The district court granted judgment as a matter of law in favor of Land Development because there was no evidence that Land Development was properly served a pre-lien notice under NRS 108.245.

On appeal, Tri Delta argues that it substantially complied with the statutory requirements of NRS 108.245 because Land Development had actual notice of the potential lien as pre-lien notice was sent to American West, which Tri Delta alleges has the same owner and address as Land Development.¹ Tri Delta further argues that it does not need to prove alter ego to show that both companies have the same address for the purpose of notice.

Land Development asserts that Tri Delta's argument relies entirely on evidence regarding a connection between these companies that was never presented at trial, and that this court should not consider an argument based on matters outside the record. Land Development further argues that even if this information is considered, it is still insufficient to prove that American West is the alter ego of Land Development. We agree that Tri Delta failed to provide proper notice.

¹Tri Delta directs this court's attention to the Nevada Secretary of State website to support its argument that American West and Land Development are the same and American West is the reputed owner. However, this information is not included in the record below or on appeal. We note that this court's review is limited to the record made in and considered by the district court, Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474 (1981), and Tri Delta failed to submit documents to support this argument below.

DISCUSSION

“This court has repeatedly held that the mechanic’s lien statutes are remedial in character and should be liberally construed; that substantial compliance with the statutory requirements is sufficient to perfect the lien if the property owner is not prejudiced.” Las Vegas Plywood v. D & D Enterprises, 98 Nev. 378, 380, 649 P.2d 1367, 1368 (1982). Failure to fully or substantially comply with the mechanic’s lien statute renders a mechanic’s lien invalid as a matter of law. Schofield v. Copeland Lumber, 101 Nev. 83, 86, 692 P.2d 519, 521 (1985).

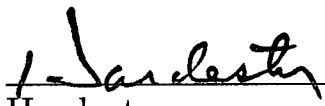
In Board of Trustees v. Durable Developers, this court stated that a lien claimant’s substantial compliance with NRS 108.245’s pre-lien requirements was sufficient where the property owner had actual knowledge of the potential lien claim and was not prejudiced. 102 Nev. 401, 410, 724 P.2d 736, 743 (1986); see also Fondren v. K/L Complex, Ltd., 106 Nev. 705, 709, 800 P.2d 719, 721 (1990).

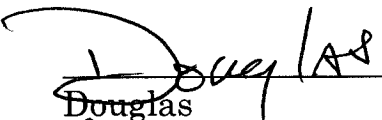
Here, Tri Delta failed to provide notice of lien to the owner of the property, Land Development. Further, Tri Delta’s claim that it substantially complied with the pre-lien notice requirement by serving American West as the reputed owner of the project fails because Tri Delta failed to show that the contractor, American West, and property owner, Land Development, were connected or that Land Development otherwise had notice. Tri Delta did not argue that American West was the reputed owner at trial. Despite Tri Delta’s argument that it substantially complied, unlike the owner in Durable Developers, it cannot be said that

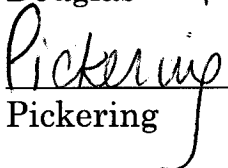
Land Development had actual knowledge of the potential lien claim and was not prejudiced.²

The record shows that American West was given pre-lien notices but there is nothing in the record that shows Land Development had actual knowledge of Tri Delta until it was served with a notice of foreclosure. Tri Delta's notification of American West does not constitute substantial compliance with NRS 108.245.³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Elissa F. Cadish, District Judge
Thomas J. Tanksley, Settlement Judge
Pezzillo Robinson
Greenberg Traurig, LLP
Kummer Kaempfer Bonner Renshaw & Ferrario/Las Vegas
Eighth District Court Clerk

²There was no evidence introduced that Land Development knew of Tri Delta's work.

³Tri Delta also contends that the district court improperly denied its pre-trial motions for summary judgment. We conclude this claim is without merit.