

CIVIL LAW – Construction Law

Summary

Appeal from postjudgment district court orders awarding attorney’s fees and denying a motion to enter satisfaction of the judgment in a mechanic’s lien action.

Disposition/Outcome

(1) The court affirmed district court’s finding that attorney’s fees incurred incidental to a lien enforcement prior to a judgment’s satisfaction were recoverable under NRS 108.237(1). However, the court reversed the district court’s finding the attorney’s fees claimed by the prevailing lien claimant were reasonable. Finally, the court found that the district court correctly refused to compel satisfaction of the judgment since the plaintiff’s payment only partially satisfied the judgment.

Factual and Procedural History

Carl B. Barney contracted with Reno Construction Inc. (RCI), to renovate his home. RCI subsequently subcontracted with Mt. Rose Heating & Air Conditioning (“Mt. Rose”) to provide equipment and services as part of the renovations. RCI and Mt. Rose filed mechanic’s liens against Barney’s property after he claimed that the renovations were defective and refused to pay. RCI and Mt. Rose sought enforcement of the mechanic’s liens in district court. The district court granted judgment and a decree of foreclosure in RCI and Mt. Rose’s favor, directing that the property be sold to satisfy the judgment.

Approximately three weeks later, Mr. Rose attempted to execute upon Barney’s personal property and proceeded to garnish Barney’s bank funds even though the property had not yet been sold. Upon Barney’s motion, the district court temporarily stayed the judgment’s execution with the condition that Barney post a bond. A short time later, Barney filed motions to exempt his bank account from execution and to quash and discharge the garnishment, claiming that the mechanic’s lien and writ of execution statutes did not permit execution upon his personal property until after the real property’s sale resulted in a deficiency. Mt. Rose Heating sought supplemental attorney’s fees and costs. After litigation on these issues, Barney posted a supersedeas bond.² The district court then entered an order staying the judgment’s execution, releasing Barney’s bank account funds from garnishment because of the bond and granting Mt. Rose’s first motion for supplemental attorney’s fees and costs.

Later, Mt. Rose filed a second supplemental motion seeking postjudgment attorney’s fees and costs from December 13, 2004 through April 28, 2005. The amounts were related to whether Barney’s bond met statutory requirements, the judgments execution, the exemption,

¹ By Elena Roberts

² The supersedeas bond was apparently posted to stay the November 2004 judgment’s execution pending appeal. The appeal was later voluntarily dismissed. *See Reno Construction, Inc., v. Barney*, Docket No. 45282 (Orders Dismissing Appeal, January 9, 2006, and May 8, 2006).

garnishment, and release of Barney's bank account funds, and Mt. Rose's previous motion for postjudgment attorney's fees and costs.

While Mt. Rose's second motion for attorney's fees and costs was pending, Barney paid Mt. Rose the remaining amount required with respect to the November 2004 judgment, satisfying his remaining debts.³ Consequently, Barney asked the district court to direct the clerk to enter satisfaction of the judgment and discharge his supersedeas bond. Mt. Rose opposed the motion asserting that the entire judgment was not satisfied by the amount paid.⁴

The district court denied Barney's motion to compel satisfaction of the judgment and to discharge the supersedeas bond on April 4, 2006. Subsequently on April 28, 2006, the district court granted Mt. Rose's second supplemental motion for attorney's fees and costs, awarding an addition \$9,114.87 in additional attorney's fees.

Barney appealed the April 4 and 28 postjudgment orders arguing that the district court lacked authority to award attorney's fees incurred after the November 2004 judgment was rendered and that, even if the court was authorized to award such fees, the fees awarded were unreasonable. Moreover, Barney contended that regardless of the April 28 award, he paid the amount due under the November 2004 judgment in full and the district court should have directed the court clerk to enter the judgment's satisfaction.

Discussion

The court determined that the questions at issue primarily involved issues of statutory interpretation and were therefore reviewed *de novo*.

Awarding attorney's fees incurred postjudgment under NRS 108.237(1)

Mt. Rose requested the April 28 award of attorney's fees pursuant to NRS 108.237(1) which provides that "[t]he court shall also award to the prevailing lien claimant ...the costs of the proceedings, including without limitation, reasonable attorney's fees, the cost for representation of the lien claimant in the proceedings, and any other amounts as the court may find to be justly due and owing to the lien claimant."

The court found that because NRS 108.237(1) gives the broad discretion to award reasonable attorney's fees as well as "any other amounts" justly due and owing to the costs of "the proceedings", it neither explicitly provided for nor expressly denied attorney's fees and costs incurred postjudgment. Therefore, The court determined that the statute should be interpreted liberally in order to further the statute's purpose to ensure that contractors are paid.

The court then turned to statutory scheme and policy in order to determine the meaning of "proceedings" as it appears in NRS 108.237(1). The court determined that the term "proceedings" must be interpreted according to other mechanic's lien statutes because the term

³ The payment included the amount owed to Mt. Rose Heating under the November 2004 judgment and the first award of supplemental attorney fees and costs.

⁴ Mt. Rose was willing to provide a partial satisfaction of the judgment.

“clearly refers to steps taken to enforce a mechanic’s lien in the courts.”⁵ Consequently the court turned to the statute that generally governs court actions to enforce mechanics liens, NRS 108.239(10) and (11), to determine the scope of the term.

The court determined that costs incurred up to that point that are incidental to the lien’s enforcement and the foreclosure decree’s execution are properly awarded under NRS 108.237(1) because a mechanic’s lien action ended only when (1) the proceeds are distributed after a property has been sold or (2) when the total amounts due under judgment are otherwise paid.⁶ The court justified this conclusion by pointing out that it effectuated the purpose of the statute to make lien claimants whole and because such an interpretation was consistent with NRS chapter 18.

Reasonableness of the district court’s attorney’s fees award

The court found the district court erred because it failed to make specific findings demonstrating that it considered the *Brunzell* factors⁷ to support its April 28 award of attorney’s fees to Mt. Rose as required by *Schuetz*.⁸ Additionally, the court found that, based on the record some of the fees awarded to Mt. Rose were unrelated to either the lien’s enforcement or the foreclosure decree’s execution and involved incidental matters upon which Barney might have prevailed.

Satisfaction of Judgment

Finally, the court found that the district court correctly refused to compel satisfaction of the judgment since the payment only partially satisfied the judgment. The court found that because Mt. Rose’s request for postjudgment attorney’s fees was pending at the time Barney tendered payment (and thus were not yet determined or tendered), Barney was only entitled to partial satisfaction of the judgment under NRS 17.200.

Conclusion

The court found that the district court’s award of attorney’s fees was authorized by NRS 108.237 although the statute did not explicitly provide for postjudgment attorneys fees. The

⁵ Barney v. Mt. Rose Heating & Air Conditioning, 124 Nev.Adv.Op.No.71 (Sept. 18, 2008).

⁶ Barney v. Mt. Rose Heating & Air Conditioning, 124 Nev.Adv.OP.No.71 at 9-11(Sept. 18, 2008).

⁷ The following factors were enumerated by the court in *Brunzell*:

- (1) the advocates’ qualities, including ability, training, education, experience, professional standing and skill;
- (2) the character of the work, including its difficulty, intricacy, importance, as well as the time and skill required, the responsibility imposed and the prominence and character of the parties when affecting the importance of the litigation;
- (3) the work performed, including the skill, time,, and attention given tot eh work; and
- (4) the result—wether the attorney was successful and what benefits were derived.

See *Brunzell v. Golden Gate Nat’l Bank*, 85 Nev. 345, 455 P.2d 31 (1969).

⁸ *Schuetz v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 865, 124 P.3d 530, 549 (2005) (recognizing the continued applicability of the *Brunzell* factors and requiring district courts to provide “sufficient reasoning and findings in support of its ultimate determination”).

court justified its conclusion based on the purpose of the statute to make lien claimant's whole and to protect them from owing additional attorneys fees incurred to execute on a lien judgment. However, the Court reversed the district court's finding the attorney fees claimed by the prevailing lien claimant were reasonable because the district court failed to make specific findings on the *Brunzell* factors in accordance with the ruling in *Schutte*. Finally, the Court found that the district court correctly refused to compel satisfaction of the judgment since the plaintiff's payment only partially satisfied the judgment because at the time Barney tendered payment a request for attorney's fees was pending.