IN THE SUPREME COURT OF THE STATE OF NEVADA

HOWARD SELLAND AND JEAN SELLAND,
Appellants,
vs.
SUNWORLD LANDSCAPE AND CONSTRUCTION, A NEVADA LIMITED LIABILITY COMPANY,
Respondent.

No. 37647

FILED

MAY 14 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting respondent's motion for reconsideration of an order discharging a mechanics' lien on the property of appellants Howard and Jean Selland ("Sellands"). On appeal, the Sellands make several arguments.[1]

First, the Sellands argue that the district court erred in revoking and vacating the order discharging and releasing the mechanics' lien entered on January 11, 2001, because service of the order to show cause was proper and Sunworld defaulted in failing to appear at the noticed hearing on January 3, 2001. More specifically, the Sellands contend that the service of the order to show cause was properly made under NRCP 5. Alternatively, the Sellands contend that assuming NRCP 4 applies, service was proper because service was made upon the resident agent of Sunworld by leaving a copy of the order and the petition at

[1]This court has jurisdiction over this appeal pursuant to NRS 108.2275(6).

02-08481

Sunworld offices, also the office of the resident agent of Sunworld. We disagree.

We conclude that the Sellands were required to personally serve Sunworld pursuant to NRCP 4 and NRS 86.261 and failed to properly do so. Personal service on Sunworld was required because the Sellands' ex parte petition constituted original proceedings and was not incidental to a pending case between the parties.[2] Moreover, Lina Acosta, a receptionist at Sunworld, was not a proper person to serve as she is not a member or manager of Sunworld, she is not a secretary of the company, nor is she an agent or representative authorized by Sunworld to receive service of process. Finally, we conclude that the Sellands failed to properly serve Sunworld's resident agent because Lina Acosta is neither an employee nor a receptionist of the resident agent.[3]

Accordingly, we conclude that the district court did not abuse its discretion in vacating its January 11, 2001, order on the ground that Sunworld was not properly served.[4]

Second, the Sellands argue that the recording of a notice of completion under NRS 108.228 constitutes a "completion of the work of improvement" under the plain language of NRS 108.226(3)(d). More

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[2]Caplow v. District Court, 72 Nev. 265, 267, 302 P.2d 755, 756 (1956).

[3]The evidence before this court is that Acosta lacked the authority to accept service on behalf of Sunworld. This evidence is uncontroverted and thus must be accepted as true. Foster v. Lewis, 78 Nev. 330, 332, 372 P.2d 679, 680 (1962).

[4]NRCP 60(c); Fagin v. Fagin, 91 Nev. 794, 798, 544 P.2d 415, 417 (1975).

specifically, the Sellands contend that the decision of when to file a notice of completion can be made at anytime after work begins and irrespective of when a work of improvement is actually completed. Thus, the Sellands contend that the district court erred in ruling that filing requirements of NRS 108.228 were not satisfied.[5] We disagree.

We conclude that NRS 108.226(3)(d) and NRS 108.228(1)(a) are ambiguous when read together because they are susceptible to more than one interpretation.[6] When a statute is ambiguous, it will be interpreted "'in line with what reason and public policy would indicate the legislature intended.'"[7]

Essentially, the Sellands interpret NRS 108.226(3)(d) to mean that the statute of limitations on recording a mechanics' lien begins to run at the time a notice of completion is recorded by an owner. On the other hand, Sunworld suggests that a notice of completion under NRS 108.226(3)(d) must be recorded in harmony with NRS 108.228.

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[5]In support, the Sellands advance Peccole v. Luce & Goodfellow, 66 Nev. 360, 378, 212 P.2d 718, 727 (1949), and Star Rentals v. Seeberg Constr., 677 P.2d 708, 712 (Or. App. 1984). The Sellands' reliance on Peccole is misplaced because that case involved a cessation of labor for more than thirty days, whereas no such stoppage of labor was involved in this case. Moreover, the Sellands' reliance on Star Rentals is misplaced because the Oregon statute at issue in that case is different from the Nevada statute.

[6]Robert E. v. Justice Court, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983).

[7]County of Clark v. Upchurch, 114 Nev. 749, 753, 961 P.2d 754, 757 (1998) (quoting State, Dep't of Mtr. Vehicles v. Lovett, 110 Nev. 473, 477, 874 P.2d 1247, 1249-50 (1994)).

Under the Sellands' interpretation, an owner can timely record his notice of completion in minutes or hours after work on his property begins. We conclude that such reading of the statute produces absurd results and the legislature could not have intended that an owner could record a notice of completion without regard to the stage of work and the status of labor. Hence, we conclude that the legislature's intent is consistent with Sunworld's interpretation, as adopting the Sellands' interpretation would allow many owners to prematurely record notice of completions shortly after work begins on their property.

Accordingly, we conclude that the Sellands' argument, that recording a notice of completion, itself, constitutes completion of "work of improvement," is not what the legislature contemplated.[8]

Third, the Sellands argue that the district court erred in revoking and vacating the January 11, 2001, order discharging and releasing Sunworld's mechanics' lien because Sunworld's lien was not timely filed and therefore invalid as a matter of law. We disagree.

NRS 108.226(2) provides the following:

> The time within which to perfect the lien by recording the notice of lien is shortened if a notice

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[8]Alternatively, the Sellands rely on NRS 108.226(3)(a) and NRS 108.226(3)(b) to show that "completion of the work of improvement" occurred. We conclude that the Sellands' arguments lack merit. NRS 108.226(3)(a) is not applicable in this case because, although the Sellands occupied the home at the time they recorded the notice of completion, the record reflects that work did not cease at the Sellands' property until late October 2000, over three weeks after the recording. Additionally, the Sellands fail to cite any authority to support their contention that a mere occupancy of a home amounts to "acceptance by the owner . . . of the building, improvement or structure" for NRS 108.226(3)(b) to be applicable.

> of completion is recorded in a timely manner pursuant to NRS 108.228, in which event the notice of lien must be recorded within 40 days after the recording of the notice of completion.

(Emphasis added.)

Pursuant to NRS 108.226(2), an owner must record in a timely manner in order to be entitled to the shortened time (i.e., the forty- day statute of limitation for recording a mechanics' lien by the lien holder). Pursuant to NRS 108.228, recording is timely after the "completion of any work of improvement" or "cessation from labor for a period of 30 days." It follows that "work of improvement" is defined as "the entire structure or scheme of improvements as a whole."[9] In this case, the district court was presented with significant evidence from both parties as to whether or not there was "completion of the work of improvement" by October 5, 2000, the date the notice of completion was recorded.

A district court's determinations of fact will not be set aside unless they are clearly erroneous.[10] Here, after reviewing the affidavits and other evidence supplied by the parties, the district court determined that Sunworld's version of the facts was more credible. A review of the record supports the district court's factual findings that there was no "completion of any work of improvement" on October 5, 2000. Hence, we conclude that the district court's determination is not clearly erroneous and this court will refrain from substituting its judgment for that of the district court.[11]

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[9]NRS 108.221; Peccole, 66 Nev. at 378, 212 P.2d at 727.

[10]Lorenz v. Beltio, Ltd., 114 Nev. 795, 802, 963 P.2d 488, 493 (1998).

[11]Id.

Accordingly, we conclude that the district court did not err in vacating the order discharging and releasing Sunworld's mechanics' lien because the Sellands' notice of completion was prematurely recorded.

Finally, the Sellands argue that the district court erred in exceeding its authority under NRS 108.2275 and that they were denied due process because the district court decided Sunworld's motion for reconsideration and issued its order in favor of Sunworld without a hearing. After careful consideration, we conclude that these arguments lack merit.

Having considered the Sellands' arguments, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Young

_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. Valorie Vega, District Judge
Edward M. Goergen, A Professional Corporation
LoBello Law Offices
Clark County Clerk