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Mark Mulhall

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N. Las Vegas Infra. Inv. v. N. Las Vegas, 139 Nev. Adv. Op. 5 (Mar. 16, 2023)¹

THE DISTRICT COURT'S RULINGS WILL NOT BE DISTURBED UNLESS THERE IS A CLEAR SHOWING IN THE RECORD THAT THE DISTRICT COURT ABUSED ITS DISCRETION.

Summary

Even when a section of a contract is unambiguous, the section's meaning can be ambiguous when read with the entirety of the contract and its appendices. The ambiguity can then be resolved by reading the contract and its appendices together to ascertain the intent of the parties. Additionally, a district court's decision to deny awarding attorney fees under NRCF 68(f)(1)(B) will not be disturbed if the record clearly shows the district court properly considered the *Beattie* factors. Lastly, taxable costs will be awarded under NRS 18.005 when those costs are truly necessarily incurred, unless otherwise enumerated.

Background

North Las Vegas Infrastructure Investment and Construction, LLC (NLVI), appellant/respondent, had the winning bid on respondent/appellant City of North Las Vegas' (the City) proposal for a financing partner to develop the Apex Industrial Park. The parties entered into a letter of intent (LOI). Then NLVI contracted with Poggemeyer Design Group, Inc. (PDG) to do the initial design and infrastructure work. NLVI was responsible for funding PDG's work, but NLVI stopped making payments, and PDG stopped work at Apex. The parties terminated the LOI, and NLVI demanded the City reimburse the amount owed or paid to PDG. The City refused, and NLVI sued for breach-of-contract.

After a bench trial, the district court ruled in favor of the City. After, the court denied the City's motion for attorney fees and granted, in part, NLVI's motion to retax the City's costs. The district court didn't award costs incurred by the City for videotaping depositions, using an electronic discovery database, and electronic trial preparation services. NLVI appeals the district court's judgment regarding reimbursement. The City appeals the district court's decision not to award attorney's fees and costs incurred by the City.

Discussion

The district court correctly found that the LOI did not require the City to reimburse NLVI for its design costs

The district court did not err in finding an ambiguity in the LOI and resolving the ambiguity to find the LOI did not require the City to reimburse NLVI. NLVI says that Section 3(a) of the LOI is unambiguous and requires the City to reimburse NLVI for all amounts owed or paid to PDG. The City contends that it never agreed to reimburse NLVI for its PDG expenses, but only agreed to facilitate payment by imposing taxes and charges on Apex landowners and passing that revenue to NLVI.

The district court found that even though Section 3(a) of the LOI was not ambiguous when read alone, it was ambiguous when read in the context of the entire agreement. When looking at the LOI and its appendices in their entirety, the City's repayment obligation was that of facilitating repayment rather than paying directly. Section 2 of the LOI stated that the City would "create the revenue streams necessary to pay for" the development of infrastructure by

¹ By Mark Mulhall.

NLVI. NLVI's response to the City's request for proposal and the parties' term sheet provide that the City would facilitate payments from tax districts and other fees to NLVI, without stating the City would be responsible for payments. Because the LOI as a whole proves that the City's repayment obligation was their obligation to facilitate repayment to NLVI through taxes and other fees rather than pay directly, the district court properly found in the City's favor.

Attorney fees and costs

The district court did not abuse its discretion by denying the City's request for an award of attorney fees

The City asserts that the district court erred in denying the City's request for an award of attorney fees because the district court made inadequate findings as to the four factors from *Beattie v. Thomas*. Under NRCP 68, a party can make a written offer to allow judgment to be made in accordance with the specified terms,² and that if a party rejects the offer of judgment and "fails to obtain a more favorable judgment[.]...the offeree must pay the offeror's post-offer costs and expenses" that were actually incurred from the time of the offer.³ When deciding whether to grant a prevailing party's request for attorney fees under NRCP 68(f)(1)(B), the district court must consider four factors: (1) whether the plaintiff's claim was brought in good faith; (2) whether the offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount.⁴ As long as "the record clearly reflects that the district court properly considered the *Beattie* factors, we will defer to its discretion."⁵

The City says the district court failed to consider the *Beattie* factors because it only mentioned one factor in the court's minute order. Yet, minute orders are ineffective for any purpose, and the district court addressed the three "good-faith" *Beattie* factors in its written order. Because the record shows that the district court did consider the *Beattie* factors, this Court defers to its discretion in granting attorney fees.

The district court abused its discretion in denying costs for electronic trial preparation services

Under NRS 18.020(3), a prevailing party can recover costs in an action where the plaintiff seeks to recover more than \$2,500. NRS 18.005 lists the categories of taxable costs, including "[a]ny...reasonable and necessary expense incurred in connection with the action."⁶ The City claims the district court abused its discretion by retaxing its costs for deposition videography services, electronic discovery, and electronic trial preparation services. The parties only dispute whether those costs were necessarily incurred.

Deposition videography services

Under NRS 18.005(2), a prevailing party may recover its taxable costs for court reporter fees for taking depositions, but it is silent on whether the district court can tax costs for

² NRCP 68(a).

³ NRCP 68(f)(1)(B).

⁴ *Beattie v. Thomas*, 99 Nev. 579, 58889, 668 P.2d 268, 274 (1983).

⁵ *Wynn v. Smith*, 117 Nev. 6, 13, 16 P.3d 424, 42829 (2001).

⁶ NRS 18.005(17).

videotaped depositions. A party choosing to videotape a deposition must bear those costs when there is no statute or procedure authorizing the taxation of those costs.⁷

The district court did not abuse its discretion in denying costs for the videotaped depositions, because the City failed to show why obtaining videos of the depositions was necessary, absent a court order.

Electronic discovery database

The City challenges the district court's decision to retax its costs for electronic discovery. The parties agreed to use a central electronic discovery database, but this was an elective charge chosen by the parties. The City did not show how this cost was necessary, therefore the court did not abuse its discretion by denying the City's costs for electronic discovery.

Electronic trial preparation services

The City, also, challenges the denial of all costs incurred by using a trial technology services provider. The district court did not award costs incurred pretrial, reasoning that they weren't taxable under NRS 18.005(17). Here, the district court abused its discretion.

The district court ordered the parties to present all evidence at trial electronically. Therefore, the parties jointly used a trial technology services provider to assist them and split the costs. The parties necessarily incurred costs for their trial technology services provider because of the requirement to present all exhibits electronically. Therefore, the district court abused its discretion in finding otherwise, and their decision to retax the City \$1000 for trial preparation services is reversed.

Conclusion

The LOI, when read as a whole, did not obligate the City to repay NLVI. The district court's written post-judgment order sufficiently discussed the Beattie factors when deciding whether to grant the City's request for attorney fees. Lastly, the district court properly exercised discretion to retax the City for the costs it incurred voluntarily, but the City showed that the costs for electronic trial preparation services were necessary because the district court ordered all evidence to be electronic. Therefore, this Court affirms the district court's rulings on repayment, attorney fees, retax for the costs of videotaping depositions and electronic discovery database, but reverses in regards to the district court's decision to retax the City for electronic trial preparation services.

⁷ 20 Am. Jur, 2d Costs § 43 (2022); see also *Armstrong v. Onufrock*, 75 Nev. 342, 349, 341 P.2d 105, 108-09 (1959)