

IN THE SUPREME COURT OF THE STATE OF NEVADA

WATT GENTON CORONADO BAY,
LLC, A DELAWARE LIMITED
LIABILITY COMPANY; AND
CORONADO BAY CLUB, LTD., A
NEVADA LIMITED LIABILITY
COMPANY,
Appellants,
vs.
OXBOW CONSTRUCTION, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,
Respondent.

No. 52766

FILED

NOV 17 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying a motion to expunge or reduce a mechanic's lien. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

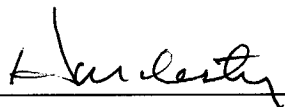
Respondent Oxbow Construction, LLC, filed a complaint to foreclose on a mechanic's lien after appellants Watt Genton Coronado Bay, LLC, and Coronado Bay Club, Ltd., allegedly failed to pay fees due under a construction contract. Prior to trial, appellants filed a motion to expunge or reduce Oxbow's lien pursuant to NRS 108.2275. The district court reduced the lien to reflect appellants' settlement of subcontractor claims but, without any explanation, refused to further reduce or expunge the lien.

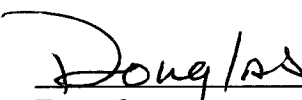
On appeal, appellants argue that the district court erred by not requiring Oxbow to submit any evidence proving that the lien should not be reduced or expunged. We agree.

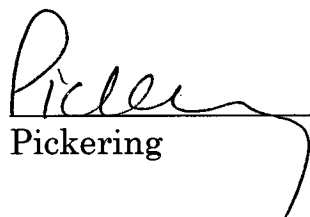
While this appeal was pending, we addressed a similar question in J.D. Construction v. IBEX Int'l Group, 126 Nev. ___, ___ P.3d ___, (Adv. Op. No. 36, October 7, 2010). In J.D. Construction, we concluded that, in NRS 108.2275 proceedings, the district court must “determine the material facts” based on “affidavits and documentary evidence submitted by the parties” before reaching a conclusion as to “whether a lien is frivolous or excessive.” Id. at ___, ___ P.3d at ___. In such proceedings, “the burden is on the lien claimant to prove the lien and the amount claimed” by a preponderance of the evidence. Id.

Here, the district court did not require Oxbow to prove the amount of its lien through affidavits or other documentary evidence. Moreover, it does not appear from the record that the district court entertained any such evidence before it denied appellants’ requested NRS 108.2275 relief. Because the district court did not base its decision on appropriate evidence, we

ORDER the judgment of the district court REVERSED and REMAND this matter to the district court for proceedings consistent with this order.

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Pickering

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Ara H. Shirinian, Settlement Judge
Ellis & Gordon
Marquis & Aurbach
Eighth District Court Clerk