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Summary of Barrett v. Eighth Jud. Dist. Ct, 130 Nev. Adv. Op. 65

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Recommended Citation

Guidry, Laura, "Summary of Barrett v. Eighth Jud. Dist. Ct, 130 Nev. Adv. Op. 65" (2014). *Nevada Supreme Court Summaries*. 799.

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CONSTRUCTION LAW: SUBCONTRACTOR PRELITIGATION NOTICE

Summary

The Court determined one issue: 1) whether a defendant subcontractor must provide NRS Chapter 40 prelitigation notice, which is statutorily followed by an opportunity to repair, prior to filing a fourth-party complaint against a supplier.

Disposition

NRS 40.645 nor any other provision requires that claimant homeowners or subcontractors give notice to other subcontractors, suppliers, or design professionals prior to commencing or adding an action against them. The Court concluded the district court erred in requiring RCR to give notice of construction defects to Uponor.

Factual and Procedural History

Homeowners in the Tropical Breeze subdivision found allegedly defective plumbing parts in their residence and provided NRS Chapter 40 notice of the alleged defect to the general contractor/developer Centex Homes. Centex then forwarded the notice to Uponor, Inc. Uponor declined to make repairs asserting it was not a supplier under NRS Chapter 40. The homeowners filed a complaint against Centex who then filed a third-party complaint against various subcontractors, including RCR Plumbing & Mechanical, Inc) (“RCR”). RCR filed a fourth-party complaint against Uponor. Uponor then asserted it had not been provided with notice of the alleged defects.

The district court found Uponor was a supplier under NRS Chapter 40 and that RCR was required to give notice of the alleged construction defect to Uponor prior to filing its fourth-party complaint. The district court allowed RCR to provide Uponor notice and then Uponor elected to make repairs. The homeowners petition this court for a writ of mandamus.

Discussion

NRS Chapter 40 does not require a subcontractor to give prelitigation notice before filing a fourth-party complaint against a supplier

Before claimant homeowners may assert construction defect claims in the district court, they must provide the contractor written notice of the alleged with an opportunity to repair.² Despite the permissive language in NRS 40.645(1)(b), the statute does not require the homeowners or RCR to give notice to Uponor prior to filing a fourth-party against it since

¹ By Laura Guidry.

² NEV. REV. STAT. § 40.645 (2014); *id.* at § 40.647(1).

Uponor is a supplier. NRS 40.646 does not provide a notice requirement for a subcontractor who believes another subcontractor or supplier is responsible. Likewise, NRS 40.690 does not create any notice requirements that a subcontractor must follow to file a fourth-party complaint against another subcontractor or supplier. Thus, neither NRS 40.646 nor NRS 40.690 required RCR to give notice to Uponor.

Conclusion

NRS Chapter 40 does not require either the claimant homeowners or the subcontractors to give prelitigation notice to another subcontractor or supplier like Uponor.