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### Summary of The Power Co. v. Henry, 130 Nev. Adv. Op. 21

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*Nevada Law Journal*

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CONTRACT LAW: SETTLEMENT AGREEMENT

**Summary**

The Court determined two issues: 1) whether NRCP 41(e)'s provision requiring dismissal for want of prosecution applies to an action in which the parties entered into a written and signed settlement agreement before NRCP 41(e)'s five-year deadline expired; and 2) whether the district court erred in reducing the parties' settlement agreement to judgment.

**Disposition**

When parties have entered into a written and signed settlement agreement before NRCP 41(e)'s five year deadline, NRCP 41(e) does not apply to such an action. Thus, district court did not err in reducing the parties' settlement agreement to judgment.

**Factual and Procedural History**

Respondent Kirk Henry was rendered quadriplegic by a bouncer at the Crazy Horse Too Gentlemen's Club, which was owned and operated by appellant The Power Company, Inc. (TPCI). In 2001, Kirk Henry and his wife, Amy Henry filed a civil complaint against TPCI for assault, battery, loss of consortium and later amended the complaint to include TPCI's president, Rick Rizzolo. On August 8, 2006, four years and ten months after the Henrys filed their action, they entered into a settlement agreement with TPCI and Rizzolo. The settlement agreement stipulated that upon TPCI and Rizzolo's payment of \$10 million to the Henrys, the Henrys would release TPCI and Rizzolo from all liability related to Mr. Henry's injury. While \$1 million was owed to the Henrys at signing, the remaining \$9 million was due upon the Crazy Horse Too's sale, regardless of the sale's net proceeds.

The Henrys moved the district court to reduce the settlement agreement to judgment twice without success. TPCI and Rizzolo moved the district court to dismiss the Henrys' action under NRCP 41(e) for want of prosecution on two occasions unsuccessfully. The district court denied the second motion to dismiss on the grounds that NRCP 41(e) did not apply because the settlement agreement obviated the need for trial. Since the Henrys received no payment after the sale of the Crazy Horse Too for \$3 million, the Henrys filed a third motion to reduce the settlement agreement to judgment which was granted by the district court.

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<sup>1</sup> By Laura Guidry.

## **Discussion**

*The district court properly denied TPCI and Rizzolo's two motions to dismiss for want of prosecution under NRCP 41(e)*

When parties enter into a binding settlement agreement that resolves all of the issues pending in an action, eliminating the need for a trial, the case has been brought to trial within the meaning of NRCP 41(e). The district court did not err in denying TPCI and Rizzoli's motions to dismiss the Henry's action because an enforceable settlement agreement was entered settling the pending issues within five years of the Henrys filing complaint.

*The district court properly granted the Henrys' motion to reduce the settlement agreement to a judgment*

A settlement agreement is a contract governed by general principles of contract law.<sup>2</sup> When a contract's language is unambiguous, the court will construe and enforce it according to that language.<sup>3</sup> Here, the settlement agreement's language is unambiguous. TPCI and Rizzolo agreed to pay the Henrys \$10 million in exchange for a release of all liability related to Mr. Henry's injury at the Crazy Horse Too upon the club's sale. TPCI and Rizzolo were required to pay the remaining \$9 million to the Henrys regardless of the sale amount of the club's. The district court properly determined that the settlement agreement must be enforced according to its clear language.<sup>4</sup>

## **Conclusion**

Since the Henrys' settlement agreement was written and signed before NRCP 41(e)'s five year deadline, NRCP 41(e) does not apply to such an action. Thus, district court did not err in reducing the parties' settlement agreement to judgment.

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<sup>2</sup> May v. Anderson, 121 Nev. 668, 672, 199 P.3d 1254, 1257 (2005).

<sup>3</sup> In re Amerco Derivative Litig., 127 Nev. ., 252 P.3d 681, 693 (2011).

<sup>4</sup> *Id.*