IN THE SUPREME COURT OF THE STATE OF NEVADA

MAGNUM OPES CONSTRUCTION, A NEVADA CORPORATION; AND PARAMOUNT FUND V, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Appellants,
vs.
SANPETE STEEL CORPORATION, A UTAH CORPORATION,
Respondent.

No. 60016

FILED

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TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER AFFIRMING JUDGMENT

This is an appeal from a district court judgment granting a mechanic's lien and awarding attorney fees, costs, and interest. Eighth Judicial District Court, Clark County; Charles M. McGee, Judge.

During Las Vegas' real estate boom, Paramount Fund V, LLC (Paramount), joined with MagnuM Opes Construction (MagnuM) to develop a parcel of real property in Henderson, Nevada. In January 2008, MagnuM began soliciting bids from potential subcontractors for the project. Sanpete Steel Corporation (Sanpete) submitted a bid for steel work, which stated that it was valid for ten days.

MagnuM responded by letter the next day. The relevant text is as follows:

> Please accept this as MagnuM Opes's Letter of Intent to award the subcontract . . . .
>
> . . . .

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> . . . Please proceed with any forward momentum for locking in pricing, and pre-ordering of materia[l].

Sanpete could only lock in steel pricing by ordering the material. And, these orders had to specify the measurements, structural design, and density of the ordered steel according to the project's requirements.[1] So, Sanpete ordered the quantity of steel necessary for the project and had it detailed according to the bid's specifications.

In the meantime, Paramount and MagnuM temporarily suspended the construction project due to the faltering economy. But, they remained optimistic about the project's future, and MagnuM's chief operating officer advised Sanpete as much.

After nearly two years in limbo, Paramount and MagnuM continued to view the project's shelving as temporary. But, Sanpete was less confident. So, in October 2009, it filed a complaint for breach of contract and requested relief in the form of a mechanic's lien on the project.

The district court found that MagnuM's conduct in sending the letter of intent and Sanpete's ordering steel and detailing services created an implied-in-fact contract.[2] It granted a lien against MagnuM and

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[1]Both parties refer to the process of producing steel according to a project's requirements as "detailing." For simplicity, we adopt this terminology.

[2]The district court did not distinguish between a contract implied-in-fact and one implied-in-law. But, its findings of fact and legal conclusions focus on the conduct and intentions of the parties. We thus infer that it found a contract implied-in-fact. 26 *Williston on Contracts* § 68:1 (4th ed. 2003) (noting that a contract implied-in-law "is wholly unlike an express

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Paramount (collectively, the Owners) for $65,540, Sanpete's cost of steel detailing. It also awarded Sanpete litigation costs and attorney fees of $57,540. This appeal followed.

I.

The Owners challenge the district court's written order finding an implied-in-fact contract on both procedural and substantive grounds. They argue that the court's statement that there was "no formal underlying contract" contradicts the written order's finding, and that the statement controls. They also argue that Sanpete was not entitled to a finding of an implied-in-fact contract because it failed to plead the theory below. Substantively, they dispute the merits of the district court's order.

A.

We dispense with the procedural arguments first. In Nevada civil cases, a court's written order controls any contradictory oral findings or conclusions. *Rust v. Clark Cnty. Sch. Dist.*, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987). Thus, any discrepancies between the district court's oral findings and written order in this case are irrelevant. Only the written order has legal effect. *Id.*

With regard to Sanpete's alleged failure to plead, a district court may raise an issue sua sponte if it gives the parties adequate notice and an opportunity to respond. *Boulder City v. Boulder Excavating, Inc.*, 124 Nev. 749, 755, 191 P.3d 1175, 1179 (2008); *Soebbing v. Carpet Barn, Inc.*, 109 Nev. 78, 83, 847 P.2d 731, 735 (1993). On the first day of trial, the district court judge advised the parties to this case that it would

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or implied-in-fact contract in that it is imposed . . . without reference to the intention of the parties." (internal quotations omitted)).

consider an implied contract theory. And, in their trial brief, the Owners argued against the theory's applicability. This demonstrates that the Owners had adequate notice and an opportunity to respond. Thus, the district court did not err in applying an implied-in-fact contract theory here.

B.

Turning to the parties' substantive arguments, an implied-in-fact contract exists where the conduct of the parties demonstrates that they (1) intended to contract; (2) exchanged bargained-for promises; and (3) the terms of the bargain are sufficiently clear. *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. ___, ___, 283 P.3d 250, 256 (2012). This court defers to the district court's findings regarding an implied-in-fact contract absent clear error. *May v. Anderson*, 121 Nev. 668, 672-73, 119 P.3d 1254, 1257 (2005). And, even where a district court fails to make specific findings of fact in support of its determination, this court may infer findings that the record clearly supports. *Luciano v. Diercks*, 97 Nev. 637, 639, 637 P.2d 1219, 1220 (1981).

We can reasonably infer the parties' exchange of promises from the record. With its bid, Sanpete promised to perform steel detailing, fabrication, and installation for the project at a total price of $1,145,021, if MagnuM accepted within ten days. MagnuM responded within that time frame, promised to award Sanpete the subcontract, and instructed it to "proceed with any forward momentum."

The record also supports an inference of the parties' intent to contract. MagnuM's letter of intent demonstrates its willingness to be bound by Sanpete's conduct. And, Sanpete's reciprocal intent is

demonstrated by its immediate retention of steel detailers and ordering materials.

Finally, that Sanpete's authority to order steel detailing was a clear term of the bargain is also supported by the record. In a sworn affidavit, Sanpete's Senior Project Manager stated that it was commonly known he would have to order steel detailing to guarantee pricing. And, he indicated that the Owners knew that Sanpete would have to order immediate detailing in order to ensure that it could meet the project's deadline. Further, he stated that the Owners were aware that Sanpete had begun detailing work based on the letter of intent.

Thus, the trial court's ultimate conclusion that an implied-in-fact contract existed is supported by the record.[3] And, to the extent the district court failed to explicitly make factual findings as to the parties' intent to contract, their exchange of promises, and the clarity of contractual terms, this court is able to reasonably infer them from the evidence. In the absence of any clear error, we therefore defer to the trial court's judgment.[4]

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[3]We acknowledge that the record contains evidence which could support an opposite outcome. But, this is not dispositive; we review only for clear error.

[4]The Owners argue that upholding the district court's determinations would subject individuals to "instant contractual liability for merely beginning to negotiate [the] terms of a contract." We disagree. Here, the district court found that the parties intended to contract, and this finding was supported by the record and not clearly erroneous. *Compare with* 17A Am. Jur. 2d *Contracts* § 37 (2004) (noting that parties have no intent to contract when they have merely entered into negotiations.)

II.

Though the district court found an implied contract, it based its damages award on a reliance measure. The Owners object to this remedy. We review de novo a lower court's particular measure of damages. *Dynalectric Co. of Nev., Inc. v. Clark & Sullivan Constructors, Inc.*, 127 Nev. ___, ___, 255 P.3d 286, 288 (2011).

Because the district court's determination that an implied-in-fact contract existed is not clearly erroneous, all damages available at law are available to Sanpete. 1 *Williston on Contracts* § 1:5 (4th ed. 2007) (noting that the legal effects of express and implied-in-fact contracts are identical). And, in a breach of contract action, a court may fashion a remedy to protect the non-breaching party's reliance interest. *Dynalectric*, 127 Nev. at ___, 255 P.3d at 289. Thus, damages based on a reliance measure were available to Sanpete following the Owners' breach of the implied-in-fact contract.[5]

A court may utilize a reliance measure where a party changes its position in reliance on a contract. Restatement (Second) of Contracts § 344 (1981). Here, Sanpete changed its position by ordering and paying for the required detailing. And in doing so, it relied on the terms of the

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[5]The district court cited to an equitable estoppel case, *Nevada State Bank v. Jamison Family P'ship*, 106 Nev. 792, 799, 801 P.2d 1377, 1382 (1990), in its order. Though the doctrine of equitable estoppel may have been applicable, reference to it was unnecessary—where adequate damages are available under contract law, any resort to equity is gratuitous. *See Czipott v. Fleigh*, 87 Nev. 496, 499, 489 P.2d 681, 683 (1971). We therefore read the district court's order as awarding legal damages for breach of an implied-in-fact contract, using a reliance measure.

implied-in-fact contract, namely that it had authority to proceed with all necessary preparatory work.

Moreover, other measures of damages are not appropriate here. Expectation damages would give Sanpete the entire benefit of its bargain. *Dynalectric,* 127 Nev. at ___ n.4, 255 P.3d at 289 n.4. But, because Sanpete did not complete the work priced in its bid, it was not so entitled. Restitutionary measures are also inappropriate. The steel detailing did not enrich the Owners because their project never broke ground. *Id.* at ___ n.5, 255 P.3d at 289 n.5.

Thus, we conclude that the district court's use of a reliance measure was not in error.[6]

III.

The lower court allowed Sanpete to secure its judgment with a mechanic's lien on the project property. The Owners challenge this on three grounds. First, they argue that Sanpete failed to timely file pursuant to NRS 108.226. Second, they challenge the lower court's interpretation of that section. And third, they note that Sanpete failed to provide them with pre-lien or published notice, and argue that Nevada's substantial compliance doctrine did not excuse these failures.[7]

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[6]The Owners also claim that the district court erred by granting reliance damages when Sanpete did not demand that relief. But, Sanpete demanded damages under a theory of contractual breach. And, a court is entitled to determine the appropriate measure of damages based on the non-breaching party's expectation, restitutionary, or reliance interests. Restatement (Second) of Contracts § 344 cmt. a (1981); *see also Dynalectric*, 127 Nev. at ___, 255 P.3d at 289. The district court thus did not err in awarding Sanpete reliance damages.

[7]The Owners also appear to assert that a court may only grant a lien for legal remedies. But, Nevada law has no such limitation. *Paterson v.*

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A.

Under NRS 108.226(1)(a)(1), a lien must be recorded within 90 days after the completion of a "work of improvement."[8] A "work of improvement" is a project's "entire structure or scheme of improvement." NRS 108.22188. And, it includes, without limitation, "all work, materials and equipment" to be used on the project. *Id.* "Completion" of a work of improvement is triggered by an owner's acceptance or occupation of the improved property after work has ceased, or by the cessation of all work for 30 consecutive days where a notice of completion is recorded. NRS 108.22116.

Absent clear error, this court will not disturb a district court's findings as to the scope and duration of a work of improvement. *I. Cox Const. Co. v. CH2 Investments, LLC*, 129 Nev. ___, ___, 296 P.3d 1202, 1204 (2013). Here, the district court found that the Owners had never completed their work of improvement. This finding is supported by the record: neither MagnuM nor Paramount had filed a notice of completion of the project, and they maintained active building permits through the summer of 2010, well after Sanpete filed its complaint.[9] We find no clear error here.

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Condos, 55 Nev. 134, 140-41, 28 P.2d 499, 500 (1934). And, regardless, the damages awarded to Sanpete are a legal remedy based on the existence of an implied-in-fact contract between the parties.

[8]NRS 108.226 lists other potential triggering events that are not controlling here; the statute only looks to the latest occurring event.

[9]The Owners note that Sanpete's work was completed more than 90 days prior to its filing the claim. But, this is not dispositive: the proper

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B.

The Owners also challenge the lower court's interpretation of NRS 108.226(1)(a)(1). They argue that, pursuant to the definition of "[c]ommencement of construction" in NRS 108.22112, a project has only commenced where improvements or materials are "visible from a reasonable inspection of the site." Absent this, they claim, a work of improvement cannot be completed, and NRS 108.226(1)(a)(1) is never triggered. We disagree.

Questions of statutory interpretation are subject to this court's de novo review. *Cox*, 129 Nev. at ___, 296 P.3d at 1203. We look again to the statutory definition of "[w]ork of improvement" under NRS 108.22188. It does not expressly require commencement of construction, or refer to visible improvement or materials. NRS 108.22188. Rather, it encompasses the entire scheme of improvement "as a whole" and includes all materials to be used "without limitation."[10] *Id.* Where the Legislature uses broad language, we infer its intent to provide broad coverage. *See Seput v. Lacayo*, 122 Nev. 499, 503, 134 P.3d 733, 736 (2006), *abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 288 n.6, 181 P.3d 670, 672 n.6 (2008). We find this canon applicable

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inquiry is whether the project's entire "work of improvement" was completed.

[10]The statute does provide exceptions regarding works of improvement on more than one property and under more than one contract. These exceptions are inapplicable here. And, because the expression of one thing implies the exclusion of others, they serve to support our interpretation of the statute. *State v. Javier C.*, 128 Nev. ___. ___, 289 P.3d 1194, 1197 (2012).

here—any decision by this court to limit the phrases "all work, materials, and equipment to be used," and "without limitation," to encompass only those improvements and materials visible upon site inspection would be arbitrary and without textual support. NRS 108.22188.

The Owners further encourage this court to adopt precedent from other jurisdictions that defines project completion. But, the Legislature has already proffered a definition of "completion" in NRS 108.22116. And, we decline to substitute other courts' interpretations for that provided by the provision's drafters. *See Boulder Oaks Cmty. Ass'n v. B & J Andrews Enters., LLC*, 125 Nev. 397, 406, 215 P.3d 27, 32 (2009).

We therefore reject the Owners' interpretation of NRS 108.226(1)(a)(1).

C.

The district court agreed with the Owners that Sanpete had failed to comply with NRS Chapter 108's notice requirements. But, it allowed the lien under a theory of substantial compliance.

This court's substantial compliance doctrine allows foreclosure on a mechanic's lien, despite the complaining party's failure to strictly comply with NRS Chapter 108's technical requirements, so long as "'the owner of the property receives actual notice of the potential lien claim and is not prejudiced.'"[11] *Fondren v. K/L Complex Ltd.*, 106 Nev. 705, 709, 800 P.2d 719, 721 (1990) (*quoting Bd. of Trs. v. Durable Developers, Inc.*, 102

[11]The Owners insist that the doctrine also requires that the complaining party have failed to comply with the statute for some reason beyond their own oversight or neglect. We disagree. Regardless of the complaining party's fault, "actual knowledge of the potential lien claim" is sufficient to perfect a lien. *Hardy Cos., Inc. v. SNMARK, LLC*, 126 Nev. ___, ___, 245 P.3d 1149, 1155 (2010).

Nev. 401, 410, 724 P.2d 736, 743 (1986)). Here, the district court found that the Owners had actual notice of the potential lien claim because Sanpete had advised a representative of both companies of its intent to file one. It also impliedly found that this eliminated the risk of any prejudice to the Owners. We uphold these findings provided they are substantially supported by the record. *Peccole v. Luce & Goodfellow, Inc.*, 66 Nev. 360, 379, 212 P.2d 718, 728 (1949).

As noted above, there was evidence presented that the Owners had actual notice of the potential lien claim—Sanpete's project manager testified that a representative of both MagnuM and Paramount had "beg[ged them] not to lien the job." And, Sanpete provided two invoices that it allegedly sent to MagnuM for the detailing services.[12] Further, members of MagnuM's accounting staff testified that they became aware in the summer of 2008 that Sanpete had performed a portion of its work for the project, and that it was not being compensated.

MagnuM does not appear to claim that it was prejudiced. Paramount, in contrast, argues that it was seriously prejudiced because it is "now being held responsible for a judgment of more than $65,000." [AOB 34] But, a party is not prejudiced simply because it is liable. *See Wauchope v. U.S. Dep't of State*, 985 F.2d 1407, 1412 (9th Cir. 1993). And, though Paramount also suggests that it could have avoided this litigation with pre-lien notice, we note that the record supports that a Paramount representative actually knew of Sanpete's potential lien claim prior to filing, and still could not deter litigation.

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[12]Though the Owners challenge the credibility of these documents, we defer to the determination of credibility rendered by the fact-finder. *In re T.R.*, 119 Nev. 646, 649, 80 P.3d 1276, 1278 (2003).

Thus, the record offers substantial support for the district court's finding that Sanpete satisfied the substantial compliance doctrine.

IV.

Sanpete moved for an award of attorney fees and costs pursuant to NRS 108.237(1). The lower court granted the motion, in part. The Owners claim that this was erroneous because Sanpete did not prevail within the meaning of NRS 108.237. Generally, this court reviews a lower court's award of attorney fees for abuse of discretion. *Thomas v. City of N. Las Vegas*, 122 Nev. 82, 90, 127 P.3d 1057, 1063 (2006). But, because this challenge raises a question of statutory interpretation, we review de novo. *Cox*, 129 Nev. at ___, 296 P.3d at 1203.

Our review is brief. NRS 108.237(1) permits a court to award attorney fees to a "prevailing lien claimant." A party is "prevailing" where it wins a lawsuit. *Black's Law Dictionary* 1307 (9th ed. 2009). Sanpete filed suit for a mechanic's lien. And, the district court found in its favor and granted its lien. Under NRS 108.237(1), the district court thus had authority to grant Sanpete's attorney fees as a prevailing lien claimant.[13]

V.

Finally, MagnuM argues that it was entitled to a hearing, attorney fees, and costs under NRS 108.2275. The district court denied the hearing because the statute "was not designed by the Legislature to apply retroactively after a trial." Thus, this challenge raises another issue

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[13]The Owners again argue that the lien statutes do not apply to equitable remedies, and that attorney fees under the lien statutes are thus unavailable to Sanpete. This argument is negated by *Paterson,* 55 Nev. at 140-41, 28 P.2d at 500. And, as noted above, based on an implied-in-fact contract the court awarded damages at law, not in equity.

of statutory interpretation. We review de novo. *Cox*, 129 Nev. at ___, 296 P.3d at 1203.

The title of NRS 108.2275 states that it applies to a "[f]rivolous or excessive notice of lien." NRS 108.2275(1) states that a party may motion the court to direct a lien claimant to show cause where it believes that "the notice of lien is frivolous . . . [or] excessive." The statute thus unambiguously allows a party to challenge a "notice of lien," but makes no mention of challenges to adjudicated lien claims. We presume that matters omitted from a statute were omitted intentionally. *Dep't of Taxation v. DaimlerChrysler Servs. N. Am., LLC*, 121 Nev. 541, 548, 119 P.3d 135, 139 (2005). Thus, we confirm the district court's reading of NRS 108.2275; it applies before trial, and not retroactively.

Before trial, MagnuM challenged the lien based on Sanpete's failure to provide notice and timely record. But, it made no motion as to the lien's frivolity or excessiveness. Because it made no motion under the statute until after the lien was granted, MagnuM was not entitled to a hearing, attorney fees, or costs under NRS 108.2775.[14] We thus decline to speculate whether the district court would have found the lien excessive upon review.

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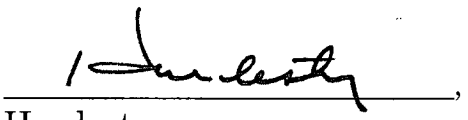
[14]We also reject MagnuM's apparent contention that NRS 108.2275 "requires" a district court to always make a finding as to a lien's frivolity. MagnuM reads language from *J.D. Constr. v. IBEX Int'l Grp.*, 126 Nev. ___, 240 P.3d 1033 (2010), out of context. In *J.D. Construction*, this court held that NRS 108.2275 requires a finding only after a property owner challenged a lien as frivolous or excessive. *Id.* at ___, 240 P.3d at 1040. And, as discussed, MagnuM failed to make such a challenge here.

Based on the foregoing, we ORDER the judgment of the district court AFFIRMED.



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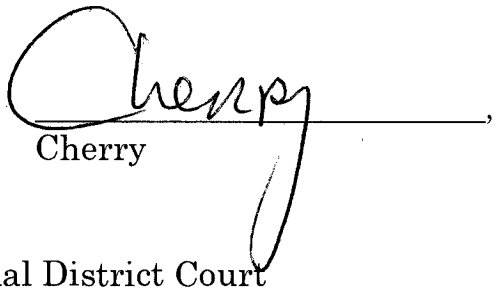

_____, J.
Cherry

cc: Chief Judge, Eighth Judicial District Court
Hon. Charles M. McGee, Senior Judge
Robert F. Saint-Aubin, Settlement Judge
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