IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICK J. GONZALEZ AND KATHY GONZALEZ, HUSBAND AND WIFE, D/B/A ETXE CONSTRUCTION,
Appellants,
vs.
ROBERT CANDEE AND JUANITA CANDEE, HUSBAND AND WIFE,
Respondents.

No. 42838

FILED

JUL 06 2006

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment in a mechanic's lien dispute. Third Judicial District Court, Churchill County; David A. Huff, Judge.

The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition. The sole issue on appeal is whether the district court erred in concluding that appellants Patrick and Kathy Gonzalez (doing business as Etxe Construction) were required to serve respondents Robert and Juanita Candee with a pre-lien notice in order to perfect a mechanic's lien on their home. We conclude Etxe was required to provide such notice and thus affirm.[1]

Pursuant to NRS 108.245(1), a potential lien claimant must notify a property owner that materials or services are being provided on

[1]We note that the district court's order contains conflicting conclusions, at one point stating that Etxe was not exempt from providing a pre-lien notice and later stating these notice requirements were inapplicable to the present case. Because the determination whether Etxe was required to file a pre-lien notice is a pure issue of law, we review de novo and give no deference to this confusing order. See SIIS v. United Exposition Services Co., 109 Nev. 28, 30, 846 P.2d 294, 295 (1993).

the property and make clear that a lien could be placed on the property if he or she does not receive full payment. Failure to provide this notice will typically prohibit the claimant from perfecting the lien.[2]

Etxe argues that, because it only provided labor, it was exempt from the pre-lien notice requirement under NRS 108.245(1). At the time this matter was considered by the district court, this provision did not require notice by someone "who performs only labor" on a project.[3] Etxe argues that its contract with Cross Country required Etxe to perform all labor and Cross Country to provide all materials. However, the district court correctly concluded that the contract also required Etxe to coordinate and assist in delivery of building materials and hire subcontractors.

Etxe urges this court to adopt an expansive definition of labor that would include these contractual duties, arguing that all aspects of a job other than providing materials should be considered "labor" when determining the necessity of pre-lien notice. However, we conclude that a

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[2]NRS 108.245(3).

[3] Except as otherwise provided in subsection 5, every person, firm, partnership, corporation or other legal entity, other than one who performs only labor, who claims the benefit of NRS 108.221 to 108.246, inclusive, shall, within 31 days after the first delivery of material or performance of work or services under his contract, deliver in person or by certified mail to the owner [a notice of the right to lien.]

NRS 108.245(1) (amended 2003) (emphasis added). The 2003 amendments to NRS 108.245 do not affect the substantive notice requirements or arguments relevant to this appeal.

narrower interpretation of labor is necessary to carry out the notice's purpose that owners be aware that work and materials are being incorporated into their property.[4] Adopting Etxe's broad definition of labor could greatly expand the exemption to the notice requirement and thus runs counter to this policy.

Etxe alternatively argues that it was exempt from providing a pre-lien notice because the Candees had actual knowledge that Etxe was working on their home. We conclude this claim also lacks merit.

An owner's knowledge that an entity is working on their home is not enough to waive the pre-lien notice requirement. Instead, the lack of a pre-lien notice is only excused when the "owner of the property receives actual notice of the potential lien claim and is not prejudiced."[5] Applying this rule in Fondren v. K/L Complex, Ltd., we concluded that a lien was properly perfected despite the claimant's failure to serve a pre-lien notice because the owner previously knew of the potential lien claim and thus delivery of a pre-lien notice "would have accomplished little or nothing."[6]

Here, in contrast, the Candees were prejudiced by Etxe's failure to provide notice. Although the Candees knew Etxe was working on their home, the Candees were not privy to the terms of Etxe's contract with Cross Country. There is no evidence that the Candees had actual

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[4]Fondren v. K/L Complex, Ltd., 106 Nev. 705, 710, 800 P.2d 719, 722 (1990).

[5]Board of Trustees v. Durable Developers, 102 Nev. 401, 410, 724 P.2d 736, 743 (1986).

[6]106 Nev. at 710, 800 P.2d at 722.

knowledge that Etxe could file a lien against their home. As a result, the Candees lacked knowledge of Exte's potential lien claim and thus were prejudiced by the lack of a pre-lien notice.[7]

For the foregoing reasons, we conclude that the district court did not err when it granted summary judgment to the Candees. Etxe was required to provide the Candees with a pre-lien notice; its failure to do so precludes it from perfecting its lien. Thus, we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. David A. Huff, District Judge
Carolyn Worrell, Settlement Judge
Wes Williams Jr.
Mackedon, McCormick & King
Churchill County Clerk

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[7]Furthermore, the Candees have already paid all amounts owed to Cross Country under the original contract plus an additional $8,157. Thus, unlike the cases Etxe relies upon, enforcing its lien would result in the Candees paying twice for their home's construction.