IN THE SUPREME COURT OF THE STATE OF NEVADA

NELSON PACIFIC CORPORATION, PREDECESSOR TO GWN, INC., D/B/A DELTA INDUSTRIES; AND GARY NELSON AND LINDA NELSON, HUSBAND AND WIFE,
Appellants,
vs.
SOUTHWEST BUILDERS & DEVELOPMENT, INC., A NEVADA CORPORATION; AND L & L PLUMBING, INC.,
Respondents.

No. 35825

NELSON PACIFIC CORPORATION, PREDECESSOR TO GWN, INC., D/B/A DELTA INDUSTRIES; AND GARY NELSON AND LINDA NELSON, HUSBAND AND WIFE,
Appellants,
vs.
SOUTHWEST BUILDERS & DEVELOPMENT, INC., A NEVADA CORPORATION; AND L & L PLUMBING, INC.,
Respondents.

No. 36081

FILED

DEC 11 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellants Nelson Pacific Corporation, predecessor to GWN, Inc., d/b/a Delta Industries, and owners Gary and Linda Nelson (collectively "Delta") appeal from a judgment in a contract dispute following a jury trial. On appeal, Delta raises various arguments, which challenge the jury's verdict and Delta's post-trial motion in favor of respondents Southwest Builders & Development, Inc. (Southwest) and L & L Plumbing, Inc. We conclude that all of Delta's contentions lack merit.

Delta first contends that the district court erred in giving an instruction to the jury concerning recovery of extra-contractual damages for breach of the implied covenant of good faith and fair dealing. In response to Delta's contention, Southwest argues that Delta waived any challenge to the extra-contractual-damages instruction. We agree. Delta failed to object to the instruction at trial and failed to raise the issue in its post-trial motion for a new trial, thus failing to apprise the district court of the issue of law involved—the law on tortious, bad-faith breach.[1] Accordingly, we conclude that Delta is precluded from appellate review regarding this issue, including a plain-error review.[2]

Delta next contends that a new trial is warranted because prejudicial conduct and comments of Southwest's and L & L Plumbing's counsels throughout the trial proceedings permeated the trial, causing the jury to be influenced by passion and prejudice in reaching its verdict. In its answering brief, Southwest argues that because Delta did not present its attorney misconduct argument to the district court in its post-trial motion for a new trial, Delta's argument on appeal should be deemed

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[1]See NRCP 51 ("No party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection."); see also Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) (holding that "when the record does not contain the objections or exceptions to instructions given or refused," appellate review is precluded); Otterbeck v. Lamb, 85 Nev. 456, 460, 456 P.2d 855, 858-59 (1969) ("If no objection to an instruction is made, there is no compliance with Rule 51 and the error is not preserved for appellate consideration.").

[2]See Tidwell v. Clarke, 84 Nev. 655, 660-61, 447 P.2d 493, 496 (1968) (holding that a plain-error review is appropriate only when appellant apprises the trial court of the issue of law involved).

recollection; and when Southwest's counsel attempted to admit the deposition testimony, Delta's counsel objected and the court sustained the objection. Thus, we conclude that the district court did not abuse its discretion regarding this issue.[6]

Finally, Delta argues that the district court erroneously denied its motion to dismiss Southwest's lien because Southwest included profits. We disagree. NRS 108.222(1) provides that a general contractor, who performs services and supplies materials to be used for construction of a building, has a lien upon the premises in the amount pursuant to the contract. We conclude that Delta's contention lacks merit because pursuant to the contract between Delta and Southwest, Southwest was to receive $60,000 in addition to reimbursement for materials and labor.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Young

_____, J.
Maupin

_____, J.
Rose

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[6]See Dow Chemical Co. v. Mahlum, 114 Nev. 1468, 1506, 970 P.2d 98, 123 (1998) (noting that the district court's determination regarding the admission of evidence will not be disturbed on appeal unless manifestly wrong), modified on other grounds by GES, Inc. v. Corbitt, 117 Nev. 265, 21 P.3d 11 (2001).

cc: Hon. Steven P. Elliott, District Judge
Carucci, Thomas & York
Jack D. Campbell
Lyle & Murphy
Washoe District Court Clerk