IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PROIMTU MMI LLC, A NEVADA LIMITED LIABILITY COMPANY,
Appellant,
vs.
TRP INTERNATIONAL, INC., A FOREIGN CORPORATION,
Respondent.

No. 68942

PROIMTU MMI LLC, A NEVADA LIMITED LIABILITY COMPANY,
Appellant,
vs.
TRP INTERNATIONAL, INC., A FOREIGN CORPORATION,
Respondent.

No. 69336

ORDER OF REVERSAL AND REMAND

These are consolidated appeals from a district court order expunging a mechanic's lien and a post-judgment order awarding attorney fees and costs. Fifth Judicial District Court, Nye County; Steven Elliott, Senior Judge.

Respondent TRP International, Inc., filed a motion in the district court seeking to expunge a mechanic's lien that appellant, Proimtu MMI, LLC, had recorded against the project both companies were working on. Over Proimtu's opposition, the district court expunged the lien after granting summary judgment in TRP's favor, and that order is the subject of the appeal in Docket No. 68942. Thereafter, the district court awarded

TRP its attorney fees and costs, which is the subject of the appeal in Docket No. 69336.

Below, TRP asserted that, because Proimtu did not give the required notice that it had filed a mechanic's lien, the lien was ineffective and must be expunged. Proimtu responded that, despite not giving the required notice, the lien was still effective because Proimtu fell into exceptions to the notice requirement. Specifically, Proimtu argued, among other things, that it was exempt from giving notice because the corporation that owned the project and the property on which it was being developed had actual notice of Proimtu's work on the project. The parties raise these same arguments on appeal.

Having reviewed the briefs and record on appeal, we conclude that the district court erred in granting summary judgment in favor of TRP and expunging the lien. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (reviewing a grant of summary judgment de novo). While the mechanic's lien statute requires that a party give notice of its right to lien, *see* NRS 108.245(1),[1] the Nevada Supreme Court has held that a party can substantially comply with the notice

[1]While the United States District Court for the District of Nevada has recently ruled that the 2014 Nevada legislative bill amending this statute was preempted in *Board of Trustees of the Glazing Health & Welfare Trust v. Chambers*, 168 F. Supp. 3d 1320, 1325 (2016), *but see Blanton v. N. Las Vegas Mun. Court*, 103 Nev. 623, 633, 748 P.2d 494, 500 (1987) (providing that Nevada courts are not bound by federal district court decisions), the mechanic's lien in this case was filed before that bill was signed into law. Thus, this case is decided under the prior version of NRS 108.245.

requirement if the property owner has actual knowledge of the potential lien claim and is not prejudiced. *See Hardy Cos. v. SNMARK, LLC*, 126 Nev. 528, 535-39, 245 P.3d 1149, 1154-57 (2010) (reaffirming that substantial compliance satisfies NRS 108.245(1) after amendments to the statutory scheme called the doctrine's application to that statute into question).

In this case, the district court's order included a stipulated finding from the parties that the corporate property owner's CEO "was physically present at the Project at the time Proimtu was working on the Project and knew of Proimtu's work and involvement on the project at the time Proimtu was retained." Despite this clear finding that the property's owner had actual knowledge of Proimtu's hiring and work on the project, the district court went on to conclude, in expunging the lien, that Proimtu had not substantially complied with the statutory notice requirement.

In its opening brief in Docket No. 68942, Proimtu argues that the stipulated finding regarding the property owner's CEO's knowledge requires a legal conclusion that the property owner had actual notice and, therefore, that Proimtu substantially complied with NRS 108.245(1), such that the district court erroneously expunged the lien. In its answering brief, TRP admits that the property owner's CEO was on site while Proimtu was working, but it does not challenge or even address the second part of the stipulation providing that the CEO knew of Proimtu's work and involvement on the project at the time Proimtu was retained. Likewise, TRP fails to respond to Proimtu's argument that this portion of the stipulated finding compels a conclusion that Proimtu complied with the statutory notice requirement.

Under these circumstances, we conclude TRP has waived any challenges to Proimtu's arguments in this regard. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised in an appellate brief are waived). As a result, we must determine, as Proimtu urges, that, given the stipulated finding that the corporate property owner's CEO knew of Proimtu's work and involvement with the project, the property owner had actual knowledge of Proimtu's work and the resulting lien claim. And because TRP also fails to argue that it was prejudiced by the lack of an NRS 108.245(1)-compliant notice, and thus has also waived that argument on appeal, we conclude that Proimtu substantially complied with the notice requirement and did not need to give the notice described in NRS 108.245(1) for its lien to be effective. *See id.*; *see also Hardy Cos.*, 126 Nev. at 535-39, 245 P.3d at 1154-57; *Fondren v. K/L Complex Ltd.*, 106 Nev. 705, 710, 800 P.2d 719, 721 (1990) (providing that the purpose of the notice statute—to "provide the [property] owner with knowledge that work and materials are being incorporated into the property"—is substantially satisfied when the owner has actual knowledge).

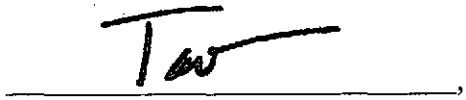
Based on the foregoing, we reverse the district court's grant of summary judgment and its expungement of the lien in Docket No. 68942.[2] We also necessarily reverse the award of attorney fees and costs in Docket

[2]Because we conclude that the owner had actual notice of Proimtu's work on the project, we need not address the alternative argument that, because it provided only labor, it did not need to provide the statutorily-required notice.

No. 69336 and remand this matter for the district court to award fees and costs as contemplated by NRS 108.2275(6)(c) (requiring an award of attorney fees and costs if a lien claimant successfully opposes a motion to expunge a mechanic's lien).

It is so ORDERED.


, C.J.
Silver


, J.
Tao


, J.
Gibbons

cc: Chief Judge, Fifth Judicial District Court
Hon. Steven Elliott, Senior Judge
Robert F. Saint-Aubin, Settlement Judge
Fennemore Craig, P.C./Las Vegas
Pintar Albiston LLP
Nye County Clerk