

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERTA BROOKS-HANDLER,  
Appellant,

vs.

VENETIAN CASINO RESORT, LLC, A  
NEVADA CORPORATION, D/B/A  
VENETIAN RESORT-HOTEL CASINO;  
AVW AUDIO VISUAL, INC., A  
FOREIGN CORPORATION, D/B/A AVW  
TELAVE AUDIO VISUAL SOLUTIONS;  
PRODUCTION RESOURCE GROUP,  
L.L.C., A FOREIGN CORPORATION,  
D/B/A FOURTH PHASE; INTERFACE  
GROUP-NEVADA, INC., A NEVADA  
CORPORATION, D/B/A SANDS EXPO &  
CONVENTION CENTER; RAMADA  
FRANCHISE SYSTEMS, INC., A  
FOREIGN CORPORATION; SPECIAL  
OPERATIONS ASSOCIATES; AND  
CONVENTION TECHNICAL  
SERVICES,  
Respondents.

No. 42160

**FILED**

JUN 15 2005

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

ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING

This is an appeal from a district court order dismissing a personal injury action. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

While employed with Special Operations Associates (SOA), Roberta Brooks-Handler was walking across ballroom G in the Venetian Casino Resort (Venetian) when she tripped on some electrical power cords used for the Ramada/Rina annual conference (the Conference) being conducted by Ramada Franchise Systems, Inc. (Ramada). She sustained injuries and incurred medical bills in excess of \$10,000. Brooks-Handler

received compensation for her injuries under the workers' compensation structure provided by the Nevada Industrial Insurance Act (NIIA). Brooks-Handler then brought a negligence claim against all named defendants in this instance, claiming their negligence directly or indirectly caused her injuries.

The district court dismissed the complaint concluding as a matter of law that provisions of the NIIA precluded Brooks-Handler from pursuing her negligence claim. Specifically, the district court held that all named entities were "legally related to [Brooks-Handler's] employer through the extension of express and/or implied agreements concerning the convention at which [Brooks-Handler] allegedly sustained an injury while in the course and scope of her employment." The district court affirmed its earlier order dismissing the complaint, "finding that work performed by all parties herein 'is obviously a subcontracted fraction of a main contract' between [Ramada] and [Venetian]." This appeal follows.

The district court properly dismissed Brooks-Handler's claims against SOA, Ramada and Venetian under the NIIA.

In reviewing orders granting motions to dismiss, this court considers "whether the challenged pleading sets forth allegations sufficient to establish the elements of a right to relief."<sup>1</sup> In making its determination, this court is to accept all factual allegations in the complaint as true.<sup>2</sup>

The district court held as a matter of law that Brooks-Handler was precluded by the NIIA from pursuing her claims against "all persons

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<sup>1</sup>Nevada Power Co. v. Haggerty, 115 Nev. 353, 358, 989 P.2d 870, 873 (1999).

<sup>2</sup>Id. at 358, 989 P.2d at 873.

or entities legally related to [Brooks-Handler's] employer through the extension of express and/or implied agreements concerning the [Conference].”

The NIIA, as codified in NRS Chapters 616A to 616D, governs workers' compensation in Nevada.<sup>3</sup> The NIIA relieves employers from liability for recovery of damages or other compensation for workplace injuries that are covered by the act.<sup>4</sup> This remedy is exclusive.<sup>5</sup> When a claimant accepts a final NIIA award for compensation of injuries sustained, such award acts as an accord and satisfaction of common law rights, extinguishing any common law right the employee may have had against the employer.<sup>6</sup>

Employees may seek compensation in tort for workplace injuries against persons or entities not deemed to be the statutory employer or persons in the same employ.<sup>7</sup> The industrial insurance system in Nevada is “uniquely different” from other states, in that subcontractors and independent contractors are accorded the same status as “employees.”<sup>8</sup> Thus, immunity provided by the NIIA covers “all

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<sup>3</sup>NRS 616A.005, 616A.020.

<sup>4</sup>NRS 616B.612(4).

<sup>5</sup>Frith v. Harrah South Shore Corp., 92 Nev. 447, 452, 552 P.2d 337, 340 (1976); see also NRS 616A.020.

<sup>6</sup>Arteaga v. Ibarra, 109 Nev. 772, 776, 858 P.2d 387, 390 (1993).

<sup>7</sup>NRS 616C.215(2).

<sup>8</sup>Aragonez v. Taylor Steel Co., 85 Nev. 718, 720, 462 P.2d 754, 755-56 (1969).

employees working for, or under, the principal contractor.”<sup>9</sup> The provisions of the NIIA are construed to include sub-subcontractors as well as subcontractors and independent contractors.<sup>10</sup>

For the purposes of the NIIA, an employee is defined as “every person in the service of an employer under any appointment or contract of hire.”<sup>11</sup> Independent contractor is defined as “any person who renders service for a specified recompense for a specified result, under the control of his principal as to the result of his work only and not as to the means by which such result is accomplished.”<sup>12</sup> Under the NIIA, “[e]xcept as otherwise provided . . . subcontractors, independent contractors and the employees of either shall be deemed to be employees of the principal contractor.”<sup>13</sup> A principal contractor is an entity that coordinates the work on a project, contracts for the completion of the entire project, contracts for the services of any subcontractor or independent contractor on the project, or is responsible for the payment of subcontractors or independent contractors.<sup>14</sup>

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<sup>9</sup>Stolte, Inc. v. District Court, 89 Nev. 257, 259, 510 P.2d 870, 871 (1973).

<sup>10</sup>Id.

<sup>11</sup>NRS 616A.105.

<sup>12</sup>NRS 616A.255.

<sup>13</sup>NRS 616A.210(1).

<sup>14</sup>NRS 616A.285.

The test delineated in Meers v. Haughton Elevator,<sup>15</sup> and codified at NRS 616B.603, is inapplicable to subcontracted fractions of a main contract.<sup>16</sup> When a contract is clearly a subcontracted portion of a main contract, the contracting businesses are the “same trade” and are shielded by the large grant of protection provided by the NIIA and NRS 616A.020.<sup>17</sup>

Here, contractual relationships exist between Ramada, Venetian, and SOA. The main contract for the convention was between Ramada and Venetian. The record is devoid of the contract creating the basis for the remaining contractual relationships. In particular, the contracts between Ramada and SOA, and between Ramada and Sands Expo and Convention Center (Sands) are not in the record, nor is the sub-contract between Sands and Telave Audio Visual Solutions (Telave). Sub-contracts between Sands and Production Resource Group (PRG) and between Sands and Convention Technical Services (CTS) are found in the

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<sup>15</sup>101 Nev. 283, 286, 701 P.2d 1006, 1007 (1985); codified at NRS 616B.603.

<sup>16</sup>Meers, 101 Nev. at 286, 701 P.2d at 1007 (stating “[t]he test (except in cases where the work is obviously a subcontracted fraction of the main contract) is whether that indispensable activity is, in that business, normally carried on through employees rather than independent contractors.” (quoting Bassett Furniture Industries, Inc. v. McReynolds, 224 S.E.2d 323, 326 (Va. 1976) (second emphasis added)) (first emphasis added)).

<sup>17</sup>NRS 616A.020(1) states in pertinent part: “[t]he rights and remedies provided in chapters 616A to 616D, inclusive, of NRS for an employee on account of an injury by accident sustained arising out of and in the course of the employment shall be exclusive, except as otherwise provided. . . .”

record. In order to provide an extension of the exclusive remedy provided by the NIIA to SOA, PRG, CTS Sands, and Telave, the necessary link between those parties and Ramada must be evidenced. That evidence would be the contractual agreement between Ramada and Sands, and any other relevant contract that establishes the relationship of the parties as subcontractors of Ramada.

Brooks-Handler's contentions that the actions of the parties created a joint venture and that joint employer immunity does not extend beyond the construction context are both without merit. This court has held that when companies combine their efforts in partnerships for specific purposes, so long as one of the partners maintains workers' compensation insurance, all of the partners and co-employers are entitled to the exclusive remedy protection of the NIIA.<sup>18</sup> This partnership need not be a "formal partnership" in order for immunity from liability to lie.<sup>19</sup> Further, the Meers test has consistently been applied to non-construction cases.<sup>20</sup>

### CONCLUSION

The record is clear that contractual relationships existed between Ramada, and Venetian, and there is no dispute that Ramada contracted with SOA. Thus the reasoning of the district court is affirmed. In particular, Ramada and Venetian are protected from liability, for

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<sup>18</sup>Haertel v. S[o]nshine Carpet Co., 104 Nev. 331, 335, 757 P.2d 364, 367 (1988).

<sup>19</sup>Id.


<sup>20</sup>See Harris v. Rio Hotel & Casino, 117 Nev. 482, 493, 25 P.3d 206, 213 (2001); see also Tucker v. Action Equip. and Scaffold Co., 113 Nev. 1349, 1356, 951 P.2d 1027, 1031 (1997).


Ramada was required to pay workers' compensation insurance premiums in compliance with the NIIA, and it is clear through the contract contained in the record Venetian is a subcontractor to Ramada, and thus shielded from liability.

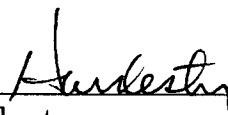
However, the record does not contain the contracts between Ramada and SOA, Ramada and Sands, or the contract between Sands and Telave; therefore, the case is remanded for further factual findings to determine whether a contract existed under which SOA and Sands may be considered a co-employees, thus shielding them, and all other subcontractors, sub-subcontractors, and independent contractors from liability by the exclusive remedy provisions of the NIIS. Such a determination will also assist in the determination of whether such protection is extended to PRG, CTS, and Telave based on the contractual relationship between those entities and Sands.

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.

  
\_\_\_\_\_, J.  
Rose

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

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Sally L. Loehrer, District Judge  
Greenman Goldberg Raby & Martinez  
Fennemore Craig  
Hutchison & Steffen, Ltd.  
Jones Vargas/Las Vegas  
Royal, Jones, Dunkley & Wilson  
Schreck Brignone/Las Vegas  
Selman Breitman, LLP  
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Clark County Clerk