IN THE SUPREME COURT OF THE STATE OF NEVADA

COLONY RESORTS LVH ACQUISITIONS, LLC, A NEVADA CORPORATION,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE ALLAN R. EARL, DISTRICT JUDGE,
Respondents,
and
CHE C. ALVARADO; AND VIVIAN ALVARADO,
Real Parties in Interest.

No. 56970

FILED

DEC 27 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING PETITION

This is an original petition for a writ of mandamus or prohibition challenging a district court order denying summary judgment in a workers' compensation action. Eighth Judicial District Court, Clark County; Allan R. Earl, Judge.

This writ petition involves three entities: petitioner Colony Resorts LVH Acquisitions, LLC (LVH), non-party Encore Productions, and real-party-in-interest Che Alvarado. LVH contracted with Encore to perform rigging work on LVH's premises, and, in turn, Encore hired Alvarado as one of its rigging employees. While working on LVH's premises, Alvarado suffered a work-related injury and obtained workers' compensation benefits through Encore, his direct employer.

Alvarado then filed a personal-injury lawsuit against LVH, seeking additional damages in connection with the accident. LVH moved

for summary judgment, contending that because it had contracted with Encore and Encore had hired Alvarado, LVH was Alvarado's "statutory employer" for purposes of the Nevada Industrial Insurance Act (NIIA), codified in NRS 616A through 616D.

The district court refused to grant LVH's motion, concluding that LVH could not be considered Alvarado's statutory employer. LVH then filed this writ petition, asking this court to direct the district court to enter summary judgment in its favor. We deny LVH's request for writ relief.

Standard of review

This court generally declines to consider writ petitions that challenge district court orders denying motions for summary judgment. D.R. Horton v. Dist. Ct., 125 Nev. 449, 453, 215 P.3d 697, 700 (2009). However, "we may exercise our discretion when no factual disputes exist and the district court is obligated to dismiss an action pursuant to clear authority under a statute or rule." Advanced Countertop Design v. Dist. Ct., 115 Nev. 268, 269, 984 P.2d 756, 758 (1999).

A factual dispute exists as to whether LVH can satisfy the Meers test

LVH acknowledges that Alvarado's direct employer, Encore, is not a licensed contractor for purposes of the NIIA. Thus, in order for LVH to be deemed Alvarado's statutory employer, and thereby obtain NIIA immunity, it must satisfy the "Meers test." See Richards v. Republic Silver State Disposal, 122 Nev. 1213, 1222-23, 148 P.3d 684, 689-90 (2006) (explaining that a premises owner can obtain NIIA immunity either by hiring a licensed contractor or by satisfying the test set forth in Meers v. Haughton Elevator, 101 Nev. 283, 286, 701 P.2d 1006, 1007 (1985)); Oliver v. Barrick Goldstrike Mines, 111 Nev. 1338, 1349, 905 P.2d 168, 175

(1995) ("[T]he 'same trade' language in [current NRS 616B.603] refers to the 'normal work' test stated in Meers . . . .").

The Meers test for determining a premises owner's status as a statutory employer is as follows:

> "[T]he test is not one of whether the subcontractor's activity is useful, necessary, or even absolutely indispensable to the statutory employer's business, since, after all, this could be said of practically any repair, construction or transportation service. The test (except in cases where the work is obviously a subcontracted fraction of a main contract) is whether that indispensable activity is, in that business, normally carried on through employees rather than independent contractors."

Meers, 101 Nev. at 286, 701 P.2d at 1007 (quoting Bassett Furniture Industries, Inc. v. McReynolds, 224 S.E.2d 323, 326 (Va. 1976)).

By its terms, for a premises owner to satisfy the Meers test, the premises owner must establish that the activity being performed by the contractor's employee is one that the premises owner would normally have had its own employees perform. Thus, in this case, LVH must show that the activity being performed by Alvarado—rigging work—is one that it normally has its own employees perform.[1]

Based on the record before us, it is not apparent that LVH normally has its own employees perform rigging work. While LVH

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[1]LVH's standing agreement with Encore cannot be considered a "subcontracted fraction" of its subsequent contract with the Men's Apparel Guild in California (MAGIC). Moreover, LVH's initial stance in district court that its agreement with Encore was the main contract contradicts the idea that this same agreement is now "obviously" a subcontracted fraction of the MAGIC contract. Meers, 101 Nev. at 286, 701 P.2d at 1007.

contends that it hires its own employees to perform some rigging work, it simultaneously maintains that it has made a "business decision" to delegate portions of its rigging work to Encore. The record provides no indication as to how much rigging work LVH has actually retained, but if anything, LVH's exclusivity contract with Encore strongly suggests that it is Encore's employees who normally perform LVH's rigging work.

At the very least, a factual dispute still exists as to whether LVH can satisfy the Meers test, which thereby renders writ relief inappropriate.[2] Advanced Countertop Design, 115 Nev. at 269, 984 P.2d at 758. We therefore

ORDER the petition DENIED.

_____, J.
Douglas

_____, J.
Hardesty

_____, J.
Parraguirre

[2]We also reject LVH's argument that NRS 616B.639 affords it immunity, as the statute refers to immunity from "compensation" but not from "damages."

cc: Hon. Allan R. Earl, District Judge
Royal Jones Miles Dunkley & Wilson
Mainor Eglet
Aaron & Paternoster, Ltd.
Eighth District Court Clerk