

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE VENETIAN LIEN LITIGATION.

No. 41163

VENETIAN CASINO RESORT, LLC;
GRAND CANAL SHOPS MALL
CONSTRUCTION, LLC; AND
NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA.,
Appellants,
vs.
HERRICK CORPORATION,
Respondent.

FILED

FEB 28 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is an appeal from a district court determination of a mechanic's lien pursuant to NRS 108.2275 and an order awarding judgment in the lien claimant's favor after a hearing before a special master. Eighth Judicial District Court, Clark County; James A. Brennan, Judge. Because the parties are familiar with the factual and procedural background of the case, we recount it only as necessary for the disposition of this appeal.¹

Article 19.13 is ambiguous

We review the district court's interpretation of a contract de novo.² “[A] clear and unambiguous provision in a contract whereby a

¹The Honorable Ronald D. Parraguirre, Justice, voluntarily recused himself from participation in the decision of this matter.

²All Star Bonding v. State of Nevada, 119 Nev. 47, 49, 62 P.3d 1124, 1125 (2003).

contractor waives his rights to a mechanic's lien or agrees not to file a lien is valid and binding and will preclude the contractor from asserting a right to a lien."³

We conclude that the district court correctly construed Article 19.13 in the context of the other provisions of the trade contracts, the partial and final lien waivers and releases incorporated as Exhibit G, the parties' course of dealing, and prevailing industry custom. After our own review of the contract documents, we conclude that Article 19.13 did not operate as a clear, unambiguous, and prospective waiver of Herrick's right to file mechanics' liens against the Venetian property under NRS Chapter 108.⁴

Retention

We reverse the district court's judgment as to whether the partial lien waivers effectively waived Herrick's right to file liens to recover retention. Because the district court made its findings of fact and conclusions of law without the benefit of this court's opinion in Dayside Inc. v. District Court,⁵ we remand to the district court to consider whether,


³Dayside Inc. v. Dist. Ct., 119 Nev. 404, 407-08, 75 P.3d 384, 386 (2003) (quoting J. A. Bock, Annotation, Validity and Effect of Provision in Contract Against Mechanic's Lien, 76 A.L.R.2d 1087, 1089 (1961)).

⁴We disagree with appellants' contention that the district court improperly "converted" sua sponte its motion to dismiss Herrick's liens as frivolous under NRS 108.2275 and Herrick's opposition to cross-motions for summary judgment. We observe that appellants were provided ample opportunity to brief and argue the validity of Article 19.13, both in the NRS 108.2275 proceeding and the preferential lien hearing before the special master.


⁵Dayside, 119 Nev. 404, 75 P.3d 384.

under Dayside, the partial lien waivers operated as a clear, unambiguous, and prospective waiver of Herrick's right to file liens to recover retention.

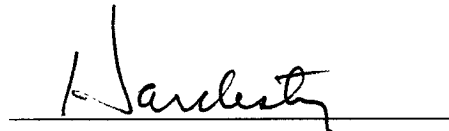
We have considered appellants' remaining arguments and conclude that they lack merit. Accordingly, we ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.⁶

 _____, C.J.

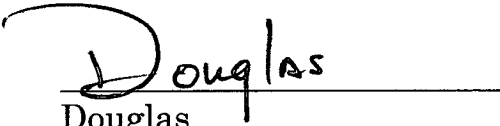
Maupin

 _____, J.

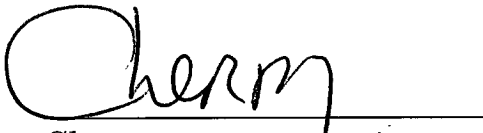
Gibbons

 _____, J.

Hardesty

 _____, J.

Douglas

 _____, J.

Cherry

 _____, J.

Saitta

⁶On remand, we instruct the Chief Judge to assign this case for further proceedings to the Business Court Division pursuant to EDCR 1.61(a)(3).

cc: Chief Judge, Eighth Judicial District
Hon. James A. Brennan, Senior Judge
Lester H. Berkson, Settlement Judge
Hale Lane Peek Dennison & Howard/Las Vegas
Lionel Sawyer & Collins/Las Vegas
Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC/Las Vegas
Beckley Singleton, Chtd./Las Vegas
Kolesar & Leatham, Chtd./Las Vegas
Monteleone & McCrory, LLP/Los Angeles, CA
Peel Brimley LLP/Henderson
Eighth District Court Clerk