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Summary of Copper Sands Homeowners Ass'n, Inc. v. Flamingo 94, LLC, 130 Nev. Adv. Op. 81

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Copper Sands Homeowners Ass'n, Inc. v. Flamingo 94, LLC,
130 Nev. Adv. Op. 81 (Oct. 2, 2014)¹

Civil Procedure: Costs Awarded to Third-Party Defendants

Summary

The Court determined that when a third-party defendant prevails in an action and moves for costs pursuant to NRS 18.020, the district court must determine which party (plaintiff or defendant) is adverse to the third-party defendant and allocate the costs award accordingly.

Background

Flamingo 94, LLC and a partner company (the “Developers”) constructed an apartment complex, which was later sold and converted into condominiums. The Copper Sands Homeowners Association (the “HOA”), subsequently formed to manage the common-interest community, brought suit against the Developers asserting six different claims related to construction defects in each unit and the community’s common areas. The Developers filed a third-party complaint to bring in various subcontractors involved in the project. The district court dismissed the HOA’s claims through summary judgment orders and awarded the third-party defendants costs pursuant to NRS 18.020.

The HOA appealed, asserting nine issues for the Court’s review. Deciding the bulk of these against the HOA, the Court determined the only issue that merited extended discussion was whether the district court had authority to award costs to third-party defendants against the HOA. On that, the Court affirmed the award of costs against the HOA, but reversed and remanded as to the amount.

Discussion

The Court adopted a test for determining liability for costs to third-parties, ultimately upholding the award of costs against the HOA. Under NRS 18.020(3), a prevailing party may recover costs “against any adverse party against whom the judgment is rendered...in an action for the recovery of money or damages, where the plaintiff seeks to recover more than \$2,500.”² Additionally, NRS 18.005 allows recovery of “any other reasonable and necessary expense incurred in connection with the action.”³ District courts have discretion in determining which costs are reasonable.⁴

However, Nevada law does not expressly state whether a plaintiff or a defendant must pay an award of costs given to a third-party defendant. A matter of first impression, the Court turned to the approaches of other jurisdictions. Ultimately, the Court adopted the approach outlined in *Bonaparte v. Neff*, 773 P.2d 1147, 1156 (Idaho Ct. App. 1989). Under *Bonaparte* the district court must determine which party is the third-party defendant’s adversary to determine

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² NEV. REV. STAT. §18.020(3) (2013).

³ NEV. REV. STAT. §18.005 (2013).

⁴ *Bergmann v. Boyce*, 109 Nev. 670, 679, 856 P.2d 560, 565-66 (1993).

whether a third-party defendant is a prevailing party.⁵ “If the court’s judgment on an issue simultaneously favors the third-party defendant and disfavors the adverse party, the third-party defendant should be considered a prevailing party for NRS 18.020’s purposes.” Here, the Court concluded, “[t]he HOA and the third-party defendants were adverse parties because the third-party defendants' liability was contingent on the HOA's claims against the Developers.”

Amount of Costs

The HOA asserted that the district court erred in awarding the third-party defendants all of their requested costs because some of the costs were unnecessary. Having affirmed the third-party defendants were prevailing parties against the HOA under NRS 18.020(3), the Court nevertheless remanded on the issue of amount.

Conclusion

Applying the *Bonaparte* rationale, the third-party defendants were deemed to be a prevailing party, and therefore the district court did not err in awarding costs. The Court affirmed the district court’s grant of summary judgment and post-judgment orders, reversed the costs award to the third-party defendants, and remanded the matter to the district court.

⁵ *Bonaparte v. Neff*, 773 P.2d 1147, 1155 (Idaho Ct. App. 1989).