


IN THE SUPREME COURT OF THE STATE OF NEVADA

CARL B. BARNEY, AN INDIVIDUAL,
Appellant,
vs.
MT. ROSE HEATING & AIR
CONDITIONING, A NEVADA
CORPORATION,
Respondent.

No. 53971

FILED

FEB 03 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is an appeal from a postjudgment district court order awarding attorney fees and costs in a mechanic's lien action. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Reno Construction, Inc. (RCI) and respondent Mt. Rose Heating & Air Conditioning filed mechanic's liens after appellant Carl Barney refused to pay for renovation work as required by a contract. Although Barney contracted with RCI for the work, RCI entered into a subcontract with Mt. Rose for services and equipment for the renovation. RCI and Mt. Rose sought enforcement of the mechanic's liens in district court. The district court entered a judgment and decree of foreclosure in favor of RCI and Mt. Rose, and awarded attorney fees and costs to them. Because of postjudgment litigation, the district court also granted two motions awarding Mt. Rose supplemental attorney fees and costs.

Barney appealed from the district court's second supplemental award of attorney fees and costs. This court heard the appeal and entered an opinion in Barney v. Mt. Rose Heating & Air, 124 Nev. 821, 192 P.3d 730 (2008), stating that courts may award postjudgment attorney fees and costs in mechanic's lien actions under NRS 108.237(1). Id. at 823, 192

P.3d at 732. In Barney, this court reversed and remanded the award of attorney fees and costs because the district court did not make specific findings regarding the award's reasonableness. Id. at 832, 192 P.3d at 737-38.

On remand, the district court considered Mt. Rose's second supplemental motion and a third motion requesting all attorney fees and interest due under Nevada law. It then awarded additional postjudgment attorney fees and costs to Mt. Rose, as well as interest payable from the date Mt. Rose served the summons and complaint. Barney now appeals from this postjudgment order, arguing that Mt. Rose failed to meet the deadline in NRS 18.170 when moving for attorney fees and costs, and that the district court erred by awarding prejudgment interest on postjudgment attorney fees and costs.¹

For the reasons set forth below, we conclude that the district court erred when it: (1) found that Mt. Rose timely requested costs and (2) set the date from which prejudgment interest was due. We further conclude that the district court properly awarded Mt. Rose \$55,008.63 in attorney fees. Therefore, we affirm in part, reverse in part, and remand to the district court for proceedings consistent with this order. Because the parties are familiar with the facts and procedural history in this case, we do not recount them further except as necessary for our disposition.

¹Barney also argued that (1) NRS 18.170 bars the award based on Mt. Rose's third motion because Barney fully satisfied the judgment, (2) the district court abused its discretion by awarding Mt. Rose attorney fees because it was not the prevailing party, and (3) the district court erred by awarding Mt. Rose costs based upon the language in NRAP 39(a). We conclude these arguments lack merit.

DISCUSSION

I. The district court erred by finding that Mt. Rose timely requested costs under NRS 18.170

Barney argues that Mt. Rose filed its third motion for attorney fees, costs, and interest in an untimely manner. We conclude that the district court did not abuse its discretion by determining that Mt. Rose timely requested attorney fees, but it did abuse its discretion by finding that Mt. Rose timely requested costs under NRS 18.170.

District courts may award attorney fees and costs when a rule, contract, or statute authorizes such action. Barney, 124 Nev. at 825, 192 P.3d at 733. When a district court awards attorney fees and costs, this court generally reviews the district court's order for an abuse of discretion. Id. Here, this court must interpret the language of NRS 18.170 to determine whether Mt. Rose complied with the statute's requirements. Issues of statutory interpretation are subject to a de novo standard of review. Barney, 124 Nev. at 825, 192 P.3d at 733.

Mt. Rose's third motion requested attorney fees and costs incurred during postjudgment litigation pursuant to Barney. The Barney opinion states that judgment creditors may recover all postjudgment attorney fees and costs incurred to enforce a mechanic's lien under NRS 108.237(1). Id. at 823, 192 P.3d at 732. We consider whether Mt. Rose timely requested postjudgment attorney fees and costs in turn.

A. Mt. Rose's request for attorney fees

District courts have discretion to determine whether a motion for attorney fees is timely. Davidsohn v. Steffens, 112 Nev. 136, 139, 911 P.2d 855, 857 (1996).

Here, the district court did not abuse its discretion in concluding that Mt. Rose requested attorney fees in a timely manner.

As set forth in Barney, the district court had discretion to award postjudgment attorney fees to Mt. Rose under the applicable mechanic's lien statute, NRS 108.237(1). 124 Nev. at 823, 192 P.3d at 732. Because NRS 108.237 does not have a time restriction for requesting attorney fees, the district court did not abuse its discretion by finding Mt. Rose's request for attorney fees to be timely. See Farmers Ins. Exchange v. Pickering, 104 Nev. 660, 765 P.2d 181 (1988). Barney's argument that the six-month deadline provided in NRS 18.170 applies to Mt. Rose's request for attorney fees lacks merit because NRS 18.170 applies solely to requests for costs, not attorney fees.

The record also suggests that Mt. Rose requested attorney fees in a diligent manner. After this court entered the Barney opinion, it issued the remittitur on October 14, 2008. The date of the remittitur is significant because the issuance of the remittitur divests this court of jurisdiction and returns it to the district court. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1134 (1998). On remand, the district court held a hearing on March 13, 2009, to address Mt. Rose's second supplemental motion. After the hearing, Mt. Rose filed its third motion on March 20, 2009, to recover all attorney fees, costs, and interest due under Nevada law. This third motion, filed approximately five months after the issuance of the remittitur, requested that the district court enforce Barney by awarding Mt. Rose attorney fees incurred in connection with the appeal. Because the main issue on appeal was whether district courts could award postjudgment attorney fees in mechanic's lien actions, it was proper for Mt. Rose to file this request after issuance of the remittitur.

B. Mt. Rose's request for costs

We must also determine whether Mt. Rose met the six-month deadline in NRS 18.170 when requesting costs. When interpreting

statutes, this court first looks to the statute's plain language. Allstate Insurance Co. v. Fackett, 125 Nev. ___, ___, 206 P.3d 572, 576 (2009). We only look beyond the plain language of a statute if it is ambiguous or silent on the issue in question. Id. NRS 18.170's plain language sets forth a mandatory six-month deadline for the time in which judgment creditors must file notice of their motion for costs associated with the collection or execution of a judgment. Courts generally construe statutes applying time restrictions as mandatory. Village League v. State, Bd. of Equalization, 124 Nev. 1079, 1086-87, 194 P.3d 1254, 1259 (2008).

In this case, NRS 18.170 applies because a judgment creditor, Mt. Rose, requested costs associated with the execution of a judgment and decree of foreclosure. Under the plain language in NRS 18.170, Mt. Rose had to file notice of its request for costs within six months after it incurred the costs. To be eligible for reimbursement, Mt. Rose must show that it incurred the costs within six months of filing its third motion. NRS 18.170.

Although Mt. Rose did submit a memorandum of costs with the third motion on March 20, 2009, the document did not list dates for when Mt. Rose incurred these costs.² After reviewing the third motion, the district court concluded that Mt. Rose timely filed the motion and awarded costs. This was an abuse of discretion because Mt. Rose failed to

²Because Mt. Rose requested attorney fees in the third motion dating back to 2005, the corresponding costs listed in the memorandum may also date back several years.

show that it filed notice of the request for costs within six months of the costs having been incurred.³ NRS 18.170.

II. The district court erred when awarding interest that accrues from the date in which Mt. Rose served the summons and complaint

Barney argues that the district court erred by awarding interest because NRS 108.237(2) does not permit an award of prejudgment interest on postjudgment attorney fees and costs. We conclude that the district court properly awarded Mt. Rose interest and properly applied the interest rates, but did not correctly determine the date from which interest was due pursuant to NRS 108.237(2). Therefore, we remand this issue to the district court for proper determination of the date from which interest is due.

This court reviews the district court's award of prejudgment interest for error. Albios v. Horizon Communities, Inc., 122 Nev. 409, 428, 132 P.3d 1022, 1034 (2006).

On remand, the district court awarded attorney fees and costs to Mt. Rose pursuant to NRS 108.237(1). The district court also awarded interest that accrues on the postjudgment attorney fees and costs. It determined the applicable interest rates pursuant to NRS 108.237(2)(b) and concluded that interest was payable from the date when Mt. Rose served the summons and complaint. It reasoned that interest was payable

³Mt. Rose argued to the district court that it met the filing deadline by moving for costs approximately five months after this court issued the remittitur. This argument lacks merit. NRS 18.170 requires judgment creditors to file notice of a motion for costs at any time or times not more than six months after the judgment creditor incurs the costs, not within six months after the district court regains jurisdiction from an appeal.

from this date based on NRS 17.130. Mt. Rose argues that the district court properly applied NRS 17.130 based on Albios, 122 Nev. 409, 132 P.3d 1022. We disagree.

Albios is a construction defect case in which this court concluded that a party may recover prejudgment interest under NRS 17.130 on judgments awarding costs and on attorney fees awarded as damages. Id. at 429-30, 132 P.3d at 1035-36. For attorney fees awarded as past damages, Albios states that prejudgment interest runs pursuant to NRS 17.130(2) from the time the plaintiff serves the summons and complaint. Id. at 430, 132 P.3d at 1036. Although Albios states that courts may award prejudgment interest pursuant to NRS 17.130, this statute does not apply in this mechanic's lien case. 122 Nev. at 429-30, 132 P.3d at 1035-36.

Instead, for mechanic's lien actions, the specific statute addressing interest for attorney fees and costs is NRS 108.237(2). Since the rules of statutory construction state that specific statutes take precedent over general statutes, we conclude that the district court erred when it did not fully apply the language in NRS 108.237(2). SIIS v. Miller, 112 Nev. 1112, 1118, 923 P.2d 577, 580 (1996). We further conclude that the district court erred by applying NRS 17.130. Barney states that pursuant to NRS 108.237(1) district courts can award to a lien claimant postjudgment attorney fees and costs incidental to a lien's enforcement. 124 Nev. at 823, 192 P.3d at 732. Courts awarding interest on attorney fees and costs in mechanic's lien actions must calculate the interest based on the language in NRS 108.237(2). Subsection (2) of NRS 108.237 states that:

The court shall calculate interest for purposes of subsection 1 based upon:

(a) The rate of interest agreed upon in the lien claimant's contract; or

(b) If a rate of interest is not provided in the lien claimant's contract, interest at a rate equal to the prime rate at the largest bank in Nevada, as ascertained by the Commissioner of Financial Institutions, on January 1 or July 1, as the case may be, immediately preceding the date of judgment, plus 4 percent, on the amount of the lien found payable. The rate of interest must be adjusted accordingly on each January 1 and July 1 thereafter until the amount of the lien is paid.

Interest is payable from the date on which the payment is found to have been due, as determined by the court.

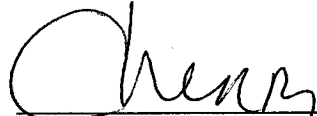
(Emphasis added). The express language in this subsection requires the district court to determine the date upon which payment was due under the original contract and to find that interest is payable from that date. NRS 108.237(2).

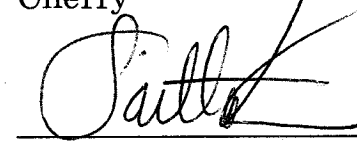
We further conclude that NRS 108.237(2) authorizes an award of interest in this case. Although the express language in subsection (1) of NRS 108.237 did not provide for the award of postjudgment attorney fees and costs, this court concluded in Barney that courts should liberally interpret this statute to further the purpose of mechanic's lien laws to ensure that owners fully pay contractors for their labor and services. 124 Nev. at 826, 192 P.3d at 734. In light of our interpretation of NRS 108.237(1) in Barney, it follows that NRS 108.237(2) would apply to postjudgment awards because the purpose of subsection 2 is to calculate interest on monies awarded pursuant to subsection 1. See NRS 108.237(2).


Based on the foregoing, we conclude that the district court erred when awarding interest that accrues from the date in which Mt.

Rose served the summons and complaint. Therefore, we reverse and remand the district court's order in this regard. On remand, the district court shall determine the proper date from which interest is due pursuant to NRS 108.237(2). 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.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Patrick Flanagan, District Judge
Molof & Vohl
Jeffery A. Briggs
Washoe District Court Clerk