

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALL AMERICAN REPAIR SERVICES
INC., A NEVADA CORPORATION,
Appellant,
vs.
ASTER GEBREKRISTOS, AN
INDIVIDUAL,
Respondent.

No. 84200-COA

FILED

DEC 26 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER GRANTING
PETITION FOR REHEARING, VACATING PRIOR ORDER,
REVERSING AND REMANDING*

On June 28, 2023, this court entered an order affirming the district court's grant of summary judgment to respondent in the underlying mechanic's lien matter.¹ Following appellant's timely petition for rehearing, and motions to file amicus curiae briefs, this court entered an order granting leave to file the amicus curiae briefs and directing respondent to file and serve an answer to the petition on November 27, 2023. Respondent's answer was due on December 11, 2023, but, as of the

¹The Honorable Bonnie A. Bulla participated in the rehearing of this appeal, although she was unavailable to participate in the initial decision, which was entered by the Honorable Michael P. Gibbons and the Honorable Deborah L. Westbrook due to Senior Justice Abbi Silver's disqualification from participating in this matter. See ADKT 23-0003 (order appointing the Honorable Abbi Silver, Senior Justice, to preside in the Court of Appeals from June 15, 2023, to June 30, 2023.); ADKT 23-0003 (order extending Senior Justice Abbi Silver's appointment until July 7, 2023).

date of this order, respondent has failed to file an answer as directed or otherwise communicate with this court.² We elect to treat respondent's failure to file an answer to the petition for rehearing as a confession of error. *Cf.* NRAP 31(d)(2) ("The failure of respondent to file a brief may be treated by the court as a confession of error and appropriate disposition of the appeal thereafter made."). Thus, having considered the petition for rehearing and the amicus curiae briefs, and in light of respondent's confession of error here, we conclude that rehearing of this matter is warranted.

In the underlying case, the district court granted respondent's motion for summary judgment on the grounds that appellant had failed to properly perfect its lien under NRS 108.226(1)(3), finding that appellant had filed its notices of lien approximately 139 days after ceasing work on the project, and had therefore failed to timely perfect its lien. Appellant appealed, arguing in part that the district court improperly interpreted NRS 108.226(1) in granting summary judgment against it.

In its petition for rehearing, appellant and amici contend, among other things, that the two lien notices it filed on February 10, 2021, were timely filed under NRS 108.226(1), because respondent requested a "pause" on the work of improvement and the 90-day statutory deadline had not yet run. Our further review of the record—including the exhibits in support of the parties' briefing related to the summary judgment motion—

²Respondent also failed to file an answering brief during the initial consideration of this matter.

indicates that not only did respondent request that appellant pause or cease work on the contract in September 2020, as indicated in this court's original order, but also that the parties continued to actively negotiate a resolution to the dispute well into December 2020. And, as noted above, respondent has not filed an answer contesting this factual information.


Because the parties were actively negotiating, we conclude that these actions constituted a continuation of the parties' original contract. *See Tonopah Lumber Co. v. Nev. Amusement Co.*, 30 Nev. 445, 451, 97 P. 636, 637 (1908) (holding that a continuation of the parties' original contract after a pause in construction can extend the statutory time limit to file a mechanic's lien). Further, the uncontroverted evidence in the record before us indicates that the parties were negotiating, at the very least, until December 14, 2020, which means that the time limit for appellant to file its mechanic's liens set forth in NRS 108.226(1) did not run until March 14, 2021. Under these circumstances, we conclude that appellant's liens were timely filed in February 2021, making summary judgment in favor of respondent improper.³ *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (recognizing that summary judgment is proper only when the movant is entitled to a judgment as a matter of law).

Thus, for the reasons set forth above, we grant appellant's petition for rehearing, NRAP 40(e), vacate this court's June 28, 2023, order of affirmance and enter this order reversing the district court's grant of

³Because summary judgment is inappropriate on the facts of this case, we need not reach the statutory interpretation issues raised by appellant and amici in the briefing on rehearing.

summary judgment and remanding this matter to the district court for further proceedings in its place.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Timothy C. Williams, District Judge
Allison Law Firm, Chtd.
Aster Gebrekristos
Lewis Roca Rothgerber Christie LLP/Las Vegas
Peel Brimley LLP/Henderson
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Holland & Hart LLP/Las Vegas
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Eighth District Court Clerk