


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TIBURON CONSTRUCTION OF  
NEVADA, A LIMITED LIABILITY  
COMPANY, AND TFC ENTERPRISES  
INCORPORATED, D/B/A TIBURON  
CONSTRUCTION,  
Appellant,  
vs.  
ROBERT A. ABRAMS AS TRUSTEE  
FOR THE ROBERT A. ABRAMS  
FAMILY TRUST, DATED NOVEMBER  
20, 1997,  
Respondents.

No. 73358

**FILED**

JUL 27 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

*ORDER OF REVERSAL*

Tiburon Construction of Nevada, LLC, and TFC Enterprises Inc., d/b/a Tiburon Construction (collectively, Tiburon), appeal from a district court order granting in part a motion to release a mechanics' lien and for attorney fees and costs under NRS 108.2275. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.<sup>1</sup>

Tiburon recorded a notice of lien against a property owned by Robert A. Abrams as Trustee for the Robert A. Abrams Family Trust (Abrams), in relation to a dispute between the parties concerning payment for work Tiburon performed on the property.<sup>2</sup> The lien later expired as a matter of law, but Abrams, nonetheless, subsequently filed a motion with

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<sup>1</sup>The Honorable Joseph T. Bonaventure, presiding as Senior Judge, initially ruled on the motion in a minute order.

<sup>2</sup>We do not recount the facts except as necessary to our disposition.

the district court alleging that the lien was frivolous and requesting an order releasing the lien and awarding attorney fees and costs.

After Abrams served Tiburon with the motion to release, Tiburon recorded a discharge and release of the lien and filed an opposition to the motion. The district court later considered the motion in chambers and granted it with respect to the request for fees and costs but declared the request to release the lien moot.

On appeal, Tiburon argues that (1) the district court did not make the requisite findings under NRS 108.2275 to support an award of attorney fees and costs; (2) the district court erred as a matter of law by failing to hold a hearing on Abrams' motion; (3) the district court erred as a matter of law in awarding attorney fees and costs even though Tiburon's lien had expired months before Abrams filed his motion; (4) NRS 108.2437 does not affirmatively require a lien claimant to record a discharge of notice of lien after the lien expires; and (5) if NRS 108.2437 does require such action, the district court improperly awarded attorney fees and costs under NRS 108.2275 instead of requiring Abrams to prove actual damages under NRS 108.2437. We conclude that the district court's order was not and could not have been supported by any of the determinations required under NRS 108.2275 to award attorney fees and costs, so we decline to consider Tiburon's remaining arguments.

Tiburon contends that the district court erred as a matter of law when it awarded attorney fees and costs to Abrams without sufficient reasoning and findings. Specifically, Tiburon argues that NRS 108.2275 allows a district court to award fees and costs only when it determines that the lien was either frivolous or excessive, and the district court made no such findings in this case.

Under NRS 108.2275(1),

The debtor of the lien claimant or a party in interest in the property subject to the notice of lien who believes the notice of lien is frivolous and was made without reasonable cause, or that the amount of the notice of 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.


“After a hearing, the district court shall make one of three determinations: (1) that the notice of lien is frivolous and made without reasonable cause, (2) that the lien amount is excessive, or (3) that the notice of lien is not frivolous or excessive and made with reasonable cause.” *J.D. Constr., Inc. v. IBEX Int’l Grp., LLC*, 126 Nev. 366, 372, 240 P.3d 1033, 1038 (2010) (citing NRS 108.2275(6)(a)-(c)). If the court determines that the lien is frivolous, it must make an order releasing the lien and awarding reasonable attorney fees and costs incurred by the movant in bringing the motion. NRS 108.2275(6)(a). If it determines that the lien is excessive, the court has discretion to make an order reducing the notice of lien to an appropriate amount and awarding attorney fees and costs. NRS 108.2275(6)(b). Finally, if it determines that the lien is neither frivolous nor excessive, the court must award fees and costs to the lien claimant incurred defending the motion. NRS 108.2275(6)(c).


We agree with Tiburon and conclude that the record does not indicate that the district court ever actually determined that the lien was frivolous or excessive. Indeed, the court only determined the motion to release was moot in light of Tiburon’s voluntary release of the lien soon after Abrams filed his motion. Therefore, the legal basis cited by the court to award fees—NRS 108.2275—did not exist. As attorney fees cannot be awarded unless authorized by rule, statute, or agreement, and no other

authority has been cited in this case, the order granting attorney fees and costs must be reversed. *See RTTC Commc'ns, LLC v. Saratoga Flier, Inc.*, 121 Nev. 34, 40, 110 P.3d 24, 28 (2005) (noting that "a court may not award attorney fees absent authority under a specific rule or statute"); *see generally State, Dep't of Human Res., Welfare Div. v. Fowler*, 109 Nev. 782, 786, 788, 858 P.2d 375, 377, 378-79 (1993) (narrowly construing another statute that awarded attorney fees).

Based on the foregoing, we

ORDER the judgment of the district court REVERSED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Tierra Danielle Jones, District Judge  
Janet Trost, Settlement Judge  
Peel Brimley LLP/Henderson  
Marquis Aurbach Coffing  
Eighth District Court Clerk