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# Summary of Dynalectric Co. of Nev. v. Clark & Sullivan Constructors, Inc., 127 Nev. Adv. Op. No. 41

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CONTRACTS – PROMISSORY ESTOPPEL

**Summary**

An appeal from an Eighth Judicial District Court judgment awarding expectation damages to Clark & Sullivan Constructors, Inc. (“C&S”) for its promissory estoppel claim against Dynalectric Co. of Nevada (“Dynalectric”).

**Disposition/Outcome**

The Nevada Supreme Court affirmed the district court’s judgment. “Justice required using [the expectation] measure of damages, and the damages that the district court awarded were foreseeable and reasonably certain.”<sup>2</sup>

**Factual and Procedural History**

In 2004, University Medical Center (“UMC”) solicited bids for its Las Vegas expansion (the “Project”). C&S, interested in serving as general contractor for the Project, sought bids from subcontractors, including Dynalectric. Dynalectric submitted a bid to C&S to perform the electrical work for the Project and repeatedly assured C&S of the accuracy of its bid. C&S incorporated Dynalectric’s bid into its bid to UMC and was awarded the general contract. C&S then notified Dynalectric. Subsequently, Dynalectric repudiated its obligations to C&S and refused to negotiate with C&S. C&S therefore contracted with three replacement subcontractors to complete the electrical work for the Project.

C&S then sued Dynalectric in district court under various theories of liability, including promissory estoppel. Dynalectric, in turn, countersued under various theories. Following a 12-day bench trial, the district court entered judgment for C&S on its promissory estoppel claim and rejected each of Dynalectric’s counterclaims. The district court awarded C&S \$2,501,615 in damages, which represented the difference between Dynalectric’s bid and the amount C&S paid the three replacement contractors to complete the electrical work for the Project. Dynalectric appealed, contending the district court should not have awarded C&S expectation damages.<sup>3</sup>

**Discussion**

The Court began its analysis by explaining Nevada’s doctrine of promissory estoppel and the appropriate measure of damages for promissory estoppel claims. Broadly speaking, Nevada

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<sup>1</sup> By Brian L. Blaylock

<sup>2</sup> *Dynalectric Co. of Nev. v. Clark & Sullivan Constructors, Inc.*, 127 Nev. Adv. Op. No. 41, at 10-11 (July 14, 2011) (per curiam).

<sup>3</sup> Dynalectric also raised at least seven other issues on appeal. *See id.* at 3 n.3. However, the Court affirmed the district court as to these additional claims with little discussion. *See id.*

follows the doctrine of promissory estoppel articulated in the Restatement (Second) of Contracts (the “Restatement”).<sup>4</sup> Citing § 90(1) of the Restatement and its official comment d, the Court held district courts may award expectation, reliance, or restitutionary damages for promissory estoppel claims. To determine the appropriate measure of damages for promissory estoppel claims, district courts “should consider the measure of damages that justice requires and that comports with the Restatement’s general requirements that damages be foreseeable and reasonably certain.”<sup>5</sup>

Next, the Court considered whether the district court used the appropriate measure of damages when it awarded C&S promissory estoppel damages representing the difference between Dynalectric’s bid and the amount the three replacement contractors charged C&S to complete the same work. Citing numerous cases in which promissory estoppel claims arose from a subcontractor’s repudiation of its obligations to a general contractor, the Court affirmed the district court’s measure of damages, holding the presumptive measure of damages for a general contractor that reasonably relies upon a subcontractor’s unfulfilled promise is expectation damages.

Finally, the Court confirmed that, in this case, justice required the expectation measure of damages and the damages the district court awarded were foreseeable and reasonably certain.

## **Conclusion**

District courts may award expectation, reliance, or restitutionary damages for promissory estoppel claims. The determination of the appropriate measure of damages “turns on considerations of what justice requires and the foreseeability and certainty of the particular damages award sought.”<sup>6</sup> The presumptive measure of damages for a general contractor that reasonably relies upon a subcontractor’s unfulfilled promise is the difference between the nonperforming subcontractor’s original bid and the cost of the replacement subcontractor’s performance. Expectation damages satisfy the requirements of justice when the damages awarded are both foreseeable and reasonably certain.

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<sup>4</sup> See *Vancheri v. GNLV Corp.*, 105 Nev. 417, 421, 777 P.2d 366, 369 (1989).

<sup>5</sup> *Dynalectric Co. of Nev.*, 127 Nev. Adv. Op. No. 41, at 6 (citing Restatement (Second) of Contracts §§ 351, 352 (1981)).

<sup>6</sup> *Id.* at 2.