IN THE SUPREME COURT OF THE STATE OF NEVADA

AHERN RENTALS, INC., A NEVADA CORPORATION,
Appellant,
vs.
TANAMERA RESORT CONDOMINIUMS, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Respondent.

No. 42392

FILED

DEC 21 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

TANAMERA RESORT CONDOMINIUMS, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Appellant,
vs.
AHERN RENTALS, INC., A NEVADA CORPORATION,
Respondent.

No. 43228

ORDER OF AFFIRMANCE

This is a consolidated appeal from a district court order extinguishing a mechanic's lien and an order denying attorney fees and costs. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

This appeal arises out of a mechanic's lien filed by Ahern Rentals against Tanamera Resort's property for equipment Ahern rented to D&L Framing, a subcontractor of the contractor who was to make improvements on Tanamera's property. Ahern appealed the district court's order releasing its mechanic's lien. Tanamera separately appealed the district court's order denying its motion for attorney fees for a frivolous lien. This court consolidated the appeals in the interest of judicial economy. We now affirm the orders of the district court.

Mechanic's lien

A question of the applicability of a lien statute is one of statutory construction that this court reviews de novo.[1]

"Where the language of a statute is plain and unambiguous and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself."[2] However, "where language is ambiguous, a court should consult other sources such as legislative history, legislative intent, and analogous statutory provisions."[3] We may infer legislative intent "by reading a particular statutory provision in the context of the entire statutory scheme."[4]

The Legislature explicitly provided that the 2003 amendments to the lien statutes would only affect agreements entered into after October 1, 2003. Ahern filed its notice of lien in February 2003, therefore, the 1997 version of NRS 108.222 applied to its purported lien.

The 1997 version of NRS 108.222(1) provided that "a person who performs labor upon or furnishes material of the value of $500 or more, to be used in the construction . . . of any building . . . has a lien upon

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[1]Crestline Inv. Group v. Lewis, 119 Nev. 365, 368, 75 P.3d 363, 365 (2003).

[2]Madera v. SIIS, 114 Nev. 253, 257, 956 P.2d 117, 120 (1998).

[3]Id.

[4]Nylund v. Carson City, 117 Nev. 913, 916, 34 P.3d 578, 580-81 (2001).

the premises and any building, structure and improvement thereon[.]"[5] NRS 108.222(1)(b) provides that in the absence of a contract, the amount of the lien would be for "an amount equal to the fair market value of, the labor performed or material furnished or rented[.]"

Ahern contends that NRS 108.222(1) clearly contemplates equipment rental companies as lien claimants. Additionally, Ahern contends that the statute is ambiguous and that reference to the legislative history demonstrates that equipment rental companies were always intended to be included in the class of lien claimants. Finally, Ahern makes the unique argument that a portion of the useful life of the equipment it rented to D&L was "material furnished" to improve Tanamera's property; therefore entitling it to a lien on the property.

However, Tanamera argues that the plain meaning of NRS 108.222(1) does not extend mechanic's lien actions to equipment rental companies. Furthermore, it argues that the legislative history of the statute demonstrates that equipment rental companies are not protected by the statute. Tanamera contends that a portion of equipment's "useful life" cannot become a fixture on the property. We agree.

Although this court has previously held that "[t]he language of NRS 108.222(1)(a) is not ambiguous[,]"[6] the language "material furnished

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[5]Additionally, NRS 108.2214 was added by the 2003 Legislature. NRS 108.2214 specifically includes a "renter of equipment" within the definition of "lien claimant."

[6]California Commercial v. Amedeo Vegas I, 119 Nev. 143, 146, 67 P.3d 328, 330 (2003).

or rented" in NRS 108.222(1)(b) is ambiguous.[7] The term "rented" could apply to Ahern renting its equipment to D&L or to D&L renting its equipment from Ahern.

Ahern asserts that by renting its equipment to D&L for use on Tanamera's property, it "furnished material of the value of $500 or more" to Tanamera.[8] Additionally, Ahern asserts that because it did not have a contract with Tanamera, it was therefore entitled to claim a lien in the amount of the "fair market value of . . . [the] material furnished or rented."[9] Ahern's argument fails to persuade us that Ahern was a contractor or subcontractor as contemplated by the Legislature.

The Legislature had the opportunity to extend lien claimant protection to equipment rental companies in the 1997 amendment of NRS 108.222 and in the prior amendments.[10] The Legislature declined to do so until 2003. Based upon the legislative history and the intent of the Legislature, the word "rented" in NRS 108.222(1)(b) applies to the costs for materials that the contractor and subcontractor furnished or rented in order to complete work over and above that provided by the contract. The words "furnished or rented" in NRS 108.222 did not suggest that an equipment rental company that rented equipment to the subcontractor

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[7]See United States v. State Engineer, 117 Nev. 585, 590, 27 P.3d 51, 54 (2001).

[8]See NRS 108.222(1) (1997).

[9]See NRS 108.222(1)(b) (1997).

[10]See A.B. 236, 53rd Leg. § 4 (Nev. 1965) (the proposed amendment included broad language that may have encompassed equipment rental companies as lien claimants, however, the broad language was deleted in the final version of NRS 108.222 (1967)). See also NRS 108.222 (1987).

was entitled to a mechanic's lien against the property. Rather, the words "furnished or rented," when read in conjunction with the other words in the statute and bearing in mind the legislative intent, applied to the valuation of extra costs incident to work done outside or in the absence of a contract by a contractor. Further, decisions from a majority of jurisdictions support the holding that a mere renter of equipment is not entitled to a mechanic's lien.[11] We conclude that the 1997 version of NRS 108.122 was meant to protect contractors and subcontractors for the costs of materials that the contractor or subcontractor furnished or rented, not for equipment that a rental company furnished or rented to the contractor or subcontractor.

With respect to Ahern's argument that a portion of its equipment's useful life became permanently attached to the property, Nevada follows the view that the physical materials must become part of the realty or structure in order to claim a lien.[12] Ahern's rental equipment did not become a physical part of the property, therefore, Ahern's rental equipment was not a fixture nor improvement on Tanamera's property.

Therefore, we conclude that Ahern was not entitled to a mechanic's lien on Tanamera's property for the value of equipment it rented to D&L. Consequently, the district court did not err in releasing Ahern's mechanic's lien on the property.

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[11]See 3 A.L.R. 3d § 573 (2004).

[12]See generally Fondren v. K/L Complex Ltd., 106 Nev. 705, 800 P.2d 719 (1990).

Attorney fees

The district court granted Tanamera's motion for an order to show cause on October 10, 2003. Tanamera filed a motion for attorney fees and costs pursuant to NRS 108.2275(6)(a) or in the alternative NRS 18.010, which the district court denied.[13] The amended version of NRS 108.2275 became effective on October 1, 2003.

The 2003 version of NRS 108.2275(6)(a) mandates that a defendant who prevails against a lien claimant be awarded reasonable attorney fees and costs if the notice of lien was frivolous and without cause. The 1997 version of NRS 108.2275(6)(a), which was in effect when Ahern first filed its notice of lien, had permissive language and gave the district court discretion to award fees and costs if it found the lien frivolous and without reasonable cause.[14]

It is not disputed that the 2003 version of the statute applies with respect to attorney fees. Tanamera contends that the award of attorney fees was mandatory once the lien was expunged. However, Tanamera offers no citation to authority in support of its argument that a judicial decision to expunge a lien is conclusive proof that the lien was frivolous and without cause.

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[13]The district court's denial of attorney fees under NRS 18.010 was not challenged on appeal, and we decline to address it.

[14]NRS 108.2275(4)(a) (1997).

The language in NRS 108.2775(6)(a) provides that an award of attorney fees is mandatory once the judicial determination is made that the notice of lien was frivolous and without reasonable cause. The legislative history is silent regarding whether a judicial release of a lien is conclusive proof that the lien was frivolous and without reasonable cause.

Nonetheless, we believe that NRS 108.2775(6)(a) should be interpreted in accordance with Ahern's argument that a mechanic's lien may be invalid, but not necessarily frivolous and without reasonable cause.

In Pacific Industries, Inc. v. Singh, the Washington Court of Appeals rejected an owner's appeal of a lower court's denial of the owner's request for attorney fees after the owner had successfully argued to expunge a lien pursuant to a motion for an order to show cause.[15] The court held:

> To be frivolous, a lien must be improperly filed beyond dispute. Even if a lien is ultimately found to be invalid, it is frivolous "only if it presents no debatable issues and is so devoid of merit that it had no possibility of succeeding." Every frivolous lien is invalid, but not every invalid lien is frivolous.[16]

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[15]86 P.3d 778, 781 (Wash. Ct. App. 2003).

[16]Id. (quoting Intermountain Elec., Inc. v. G-A-T Bros. Constr., Inc., 62 P.3d 548 (2003)).

Importantly, the statute at issue in Pacific Industries employs language nearly identical to the language contained in NRS 108.2275(6)(a).[17]

A review of the order denying Tanamera's motion for attorney fees demonstrates that the district court interpreted NRS 108.2275(6)(a) to mean that attorney fees and costs are mandatory only if the court first determines that the notice of lien was frivolous and without cause. The district court concluded that Ahern advanced a credible argument that it was protected by the lien statute, and therefore its notice of lien was not frivolous and without cause.

We conclude that the district court correctly applied the plain meaning of NRS 108.2775(6)(a) in denying Tanamera's motion for attorney fees. We find that Ahern's lien was not "improperly filed beyond dispute" nor did it present "no debatable issues [or was] so devoid of merit that it had no possibility of succeeding."[18] Therefore, Tanamera was not entitled to a mandatory award of attorney fees when the district court released Ahern's lien, and the district court did not err in denying Tanamera's request for attorney fees.

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[17]See WASH. REV. CODE § 60.04.081(4).

[18]Pacific Industries, 86 P.3d at 781.

CONCLUSION

The district court properly expunged Ahern's lien on Tanamera's property because the lien statutes did not protect a renter of equipment when Ahern filed its notice of lien. Additionally, the district court properly denied Tanamera's request for attorney fees and costs. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.

Rose, J.

Parraguirre, J.

cc: Hon. Steven R. Kosach, District Judge
Richard G. Hill
Lane, Fahrendorf, Viloria & Oliphant, LLP
Washoe District Court Clerk