

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE VENETIAN LIEN LITIGATION.

No. 42555

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

Appellants,

vs.

TRM CORPORATION, A CALIFORNIA
CORPORATION, D/B/A SUPERIOR
TILE COMPANY, AND LEHRER
MCGOVERN BOVIS, INC.,

Respondents.

FILED

FEB 28 2007

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

ORDER OF AFFIRMANCE

This is an appeal from district court orders adopting a special master's recommendations after a hearing in a mechanic's lien foreclosure proceeding. Eighth Judicial District Court, Clark County; James A. Brennan, Judge. Because the parties are familiar with the facts, we recount them here only as necessary for our disposition of this appeal.¹

Respondent TRM Corporation d/b/a Superior Tile Company filed notice of a mechanic's lien and sought recovery against a surety bond in the amount of unpaid overtime wages posted by appellants Venetian Casino Resort, LLC, Grand Canal Shops Mall Construction, LLC, and National Union Fire Insurance Company of Pittsburgh, PA (collectively,

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

Venetian). Lehrer McGovern Bovis, Inc. (LMB) acted as Venetian's Managing Contractor.

Overtime charges

Venetian contends that the district court improperly permitted TRM to recover damages for overtime charges in violation of former NRS 108.222(1) and 108.239. We disagree.

“The [mechanic's lien] statutory scheme as a whole clearly limits a lienholder to the amount of the contract if a contract exists.”² However, “[o]nce . . . change orders [are] approved, they [become] part of the contract price.”³ “NRS 108.222 allows a contractor to seek a mechanic's lien for labor, materials, overhead and profit when no contract exists Presumably, when a contract exists, the parties have already bargained over these items.”⁴

All damages recommended by the special master and adopted by the district court represented costs incurred and bargained for pursuant to written change orders approved by LMB. These costs were for overtime to meet the construction deadline. Despite Venetian's assertion that the trade contract prohibited payment of overtime wages for any reason, these charges necessarily became part of the contract price when executed through valid written change orders. The trade contract states that “[TRM] will not be entitled to additional compensation for work

²California Commercial v. Amedeo Vegas I, 119 Nev. 143, 146, 67 P.3d 328, 331 (2003).

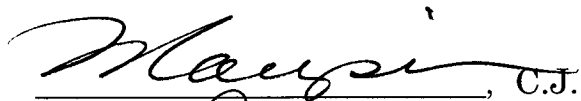
³Id. at 148, 67 P.3d at 332.

⁴Id. at 148 n.15, 67 P.3d at 332 n.15.

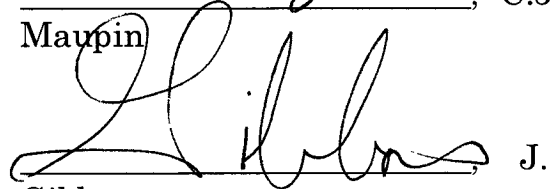
performed outside of regular working hours, except as authorized in writing by [LMB].” The record contains copies of each change order at issue, detailing the overtime charges and extra work, and each is signed by TRM and a representative of LMB. Thus, we conclude that these overtime charges were properly made part of the special master’s recommended damages.

We have considered Venetian’s remaining arguments and conclude that they lack merit. Accordingly, we

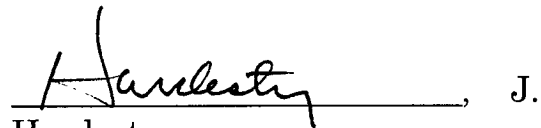
ORDER the judgment of the district court AFFIRMED.

 _____, C.J.

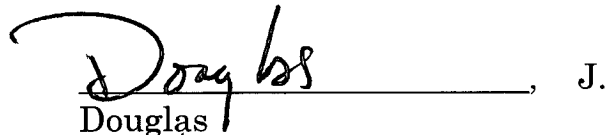
Maupin

 _____ J.

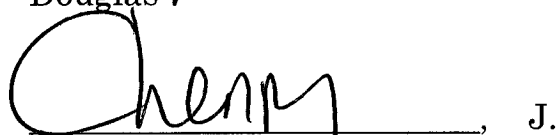
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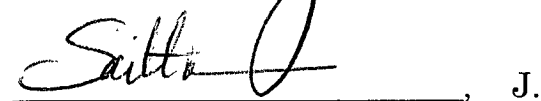
Hardesty

 _____ J.

Douglas

 _____ J.

Cherry

 _____ J.

Saitta

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
Tommy A. Conner
Dixon Truman & Fisher
Harrison Kemp & Jones, LLP
Eighth District Court Clerk