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Iliescu v. Steppan, 133 Nev. Adv. Op. 25 (May 25, 2017)

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STATUTORY LIENS: MECHANIC’S LIEN

Summary

The NRS 108.245(1) actual notice exception does not apply to offsite work and services when no onsite work has been performed on the property.

Background

In 2005, Appellants John Iliescu, Jr. and Sonnia Iliescu entered into a Land Purchase Agreement to sell four unimproved parcels to Consolidated Pacific Development (CPD). During escrow, CDP assigned the Land Purchase Agreement to BSC Investments, LLC (BSC). BSC negotiated with Fisher Friedman Associates, an architectural firm, to design the towers on the property. Respondent Mark Steppan, a Fisher Friedman employee, served as the architect of record.

Steppan and BSC signed an American Institute of Architects (“AIA”) agreement which entitled Steppan to 20 percent of the total fee when he completed the “schematic design” phase. Although Steppan completed the schematic design phase, BSC did not pay him for his services. So, Steppan recorded a mechanic’s lien against Iliescu’s property, but he did not provide Iliescu with a pre-lien notice of the mechanic’s lien.

Iliescu filed a claim in district court for a release of Steppan’s mechanic lien arguing that Steppan failed to provide the required pre-lien notice before recording the lien. Steppan filed a complaint to foreclose the lien. These cases were consolidated, and Steppan filed a cross-motion for partial summary judgement asserting that although he failed to give the pre-lien notice under NRS 108.245, such notice was not required under the “actual notice” exception recognized by this Court in *Fondren v. K/L Complex Ltd.*²

The district court denied Iliescu’s motion but granted Steppan’s motion stating that no pre-lien notice was required because the Iliescu’s had actual notice after viewing the architectural drawings and attending meetings with the design team. The district court ultimately entered an order foreclosing Steppan’s mechanic’s lien, and this appeal followed.

Discussion

Pre-lien notice under NRS. 108.245

NRS 108.245(1) states that a mechanic’s or materialmen’s lien “shall, at any time after the first delivery of material or performance of work or services under a contract, deliver” a notice of right to lien to the property owner.³ A lien for materials or labor cannot be enforced unless the claimant gives the property owner the required notice.

Although this Court has previously addressed when substantial compliance with NRS 108.245’s has occurred, it has not addressed whether the actual notice exception applies to offsite

¹ By Yolanda Carapia.

² *Fondren v. K/L Complex Ltd.*, 106 Nev. 705, 710, 800 P.2d 719–22 (1990).

³ NEV. REV. STAT. § 108.245(1) (2015).

work and services performed when no onsite work has been performed on the property. Steppan argued that because architects can lien for offsite work, then the actual notice exception must apply. However, Iliescu argued that “the actual notice exception does not apply to offsite work when that work has not been incorporated into the property.” The Court agreed with Iliescu.

The actual notice exception does not extend to offsite work when no onsite work has been performed on the property.

NRS 108.245 “protect[s] owners from hidden claims and . . . [t]his purpose would be frustrated if mere knowledge of construction is sufficient to invoke the actual knowledge exception against an owner by any contractor.” The rationale behind NRS 108.245 applies to offsite architectural work performed pursuant to an agreement with a prospective buyer when there is no indication of onsite work, and the offsite architectural work has not benefited the owner or improved its property.

Moreover, under NRS 108.234(1), a disinterested owner may avoid responsibility by giving notice of non-responsibility after he “first obtains knowledge of the construction, alteration or repair, or the intended construction, alteration repair.”⁴ However, in this case, Iliescu is not a disinterested owner because he indirectly caused the architectural work to be performed.

Conclusion

In applying NRS 108.245, and in the interest of protecting property owners, the Court refused to extend the actual notice exception to this case. Work had not been started on Iliescu’s property at the time of the recorded lien, and no architectural benefit or improvement was made to Iliescu’s property. As such, the actual notice exception does not apply here. Therefore, the Court found that Steppan did not provide Iliescu with the required pre-lien notice, and the district court erroneously found that Steppan had complied with NRS 108.245.

⁴ NEV. REV. STAT. § 109.234(2) (2015).