IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE VENETIAN LIEN LITIGATION

No. 36029

VENETIAN CASINO RESORT, LLC, GRAND CANAL SHOPS MALL CONSTRUCTION, LLC, AND FRONTIER INSURANCE COMPANY,

Appellants,

vs.

LAS VEGAS PAVING CORPORATION,

Respondent.

FILED

MAR 06 2001

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

IN RE VENETIAN LIEN LITIGATION

No. 36030

VENETIAN CASINO RESORT, LLC, GRAND CANAL SHOPS MALL CONSTRUCTION, LLC, AND FRONTIER INSURANCE COMPANY,

Appellants,

vs.

RECREATION DEVELOPMENT CORPORATION, LLC,

Respondent.

IN RE VENETIAN LIEN LITIGATION

No. 36031

VENETIAN CASINO RESORT, LLC, GRAND CANAL SHOPS MALL CONSTRUCTION, LLC, AND FRONTIER INSURANCE COMPANY,

Appellants,

vs.

ARC MATERIALS D/B/A CSR,

Respondent.

IN RE VENETIAN LIEN LITIGATION

No. 36032

VENETIAN CASINO RESORT, LLC, GRAND CANAL SHOPS MALL CONSTRUCTION, LLC, AND FRONTIER INSURANCE COMPANY,

Appellants,

vs.

SCOTT COMPANY OF CALIFORNIA,

Respondent.

IN RE VENETIAN LIEN LITIGATION

No. 36033

VENETIAN CASINO RESORT, LLC, GRAND CANAL SHOPS MALL CONSTRUCTION, LLC, AND FRONTIER INSURANCE COMPANY,

Appellants,

vs.

WGG/JP JOINT VENTURE ASSOCIATES,

Respondent.

IN RE VENETIAN LIEN LITIGATION

No. 36157

VENETIAN CASINO RESORT, LLC, GRAND CANAL SHOPS MALL CONSTRUCTION, LLC, AND FRONTIER INSURANCE COMPANY,

Appellants,

vs.

EBERHARD/SOUTHWEST ROOFING, INC.,

Respondent.

IN RE VENETIAN LIEN LITIGATION — No. 36160

VENETIAN CASINO RESORT, LLC, GRAND CANAL SHOPS MALL CONSTRUCTION, LLC, AND FRONTIER INSURANCE COMPANY,

Appellants,

vs.

BULLOCK INSULATION, INC.,

Respondent.

IN RE VENETIAN LIEN LITIGATION — No. 36161

VENETIAN CASINO RESORT, LLC, GRAND CANAL SHOPS MALL CONSTRUCTION, LLC, AND FRONTIER INSURANCE COMPANY,

Appellants,

vs.

FINLANDIA SAUNA PRODUCTS, INC.,

Respondent.

IN RE VENETIAN LIEN LITIGATION — No. 36162

VENETIAN CASINO RESORT, LLC, GRAND CANAL SHOPS MALL CONSTRUCTION, LLC, AND FRONTIER INSURANCE COMPANY,

Appellants,

vs.

TOMARCO CONTRACTOR SPECIALTIES, INC.,

Respondent.

IN RE VENETIAN LIEN LITIGATION	No. 36163
VENETIAN CASINO RESORT, LLC, GRAND CANAL SHOPS MALL CONSTRUCTION, LLC, AND FRONTIER INSURANCE COMPANY, Appellants, vs. HERRICK CORPORATION, Respondent.	

IN RE VENETIAN LIEN LITIGATION	No. 36164
VENETIAN CASINO RESORT, LLC, GRAND CANAL SHOPS MALL CONSTRUCTION, LLC, AND FRONTIER INSURANCE COMPANY, Appellants, vs. A & B PAINTING WEST, INC., Respondent.	

IN RE VENETIAN LIEN LITIGATION	No. 36165
VENETIAN CASINO RESORT, LLC, GRAND CANAL SHOPS MALL CONSTRUCTION, LLC, AND FRONTIER INSURANCE COMPANY, Appellants, vs. QUALITY MECHANICAL CONTRACTORS, INC., Respondent.	

IN RE VENETIAN LIEN LITIGATION — No. 36166

VENETIAN CASINO RESORT, LLC, GRAND CANAL SHOPS MALL CONSTRUCTION, LLC, AND FRONTIER INSURANCE COMPANY,

Appellants,

vs.

CHOICE ELECTRIC,

Respondent.

IN RE VENETIAN LIEN LITIGATION — No. 36232

VENETIAN CASINO RESORT, LLC, GRAND CANAL SHOPS MALL CONSTRUCTION, LLC, AND FRONTIER INSURANCE COMPANY,

Appellants,

vs.

MIDWEST DRYWALL CO., INC.,

Respondent.

IN RE VENETIAN LIEN LITIGATION — No. 36235

VENETIAN CASINO RESORT, LLC, GRAND CANAL SHOPS MALL CONSTRUCTION, LLC, AND FRONTIER INSURANCE COMPANY,

Appellants,

vs.

EBENISTERIE BEAUBOIS, LTEE,

Respondent.

IN RE VENETIAN LIEN LITIGATION	No. 36236
VENETIAN CASINO RESORT, LLC, GRAND CANAL SHOPS MALL CONSTRUCTION, LLC, AND FRONTIER INSURANCE COMPANY, Appellants, vs. NORTHWESTERN, INC., Respondent.	

IN RE VENETIAN LIEN LITIGATION	No. 36237
VENETIAN CASINO RESORT, LLC, GRAND SHOPS MALL CONSTRUCTION, LLC, AND FRONTIER INSURANCE COMPANY, Appellants, vs. VALLEY CREST LANDSCAPE, INC., Respondent.	

IN RE VENETIAN LIEN LITIGATION	No. 36238
VENETIAN CASINO RESORT, LLC, GRAND CANAL SHOPS MALL CONSTRUCTION, LLC, AND FRONTIER INSURANCE COMPANY, Appellants, vs. HUFCOR, INC., D/B/A HUFCOR-AIRWALL, Respondent.	

IN RE VENETIAN LIEN LITIGATION — No. 36239

VENETIAN CASINO RESORT, LLC, GRAND CANAL SHOPS MALL CONSTRUCTION, LLC, AND FRONTIER INSURANCE COMPANY,

Appellants,

vs.

ALLYN MASONRY, INC., F/K/A BOB ALLYN MASONRY, INC.,

Respondent.

IN RE VENETIAN LIEN LITIGATION — No. 36240

VENETIAN CASINO RESORT, LLC, GRAND CANAL SHOPS MALL CONSTRUCTION, LLC, AND FRONTIER INSURANCE COMPANY,

Appellants,

vs.

LIVING WATERS, DPD, INC.,

Respondent.

IN RE VENETIAN LIEN LITIGATION — No. 36241

VENETIAN CASINO RESORT, LLC, GRAND CANAL SHOPS MALL CONSTRUCTION, LLC, AND FRONTIER INSURANCE COMPANY,

Appellants,

vs.

ARFA CONTRACTING CO., INC.,

Respondent.

IN RE VENETIAN LIEN LITIGATION

No. 36242

VENETIAN CASINO RESORT, LLC, GRAND CANAL SHOPS MALL CONSTRUCTION, LLC, AND FRONTIER INSURANCE COMPANY,

Appellants,

vs.

HARMON, LIMITED,

Respondent.

IN RE VENETIAN LIEN LITIGATION

No. 36243

VENETIAN CASINO RESORT, LLC, GRAND CANAL SHOPS MALL CONSTRUCTION, LLC, AND FRONTIER INSURANCE COMPANY,

Appellants,

vs.

WON-DOOR CORPORATION,

Respondent.

IN RE VENETIAN LIEN LITIGATION

No. 36244

VENETIAN CASINO RESORT, LLC, GRAND CANAL SHOPS MALL CONSTRUCTION, LLC, AND FRONTIER INSURANCE COMPANY,

Appellants,

vs.

ARCON OF NEVADA, INC.,

Respondent.

IN RE VENETIAN LIEN LITIGATION	No. 36245
VENETIAN CASINO RESORT, LLC, GRAND CANAL SHOPS MALL CONSTRUCTION, LLC, AND FRONTIER INSURANCE COMPANY, Appellants, vs. TECHNICOAT, LIMITED PARTNERSHIP, Respondent.	

IN RE VENETIAN LIEN LITIGATION	No. 36246
VENETIAN CASINO RESORT, LLC, GRAND CANAL SHOPS MALL CONSTRUCTION, LLC, AND FRONTIER INSURANCE COMPANY, Appellants, vs. HEINAMAN CONTRACT GLAZING, Respondent.	

IN RE VENETIAN LIEN LITIGATION	No. 36581
VENETIAN CASINO RESORT, LLC, GRAND CANAL SHOPS MALL CONSTRUCTION, LLC, AND FRONTIER INSURANCE COMPANY, Appellants, vs. VALLEY CREST LANDSCAPE, INC., Respondent.	

ORDER DISMISSING APPEALS

These appeals challenge the district court's orders denying appellants' motions to dismiss respondents' mechanic's

liens as frivolous pursuant to NRS 108.2275. Respondents have filed motions to dismiss appellants' appeals.[1]

Pursuant to a construction management agreement between the Venetian Casino Resort, LLC and Lehrer McGovern Bovis, Inc. (LMB), LMB was obligated to supply, through independent contractors, all work, labor, services, materials, supplies and equipment necessary to construct the Venetian Casino Resort (the project). LMB entered into agreements with a number of contractors, which in turn contracted with subcontractors and vendors, to complete construction on the project.

During construction of the project, disputes arose among the various contractors, subcontractors and vendors (respondents), as well as between the Venetian and LMB. LMB apparently refused to pay respondents, which resulted in numerous mechanic's liens being filed against the Venetian. The Venetian filed motions to dismiss these mechanic's liens as frivolous pursuant to NRS 108.2275. On March 9, 2000, the district court conducted hearings concerning the Venetian's motions to dismiss, and ultimately denied the Venetian's motions. Because the district court considered matters

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[1]In Docket Nos. 36031, 36160, 36163, 36239, 36240, 36241, and 36242, respondents did not file formal motions to dismiss; instead, they filed joinders in respondent Ebenisterie Beaubois, Ltee's motion to dismiss, filed in Docket No. 36235. In all but one appeal (Docket No. 36240), apellants opposed these joinders. Although respondents should have complied with NRAP 27(a) and filed formal motions to dismiss these appeals, in the interest of judicial economy we construe their joinders as motions to dismiss. Additionally, in Docket Nos. 36030, 36237, 36243, 36245, and 36581, respondents did not file motions to dismiss or joinders in other respondents' motions. Nevertheless, as these appeals present the same jurisdiction issues as all the other appeals, we have elected to address jurisdiction in all appeals.

outside the pleadings, it construed the Venetian's motions to dismiss as motions for summary judgment.

The Venetian and other appellants appealed from the district court's orders. Respondents filed motions to dismiss the appeals, on the basis that they are not authorized. It is well settled that we will not consider an appeal from a district court order denying a motion for summary judgment.[2] Here, the district court specifically indicated in all of its orders that there were issues that should be presented at trial.

The Venetian contends that NRS 108.2275 provides it an avenue for appeal because that statute authorizes an appeal from a district court order determining that a lien is not frivolous. NRS 108.2275 provides, in pertinent part:

> 1. The debtor of the lien claimant or a party in interest in the premises subject to the lien who believes the notice of lien is frivolous and was made without reasonable cause, or that the amount of the lien is excessive, may apply by motion to the district court . . . for an order directing the lien claimant to appear before the court to show cause why the relief requested should not be granted. . . .
>
> . . . .
>
> 4. If, after a hearing on the matter, the court determines that:
>
> (a) The lien is frivolous and was made without reasonable cause, the court may make an order releasing the lien and awarding costs and reasonable attorney's fees to the applicant.

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[2]See Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984); Sorenson v. Pavlikowski, 94 Nev. 440, 581 P.2d 851 (1978).

> (b) The amount of the lien is excessive, the court may make an order reducing the lien to an amount deemed appropriate by the court and awarding costs and reasonable attorney's fees to the applicant.
>
> (c) The lien is not frivolous and was made with reasonable cause and that the amount of the lien is not excessive, the court may make an order awarding costs and reasonable attorney's fees to the lien claimant.
>
> 5. Proceedings conducted pursuant to this section do not affect any other rights and remedies otherwise available to the parties.
>
> 6. An appeal may be taken by either party from an order made pursuant to subsection 4.

Thus, NRS 108.2275(4) contemplates district court orders that determine that a lien is frivolous, that a lien is excessive, or that a lien is neither frivolous nor excessive. NRS 108.2275(6) provides a basis for appeals from such orders.

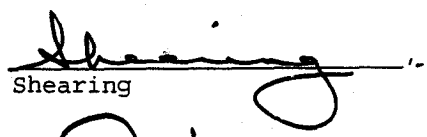
In all of its orders, the district court recognized that it had previously entered a case management order that precluded challenges to the liens on excessiveness grounds but allowed challenges to the liens on the basis of alleged frivolity:

> All persons, parties, and litigants involved in the action In Re Venetian Lien Litigation who desire to challenge the validity of a mechanic's lien for being frivolous and without reasonable cause, but not an excessive lien, in the instant litigation must do so by motion filed on or before the 17th day of December, 1999.

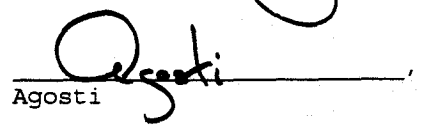
Our review of the district court's orders reveals that NRS 108.2275 does not authorize us to consider these appeals. Although the district court's orders underlying these appeals vary, in no order did the district court determine that the liens were frivolous, and in no order did the court make any determinations regarding excessiveness, as

that issue was precluded. NRS 108.2275(4) and (6) would permit an appeal only if the district court had concluded that a lien was frivolous, had concluded that a lien was excessive, or had concluded both that a lien was not frivolous and was not excessive. Accordingly, as NRS 108.2275 does not authorize the instant appeals, we

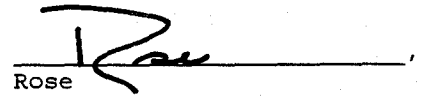
ORDER these appeals dismissed.[3]



Shearing, J.



Agosti, J.



Rose, J.

cc: Hon. James A. Brennan, Senior District Judge
Lester H. Berkson, Settlement Judge
Ballard Spahr Andrews & Ingersoll, LLP
Robert L. Bachman
Barker Brown Busby Chrisman & Thomas
Stanley H. Brown, Jr.
Stephen T. Cummings
Gibbs, Giden, Locher & Turner, LLP
Griffin Cochrane & Marshall
Hamburg, Hanover, Edwards & Martin, LLP
Haney, Woloson & Mullins
Harrison Kemp & Jones, Chtd.
Jolley Urga Wirth & Woodbury
Jones Vargas
Kerr & Associates
Leavitt Sully & Rivers
McDonald Carano Wilson McCune Bergin Frankovich & Hicks
McKnight & Hendrix
Mead, Salamone & Sofen
Monteleone & McCrory, LLP
Peel, Brimley, Spangler & Brown
Rawlings Olson Cannon Gormley & Desruisseaux
Williams & Wiese
Clark County Clerk

[3]In light of this order, we vacate our prior notices of settlement conferences in these appeals.