

IN THE SUPREME COURT OF THE STATE OF NEVADA

STUART SPEAR, AN INDIVIDUAL;
STUART CONSTRUCTION, INC., A
NEVADA CORPORATION; AND
MOUNTAIN CONCEPTS, INC., A
CALIFORNIA CORPORATION,
Appellants,

vs.

WILLIAM R. NORRIS AND
CATHERINE A. NORRIS,
Respondents

No. 41583

FILED

SEP 08 2005

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment in an action concerning a construction contract. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Appellants Stuart Spear and Stuart Construction (Spear and Stuart) argue that the district court did not consider the appropriate factors in its decision, and that it erred in finding that offsets in the amount of payments made to the subcontractors and materialmen could not be allowed. We disagree and affirm the district court's order.

DISCUSSION

Motion for Reconsideration

"A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous."¹ The Norrises provided "substantially different

¹Masonry and Tile v. Jolley, Urga & Wirth, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).

evidence” sufficient to permit the district court to reconsider its initial denial of summary judgment. We conclude that the district court’s decision to grant the motion for reconsideration was proper.

Summary Judgment

Spear and Stuart contend that the district court erred in granting the Norrises’ motion for summary judgment because they substantially complied with licensing requirements and that the only penalty for exceeding contractor license limits is an administrative penalty and not damages.

This court reviews an order granting summary judgment de novo.² Summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”³ “[T]he moving party has the burden of proving the absence of genuine issues of fact and must ‘show that one of the elements is clearly lacking as a matter of law.’”⁴ However, summary judgment will be upheld on appeal when, after reviewing the record in a light most

²Nicholas v. Public Employees’ Ret. Board, 116 Nev. 40, 43, 992 P.2d 262, 264 (2000).

³NRCP 56(c) (note that NRCP 56(c) was amended effective January 1, 2005; however, the amendment does not affect the quoted text).

⁴Joynt v. California Hotel & Casino, 108 Nev. 539, 542, 835 P.2d 799, 801 (1992) (quoting Sims v. General Telephone & Electric, 107 Nev. 516, 521, 815 P.2d 151, 154 (1991)).

favorable to the appellant, there remain no issues of material fact and respondent is entitled to judgment as a matter of law.⁵

Under NRS 624.700(4), a contract entered into by an unlicensed contractor “shall be deemed void ab initio.” Here, the district court found that the contract was void since Spear and Stuart were not licensed contractors, and the record supports that finding. The Norrises were entitled to judgment as a matter of law; therefore, we conclude the district court did not err in granting summary judgment.

Offsets

Spear and Stuart argue that they were entitled to offset amounts paid to materialmen and subcontractors from the judgment in favor of the Norrises. The Norrises argue that because Spear and Stuart were not licensed contractors, they are absolutely precluded from receiving any form of compensation under NRS 624.320.

NRS 624.320 precludes a person or business that contracts without a proper license from bringing an action for compensation under the contract. Although the rule against recovery by an unlicensed contractor is “predicated upon sound public policy,”⁶ this court has noted that, “the realities of the situation must be considered.”⁷ Therefore, this court has recognized certain exceptions to the recovery bar in cases where an unlicensed contractor is either defending a claim or asserting a claim

⁵Butler v. Bogdanovich, 101 Nev. 449, 451, 705 P.2d 662, 663 (1985).

⁶Magill v. Lewis, 74 Nev. 381, 386, 333 P.2d 717, 719 (1959).

⁷Id.

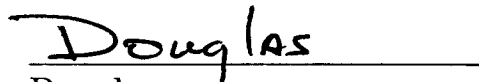
not on the contract itself, but instead on an equitable theory such as quantum meruit or unjust enrichment.⁸

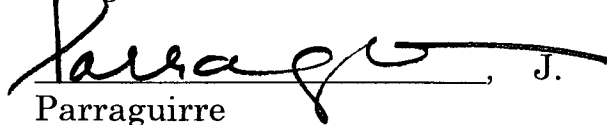
Here, Stuart and Spear were given an opportunity to argue the issue of offsets at an evidentiary hearing. At that hearing, the district court decided to offset \$24,700 from the Norrises' award for services that Spear performed under the licensed entity Mountain Concepts, Inc. However, the district court denied Spear's request for offsets for amounts he paid to subcontractors and materialmen under the void contract.

The record does not indicate that the Norrises engaged in any conduct that would necessitate Spear recovering under an equitable theory in light of his failure to comply with the licensing statute. Therefore, we conclude that the district court did not err in declining Stuart and Spear's request for offsets under the void contract. Accordingly, we

AFFIRM the order of the district court granting summary judgment.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

⁸See generally Day v. West Coast Holdings, Inc., 101 Nev. 260, 699 P.2d 1067 (1985); San Diego Prestressed Concrete Co. v. Chicago Title Ins. Corp., 92 Nev. 569, 555 P.2d 484 (1976); Walker Bank & Trust Co. v. Smith, 88 Nev. 502, 501 P.2d 639 (1972); Nevada Equities, Inc. v. Willard Pease Drilling Co., 84 Nev. 300, 440 P.2d 122 (1968); Magill v. Lewis, 74 Nev. 381, 333 P.2d 717 (1959); Milum v. Herz Bros. Water Well Drilling & Supply Co., 74 Nev. 309, 329 P.2d 1068 (1958).

cc: Hon. Brent T. Adams, District Judge
Jeffrey K. Rahbeck
Hale Lane Peek Dennison & Howard/Reno
Washoe District Court Clerk