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### J.E. Johns & Assocs. v. Lindberg, 136 Nev. Adv. Op. 55 (August 20, 2020)

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NRS 17.245(1)(a) AND MULTIPLE DEFENDANTS: APPLICABILITY AND OFFSET  
CALCULATION CONSIDERATIONS

**Summary**

In an opinion drafted by Justice Hardesty, the Nevada Supreme Court considered the applicability of NRS 17.245(1)(a), which governs the effect of a release or covenant not to sue in the context of tort liability with multiple defendants.<sup>2</sup> Although NRS 17.245(1)(a) discharges the tortfeasor with a release or covenant from liability for contribution, it does not discharge any of the other tortfeasors from liability for the injury.<sup>3</sup> However, it does reduce the claim against other settling tortfeasors by the amount stipulated by the release or covenant from the nonsettling tortfeasor, thereby equitably offsetting the judgment.<sup>4</sup> The Court held that NRS 17.245(1)(a)'s applicability depends on whether the settling and nonsettling defendants were responsible for the same injury. Further, the Court held that offset award calculations pursuant to NRS 17.245(1)(a) include taking into consideration the relationship of the judgment to settling defendants.

**Background**

This case arose out of respondents John Lindberg, Michael Lindberg, and Judith L. Lindberg's (collectively, "The Lindbergs") purchase of a residential real property from defendants, including the sellers of the real property, the Lindbergs' own real estate agents, and the sellers' real estate agents. The Lindbergs claimed that the defendants violated their statutory disclosure obligation when they failed to disclose that two structures located on the property lacked appropriate permits, which caused the Lindbergs to expend money to make repairs in order to stay in compliance.

Prior to trial, the Lindbergs settled with the sellers for \$50,000, and the Lindbergs' real estate agents for \$7,500. However, the Lindbergs proceeded to trial with the sellers' real estate agents where the district court concluded that the sellers' real estate agents were liable. The district court initially awarded the Lindbergs a total of \$75,780.79, including damages and attorney fees and costs. Following the trial, after a hearing to confirm the settlement amounts and applicable deductions, including the application of NRS 17.245(1)(a), the district court amended the judgment to \$51,630.79 and awarded \$13,028.40 in interest.<sup>5</sup>

Both the sellers' agents and the Lindbergs appealed the amended judgment, claiming that the district court erred in determining the award offset by NRS 17.245(1)(a).<sup>6</sup> The Lindbergs argued that the district court erred in reducing the original award because there was no finding that the defendants' liability stemmed from the same injury, as required by NRS 17.245(1)(a).<sup>7</sup> Alternatively, the sellers' agents challenged the district court's judgment-offset calculation, arguing that the district court failed to offset the judgment by the full settlement amount.

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<sup>1</sup> By Theresa Thibeau.

<sup>2</sup> NEV. REV. STAT. § 17.245(1)(a) (1997).

<sup>3</sup> *Id.*

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

<sup>5</sup> *Id.*

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

<sup>7</sup> *Id.*

## **Discussion**

### *Same Injury*

The Court first addressed whether the district court properly concluded that the settling and nonsettling defendants were responsible for the same injury. The Lindbergs argued that settling and nonsettling defendants must be adjudicated as joint tortfeasors in order for the NRS 17.245(1)(a) offsets to apply.<sup>8</sup>

The Court first determined that the Lindbergs' appeal lacked merit because they incorrectly relied on NRS 17.225(1) to support their argument.<sup>9</sup> The Court reasoned that while NRS 17.225(1) governs the right to contribution, it does not govern equitable settlement offsets from multiple defendants responsible for the same injury under NRS 17.245(1)(a), which was at issue here.<sup>10</sup>

Additionally, the Court looked to the plain meaning of the statute in further support of its determination.<sup>11</sup> The Court concluded that the plain language of NRS 17.245(1)(a) does not include requirements as to the relationship of multiple defendants, and thus does not require a finding of joint tortfeasor liability.<sup>12</sup>

Alternatively, the Court determined that the correct inquiry in determining the applicability of NRS 17.245(1)(a) is whether the settling and nonsettling defendants caused the same injury.<sup>13</sup> The Court concluded that “independent causes of action, multiple legal theories, or facts unique to each defendant do not foreclose a determination that both the settling and nonsettling defendants bear responsibility for the *same injury* pursuant to NRS 17.245(1)(a).”

The Court next turned to its analysis of whether the defendants' conduct caused the same injury pursuant to NRS 17.245(1)(a).<sup>14</sup> The Lindbergs argued that the harms caused as a result of nondisclosure differed among the defendants. Specifically, they argued that the claims against the sellers were for the lack of permits for the two structures, while the claims against the sellers' agents and the Lindbergs' agents were for an improper septic tank and incorrectly listing the property as a single-family residence. In support of this argument, the Lindbergs reasoned that each of the defendants violated distinct statutes, and thus were not liable for the same injury under the same statute.

However, the Court was not convinced by the Lindbergs' argument, and ultimately concluded that the Lindbergs' injuries all stemmed from the failure to disclose by all of the defendants. Further, the Court found that—though distinct—all of the statutory violations governed the disclosure requirements of selling real property and thus resulted in the same injury.<sup>15</sup> Accordingly, the Court held that the district court properly concluded that the settling and nonsettling defendants caused the same injury pursuant to NRS 17.245(1)(a).<sup>16</sup>

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<sup>8</sup> NEV. REV. STAT. § 17.245(1)(a) (1997).

<sup>9</sup> NEV. REV. STAT. § 17.225(1) (1979).

<sup>10</sup> *Id.*; NEV. REV. STAT. § 17.245(1)(a) (1997).

<sup>11</sup> *See Beazer Homes Nev., Inc. v. Eighth Jud. Dist. Ct.*, 97 P.3d 1132, 1135 (2004).

<sup>12</sup> NEV. REV. STAT. § 17.245(1)(a) (1997).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *See* NEV. REV. STAT. § 113.130(1) (2011); NEV. REV. STAT. § 113.150(4) (1997); NEV. REV. STAT. § 645.252(1)(a) (2007); NEV. REV. STAT. § 645.252(2) (2007); NEV. REV. STAT. § 645.257 (2001).

<sup>16</sup> NEV. REV. STAT. § 17.245(1)(a) (1997).

## *Calculation*

The Court next addressed whether the district court properly calculated the offset in damages pursuant to NRS 17.245(1)(a).<sup>17</sup> In its calculation, the district court reduced the judgment, taking into consideration the judgment against the nonsettling defendants. This included applying only one-third of the settlement by the sellers, because the district court recognized that the Lindbergs were entitled to treble damages with respect to the sellers. The award for attorneys' fees and costs remained unaltered.

The sellers' agents argued that because NRS 17.245(1)(a) does not distinguish between treble and actual damages, the district court erred when it did not automatically deduct the entirety of the settlement awards by the settling defendants.<sup>18</sup> Thus, the question before the Court was whether NRS 17.245(1)(a) requires a court to take into consideration the makeup of an award in relation to the judgment against nonsettling defendants, or to automatically deduct the entirety of the settlement award without this consideration.<sup>19</sup>

The Court reviewed the issue *de novo* and considered the plain meaning and legislative intent of the statute. The Court reasoned that because the purpose of settlement offsets is to prevent windfalls, it would be inconsistent with legislative intent to automatically deduct the entirety of a settlement award without "scrutinizing the allocations of damages awarded." Otherwise, plaintiffs would be unfairly penalized and nonsettling defendants would be granted windfall.

Accordingly, the Court concluded that the district court properly calculated the offsets pursuant to NRS 17.245(1)(a) when they took into account the treble damages associated with the sellers' settlement.<sup>20</sup>

## **Conclusion**

The Court concluded that under NRS 17.245(1)(a), applicability depends on whether the settling and nonsettling defendants were responsible for the same injury, and that the defendants were ultimately responsible for the same injury to the Lindbergs.<sup>21</sup> Further, the Court held that offset award calculations pursuant to NRS 17.245(1)(a) include taking into consideration the relationship of the judgment to settling defendants, and thus the district courts' calculation of the offsets was correct.<sup>22</sup> The Court affirmed the district court's decision to apply NRS 17.245(1)(a), as well as its calculation under 17.245(1)(a).<sup>23</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*