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6 Attorneys for Proimtu MMI LLC

FILED
FIFTH JUDICIAL DISTRICT COURT

OCT 05 2015

NYE COUNTY DEPUTY CLERK
Electronically Filed
Oct 07 2015 01:43 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

7 FIFTH DISTRICT COURT

8 NYE COUNTY, NEVADA

9 TRP INTERNATIONAL, INC., a foreign
corporation,

CASE NO.: CV-36431

10 Petitioner,

DEPT. NO.: I

11 vs.

NOTICE OF APPEAL

12 PROIMTU MMI LLC, a Nevada limited
liability company,

13 Respondent.
14

15 Notice is hereby given that Proimtu MMI LLC ("Proimtu"), Respondent above named,
16 appeals to the Supreme Court of Nevada from the Findings of Fact, Conclusions of Law and Order
17 on Petition to Expunge Lien entered in this action on the 9th day of September, 2015.

18 DATED this 2nd day of October, 2015.

19 FENNEMORE CRAIG, P.C.

20
21 By:

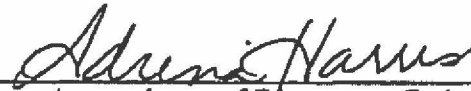
Christopher H. Byrd, Esq. (No. 1633)
Brenoch Wirthlin (No. 10282)
300 S. Fourth Street, Suite 1400
Las Vegas, Nevada 89101

22 Attorneys for Respondent Proimtu MMI LLC
23
24
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27
28

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of October, 2015, I served a copy of the NOTICE OF APPEAL upon the parties to this action by mailing a copy thereof, postage prepaid, via regular U.S. Mail, addressed as follows:

Becky A. Pinar, Esq.
Bryan L. Albiston, Esq.
Pinar Albiston LLP
6053 S. Fort Apache Road, Suite 120
Las Vegas, NV 89148
Attorneys for Petitioner



An employee of Fennemore Craig, P.C.

1 Christopher H. Byrd, Esq. (No. 1633)
2 Brenoch R. Wirthlin, Esq. (No. 10282)
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Attorneys for Proimtu MMI LLC

FILED
FIFTH JUDICIAL DISTRICT COURT

OCT 05 2015

NYE COUNTY DEPUTY CLERK
DEPUTY

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7 **FIFTH DISTRICT COURT**

8 **NYE COUNTY, NEVADA**

9 TRP INTERNATIONAL, INC., a foreign
corporation,

CASE NO.: CV-36431

10 Petitioner,

DEPT. NO.: I

11 vs.

CASE APPEAL STATEMENT

12 PROIMTU MMI LLC, a Nevada limited
liability company,

13 Respondent.
14

15 Appellant Proimtu MMI LLC ("Proimtu"). Respondent above named, pursuant to NRAP
16 3(f), hereby submits its Case Appeal Statement as follows:

17 1. Name of appellant filing this case appeal statement: Proimtu MMI, LLC, a
18 Nevada limited liability company.

19 2. Identify the judge issuing the decision, judgment, or order appealed from:
20 Judge Steven Elliott; Findings of Fact, Conclusions of Law and Order on Petition to Expunge
21 Lien entered in this action on the 9th day of September, 2015.
22

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24 ///

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27 ///

28 ///

1 3. Identify each appellant and the name and address of counsel for each
2 appellant:

3 Proimtu MMI, LLC - Appellant
4 Christopher H. Byrd, Esq. (No. 1633)
5 Brenoch R. Wirthlin, Esq. (No. 10282)
6 FENNEMORE CRAIG, P.C.
7 300 S. Fourth Street, Suite 1400
8 Las Vegas, Nevada 89101
9 Telephone: (702) 692-8000
10 Facsimile: (702) 692-8099
11 e-mail: cbyrd@fclaw.com
12 bwirthlin@fclaw.com

13 4. Identify each respondent and the name and address of appellate counsel, if
14 known, for each respondent (if the name of a respondent's appellate counsel is unknown,
15 indicate as much and provide the name and address of that respondent's trial counsel):

16 TRP International, Inc. ("TRP")
17 Becky A. Pintar, Esq.
18 Nevada State Bar No. 7867
19 Bryan L. Albiston, Esq.
20 Nevada State Bar No. 12679
21 PINTAR ALBISTON LLP
22 6053 S. Fort Apache Road, Suite 120
23 Las Vegas, NV 89148
24 702-685-5255 - phone
25 702-202-6329 - fax
26 Becky@PintarAlbiston.com

27 5. Indicate whether any attorney identified above in response to question 3 or 4
28 is not licensed to practice law in Nevada and, if so, whether the district court granted that
attorney permission to appear under SCR 42 (attach a copy of any district court order
granting such permission): All attorneys are licensed to practice law in Nevada.

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1 6. **Indicate whether appellant was represented by appointed or retained counsel**
2 **in the district court:** Appellant was represented by retained counsel in the district court,
3 Fennemore Craig, P.C.

4 7. **Indicate whether appellant is represented by appointed or retained counsel on**
5 **appeal:** Appellant is represented by retained counsel on appeal, Fennemore Craig, P.C.

6 8. **Indicate whether appellant was granted leave to proceed in forma pauperis,**
7 **and the date of entry of the district court order granting such leave:** Appellant did not apply
8 for and was not granted leave to proceed in forma pauperis.

9 9. **Indicate the date the proceedings commenced in the district court (e.g., date**
10 **complaint, indictment, information, or petition was filed):** TRP's Petition to Expunge Lien
11 ("Petition") was filed on December 12, 2014.

12 10. **Provide a brief description of the nature of the action and result in the district**
13 **court, including the type of judgment or order being appealed and the relief granted by the**
14 **district court:** In or around October 16, 2012, Proimtu entered into that certain contract
15 ("Contract") with Petitioner for the erection of heliostats for the Crescent Dunes Thermosolar
16 Power Plant ("Project"). Pursuant to the Contract, Proimtu agreed to perform "[h]eliostat
17 assembly and field erection of heliostats." TRP was the contractor on the Project. TRP filed its
18 Petition to expunge Proimtu's lien on certain real property arising out of TRP's failure to pay
19 Proimtu for Proimtu's work on the Project.

20 11. **Indicate whether the case has previously been the subject of an appeal to or**
21 **original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court**
22 **docket number of the prior proceeding:** This case has not previously been the subject of an
23 appeal to or writ proceeding in the Supreme Court.

1 **12. Indicate whether this appeal involves child custody or visitation:** This appeal
2 does not involve child custody or visitation.

3 **13. If this is a civil case, indicate whether this appeal involves the possibility of**
4 **settlement:** This is a civil case and Proimtu is not opposed to the possibility of settlement.
5

6 DATED this 2nd day of October, 2015.

7 **FENNEMORE CRAIG, P.C.**

8
9 By: 

10 Christopher H. Byrd, Esq. (No. 1633)

11 Brenoch Wirthlin (No. 10282)

12 300 S. Fourth Street, Suite 1400

13 Las Vegas, Nevada 89101

14 Attorneys for Respondent Proimtu MMI LLC
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16
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1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 2nd day of October, 2015, I served a copy of the CASE
3 APPEAL STATEMENT upon the parties to this action by mailing a copy thereof, postage
4 prepaid, via regular U.S. Mail, addressed as follows:

5 Becky A. Pintar, Esq.
6 Bryan L. Albiston, Esq.
7 Pintar Albiston LLP
8 6053 S. Fort Apache Road, Suite 120
9 Las Vegas, NV 89148
10 Attorneys for Petitioner

11 
12 _____
13 An employee of Fennemore Craig, P.C.
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Case #: CV-0036431

Judge: WANKER, KIMBERLY A.

Date Filed: 12/12/14 Department: 01

Case Type: CAJOTH CONT/ACCT/JUDG/OTHER

Title/Caption: TRP INTERNATIONAL, INC. a foreign corp.
vs
PROIMTU MMI LLC, a Nevada Limited
Liability Company

Comments: FILE IN TONOPAH

Defendant(s)
PROIMTU MMI LLC

Attorney(s)
BYRD, CHRISTOPHER H.

Plaintiff(s)
TRP INTERNATIONAL, INC.

Attorney(s)
PINTAR, BECKY A.

Filings:

Date	Pty	Filing	Fees
12/12/14	P	PETITION TO EXPUNGE LIEN - ARBITRATION EXEMPT: AFFECTS TITLE TO REAL PROPERT	245.00
1/08/15	C	ORDER FOR HEARING ON PETITION TO EXPUNGE LIEN	
1/20/15	P	CERTIFICATE OF SERVICE	
2/02/15	R	RESPONDENT PROIMTU MMI LLC'S OPPOSITION TO PETITION TO EXPUNGE LIEN	198.00
2/09/15	P	REPLY TO OPPOSITION TO PETITION TO EXPUNGE LIEN	
2/13/15	C	ORDER OF RECUSAL AND REQUEST FOR SENIOR JUDGE	
2/25/15	R	RESPONDENT PROIMTU MMI LLC'S OBJECTION TO UNTIMELY DISCLOSURE OF SUPPLEMENTAL DOCUMENTS TO SUPPORT THE PETITION TO EXPUNGE	
3/03/15	C	ORDER	
4/16/15	P	REQUEST FOR RULING ON PETITION TO EXPUNGE LIEN,OR IN THE ALTERNATIVE, TO PLACE ON CALENDAR	
7/06/15	P	MOTION FOR ATTORNEY FEES	
7/06/15	P	MEMORANDUM OF COSTS AND DISBURSEMENTS	
7/20/15	D	OPPOSITION TO PETITIONERS MOTION FOR ATTORNEY'S FEES	
7/23/15	P	RESPONDENT PROIMTU MMI, LLC'S EMERGENCY MOTION TO STAY	
7/27/15	P	REPLY TO OPPOSITION TO MOTION FOR ATTORNEY FEES	
8/12/15	P	RE-NOTICE OF HEARING ON RESPONDENT PROIMTU MMI, LLC'S EMERGENCY MOTION TO STAY	
8/20/15	P	OPPOSITION TO RESPONDENT PROIMTU'S EMERGENCY MOTION TO STAY	
8/27/15	P	DISCLOSURE OF SUPPLEMENTAL DOCUMENTS TO SUPPORT THE PETITION TO EXPUNGE	
9/02/15	D	RESPONDENT PROIMTU MMI, LLC'S REPLY IN SUPPORT OF EMERGENCY MOTION TO STAY	
9/09/15	P	SUPPLEMENT TO MOTION FOR ATTORNEY FEES	
9/09/15	C	FINDINGS OF FACT, CONCLUSIONA OF LAW AND ORDER ON PETITION EXPUNGE LIEN	
10/05/15	D	NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ON PETITION TO EXPUNGE LIEN	
10/05/15	D	NOTICE OF APPEAL	
10/05/15	D	CASE APPEAL STATEMENT	

Case #: CV-0036431

Judge: WANKER, KIMBERLY A.

Date Filed: 12/12/14 Department: 01

Case Type: CAJOTH CONT/ACCT/JUDG/OTHER

Title/Caption: TRP INTERNATIONAL, INC. a foreign corp.
vs
PROIMTU MMI LLC, a Nevada Limited
Liability Company

Comments: FILE IN TONOPAH

Defendant(s)
PROIMTU MMI LLC

Attorney(s)
BYRD, CHRISTOPHER H.

Plaintiff(s)
TRP INTERNATIONAL, INC.

Attorney(s)
PINTAR, BECKY A.

Hearings:

Date	Time	Hearing
2/12/15	10:00	PETITION TO EXPUNGE LIEN

JUDGE: KIMBERLY A WANKER
CLERK: AMY DOWERS

Reference
TONOPAH

APP: BECKY PINTAR FOR TRP INTERNATIONAL, INC; BRENOCK WIRTHLIN FOR PROIMTU MMI LLC;

THE COURT ADVISES THE PARTIES THAT SENIOR JUDGE STEVEN ELLIOT HAS BEEN ASSIGNED TO THE CASE AND THAT HE IS AWARE OF THE PENDING TRIAL DATES INVOLVING CV36431, CV36323, AND CV35217. THE COURT QUESTIONS COUNSEL CONCERNING A CLAUSE IN PARAGRAPH 34 WHICH STATES THAT ANY DISPUTES BETWEEN THE PARTIES WILL BE SUBMITTED TO ARBITRATION IN MADRID, SPAIN AND THAT THE CONTRACT SHALL BE INTERPRETTED SUBJECT TO SPANISH LAW AND WAIVE ANY OTHER LEGAL REMEDY. MS. PINTAR STATES THAT ONCE THE LIEN WAS RECORDED THEN THE LIEN HAD TO BE ARGUED UNDER NEVADA LAW. MS. PINTAR STATES THAT THE LIEN ATTACHES TO THE PROPERTY AND SO NOW THE OWNER OF THE PROPERTY AND THE GENERAL CONTRACTOR INVOLVED. MR. WIRTHLIN STATES THAT HE DOES NOT BELIEVE THAT THE ARBITRATION CLAUSE PROHIBITS HIS CLIENT FROM AVAILING ITSELF OF NEVADA LAW IN ORDER TO PROCURE PAYMENT. MR. WIRTHLIN REFERS TO NRS 108.2457 WHICH STATES THAT ANY TERM OF A CONTRACT THAT ATTEMPTS TO LIMIT THE LIEN RIGHTS IS VOID. MS. PINTAR STATES THAT THE LIEN HAS BEEN BONDED AROUND AND BECAUSE OF THE LIEN THE GENERAL CONTRACTOR, COBRA, HAS WITHHELD PAYMENT FROM TRP. MS. PINTAR STATES THAT BECAUSE OF THAT ACTION THEY WERE FORCED TO FILE THE PETITION UNDER NEVADA LAW TO EXPUNGE THE LIEN SO THAT THE DISPUTE CAN BE HANDLED AS SET FORTH IN THE CONTRACT. MR. WIRTHLIN POINTS OUT THAT THE ISSUE OF JURISDICTIN WAS NOT RAISED PRIOR TO TODAY. THE COURT CONFIRMS THAT SHE IS THE ONE THAT RAISED THE ISSUE OF JURISDICTION. MR. WIRTHLIN REQUEST THAT PROIMTU HAVE THE OPPORTUNITY TO BRIEF THE ISSUE. MR. WIRTHLIN POINTS OUT THAT IF THE ISSUE IS NOT WORKED OUT WITHIN 30 DAYS THEN YOU SUBMIT TO SPANISH ARBITRATION BUT THE LIEN IS NOT AFFECTED BECAUSE OF NEVADA LAW AND NEEDS TO BE DECIDED ON THE MERRIT. MS. PINTAR ADDRESSES THE COURT CONCERNING MECHANICS LIENS. MS. PINTAR SPEAKS TO THE DEFENDANT'S FIRST AGRUEMENT WHICH STATES THEY PROVIDED LABOR ONLY. MS. PINTAR DISPUTES THAT PROIMTU ONLY SUPPLIES LABOR. MS. PINTAR PROVIDES A SUPPLEMENTAL DISCLOSURE FOR THE COURT THAT CONTAINS INVOICES SHOWING PROIMTU RENTED CRANES AND CHARGE FOR SUPPLIES. MS. PINTAR ARGUES THAT PROIMTU PROVIDE MORE THAT LABOR AND THAT THEY ACTED AS A SUBCONTRACT

THEREFORE THEY ARE REQUIRED TO PROVIDE A PRELIMINARY NOTICE TO THE OWNER OF THE LIEN. MS. PINTAR STATES THAT PROIMTU DID NOT NOTIFY THE OWNER THAT THEY ARE ON THE PROPERTY. MS. PINTAR STATES THAT CLEARLY THERE IS PREJUDICE TO THE OWNER. MR. WIRTHLIN STATES LIBERAL INTERPRETATION AND SUBSTANTIAL COMPLIANCE ARE REQUIRED WHEN DEALING WITH MECHANICS LIENS. MR. WIRTHLIN STATES THAT THE WORK WAS DONE AND PROIMTU HAS NOT BEEN PAID.

6/18/15 9:00 PETITION TO EXPUNGE LIEN (JUDGE ELLIOT)

9/09/15 9:00 PROIMTU'S EMERGENCY MOTION TO STAY

JUDGE: STEVEN P ELLIOT

CLERK: AMY DOWERS

APP: BECKY PINTAR FOR TRP INTERNATIONAL WITH GUSTAVO CALZADO; BRENOCK WIRTHLIN FOR PRIOMTU LLC; DONNA DI MAGGIO FOR COBRA THERMOSOLAR PLANTS AND TONOPAH SOLAR RESERVE;

*****SEE FILE FOR MINUTES*****

9/09/15 9:00 MOTION FOR ATTORNEY'S FEES (TRP INTERNATIONAL

*****SEE FILE FOR MINUTES*****

ORIGINAL

1 Christopher H. Byrd, Esq. (No. 1633)
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6 Attorneys for Proimtu MMI LLC

FILED
FIFTH JUDICIAL DISTRICT COURT

OCT 05 2015

NYE COUNTY DEPUTY CLERK
DEPUTY

7 FIFTH DISTRICT COURT

8 NYE COUNTY, NEVADA

9 TRP INTERNATIONAL, INC., a foreign
corporation,

CASE NO.: CV-36431

10 Petitioner,

DEPT. NO.: I

11 vs.

**NOTICE OF ENTRY OF FINDINGS
OF FACT, CONCLUSIONS OF LAW
AND ORDER ON PETITION TO
EXPUNGE LIEN**

12 PROIMTU MMI LLC, a Nevada limited
liability company,

13 Respondent.
14

15 PLEASE TAKE NOTICE that a Findings of Fact, Conclusions of Law and Order on
16 Petition to Expunge Lien was entered in the above-referenced matter on September 9, 2015. A
17 copy of which is attached hereto.

18 DATED this 2nd day of October, 2015.

19 FENNEMORE CRAIG, P.C.

20
21 By:

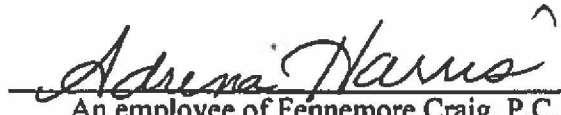
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Las Vegas, Nevada 89101

Attorneys for Respondent Proimtu MMI LLC

1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 27th day of October, 2015, I served a copy of the NOTICE
3 OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ON
4 PETITION TO EXPUNGE LIEN upon the parties to this action by mailing a copy thereof,
5 postage prepaid, via regular U.S. Mail, addressed as follows:

6 Becky A. Pintar, Esq.
7 Bryan L. Albiston, Esq.
8 Pintar Albiston LLP
9 6053 S. Fort Apache Road, Suite 120
10 Las Vegas, NV 89148
11 Attorneys for Petitioner

12 
13 An employee of Fennemore Craig, P.C.
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2 Nevada State Bar # 7867
3 Bryan L. Albiston, Esq.
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7 Las Vegas, Nevada 89148
8 (702) 685-5255
9 (702) 202-6329 fax
10 Becky@PintarAlbiston.com

11 Attorneys for Plaintiff
12 TRP INTERNATIONAL, INC.

13 **FIFTH DISTRICT COURT**
14 **NYE COUNTY, NEVADA**

15 TRP INTERNATIONAL, INC., a foreign
16 corporation,

17 Petitioner,

18 v.

19 PROIMTU MMI LLC, a Nevada limited liability
20 company,

21 Respondent.

Case No.: CV-36431
Dept.: 1

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER ON PETITION TO
EXPUNGE LIEN**

22 The Court having considered Petitioner's TRP INTERNATIONAL, INC. ("TRP") Petition to
23 Expunge Lien ("Petition"), as against Respondent PROIMTU MMI LLC ("Proimtu") and all
24 pleadings on file, and after hearing oral argument, the Court makes the following Findings of Fact,
25 Conclusions of Law and Order.

26 **FINDINGS OF FACT**

27 1. TRP is a company based in Spain that constructs solar projects and it entered into a
28 contract with the prime contractor, Cobra Thermosolar Plants, Inc. ("Cobra"), to fabricate and erect
heliostats on a solar project in Tonopah, Nevada, known as the Crescent Dunes Thermosolar Plant
(the "Project").

2. In turn, TRP and Respondent PROIMTU MMI LLC ("Proimtu") entered into a contract
for heliostat assembly and field erection ("Contract").

3. In the Contract, TRP is referred to as the Contractor and Proimtu is referred to as the

1 Subcontractor, with the scope of work including:

- 2 • Close monitoring of the procedure to assemble heliostats, according to the requirements
- 3 issued by the client.
- 4 • Monitoring of all documentary and procedural requirements required by the customer
- 5 • Care, maintenance and use of the tools provided to do the job.
- 6 • Strictly following the procedures defined for the tasks, included as ANNEX by TRP for
- 7 each point on the assembly line and the implementation of appropriate controls to ensure the
- 8 proper execution of the work.
- 9 • Installation of 10,375 or heliostats heliostats at 80 days after the learning period to meet
- 10 customer requirements.
- 11 • Comply with the quality requirements imposed by the client in the assembly of heliostats.
- 12 • Establish and incorporate shifts working staff needed to produce 400 heliostats a week,
- 13 having also the possibility of increasing its resources to a production of 500 heliostats a
- 14 week without any additional cost to TRP.
- 15 • Meet calibrations according to the specifications of the quality plan approved by the client.
- 16 Using stations verification and calibration equipment needed for 100% of the heliostats
- 17 within tolerances.
- 18 • Use of the means provided by the Contractor for quality control and traceability of
- 19 heliostats mounted.
- 20 • Transport from the assembly line to the final erection on site. Includes all equipment and
- 21 lifts, vehicles and manpower needed to carry out the implementation on the foundation of the
- 22 pedestals or heliostats corresponding (sic)
- 23 • Preparation and submission for approval of procedures by TRP pedestal and heliostat
- 24 erection on field.
- 25 • Providing tools, hand tools, jigs and other equipment of any kind to be established in the
- 26 lifting procedure once approved by TRP to perform transport and lifting the heliostat s on the
- 27 site. This equipment must be in good condition for the implementation of the scope defined
- 28 in this contract.

- 1 • Maintenance of all equipment according to the instructions of TRP
- 2 • Strict monitoring of lifting procedures, and generating reports and monitoring quality
- 3 control to ensure the smooth implementation of the lifting.
- 4 • Final and perfect leveling and alignment of heliostat according to the specifications of
- 5 COBRA.
- 6 • Adapt the resource needs to reach heliostats and pedestals erection to meet the requirement
- 7 of 400 heliostats a week, with potential to increase to 500 heliostats a week at no additional
- 8 cost to TRP.
- 9 • Previous verification of screws already in the solar field to confirm you have the correct
- 10 position and verticality and that are on the side of tolerance
- 11 • Reporting quality control and production control applications to ensure the smooth
- 12 implementation of the lifting.
- 13 • Final leveling and fit and alignment pedestals and heliostats according to specifications.
- 14 • Final reports Quality Control
- 15 • Re-Galvanization of damaged items during the course of the work if necessary .
- 16 • Preparation of Risk Assessment for the work required and must be approved by the
- 17 contractor before the work begins.
- 18 • Preparation of Environmental Management Reports and waste required by the Customer.
- 19 Strict monitoring of environmental management Standards required by the client.
- 20 • Certificates of materials used if it is the case.
- 21 • Issuance of Certificates of Inspection of equipment that require own.
- 22 • Generation and contribution in a timely manner of the documentation required by the
- 23 American authorities and the client on the recruits.
- 24 • Completion of Documents and Project Quality required.
- 25 • Implementation of temporary facilities as OSHA requirements and health and safety by the
- 26 subcontractor.
- 27 • Lights when necessary work areas, exterior or interior and means to do so if outdoors.
- 28 Excluding general vias, responsibility. (sic)

1 • All activities necessary to conduct the proper execution of the work according to the
2 conditions, which are considered by the subcontractor are included.

3 • Contribution in case of personnel certificates

4 • In compliance with the operational requirements of the site, including:

5 Wage Requirements as Davis Bacon as indicated in Annex 4.

6 • Delivery of the required data from DBA & STA indicated In Annex 4 regularly.

7 4. Ultimately, a dispute arose between TRP and Proimtu regarding the payments each side
8 alleged were due under the Contract.

9 5. Due to the dispute for payment, Proimtu subsequently recorded a mechanics lien,
10 pursuant to NRS 108.222 (the "Lien") in the amount of \$2,357,977 against the real property more
11 commonly known as APN Nos. 012-141-01, 012-151-01, 612-141-01, 012-031-04, 012-131-03 and
12 012-131-04 (the "Real Property") in Nye County, Doc # 823637, on November 12, 2014.

13 6. On January 2, 2015, Cobra posted a bond, Bond No. 915209, in the amount of
14 \$3,536,965.50, recorded as Doc # 825596 in Nye County, pursuant to NRS 108.413 to 108.2425, to
15 release the lien from the Real Property.

16 7. TRP argues that the Lien is invalid and should be expunged, pursuant to 108.2275, as
17 Proimtu has allegedly failed to comply with mandatory statutory requirements for a valid lien by by
18 allegedly failing to serve a notice of right to lien pursuant to NRS 108.245.

19 8. Proimtu argues that NRS 108.245(1) provides an exception to the requirements of NRS
20 108.245 to provide a notice of intent to lien if the lien claimant only provides labor to the
21 construction project.

22 9. Proimtu argues that it only provided labor to the Project.

23 10. In the alternative, Proimtu argues that if the Court finds that it did not provide only labor
24 to the Project, thereby exempting it from compliance with NRS 108.245, then "a lien claimant
25 substantially complies with NRS 108.245's pre-lien requirement when the property owner has actual
26 knowledge of the potential lien claim and is not prejudiced." *Hardy Cox. v. SNMARK, LLC*, 126
27 Nev. Adv. Rep. 49, 245 P.3d 1149 (2010).

28 11. Proimtu also argues that, pursuant to NRS 108.22104, an "agent of the owner" means

1 every architect, builder, contractor, engineer, geologist, land surveyor, lessee, miner, subcontractor
2 or other person having charge or control of the property, improvement or work of improvement of
3 the owner, or any part thereof. Therefore, if Cobra, the general contractor, had notice of Proimtu
4 being on the Project, then that knowledge should be imputed to the owner to satisfy the requirements
5 of NRS 108.245 to provide a notice of intent to lien. At the hearing on this matter TRP
6 acknowledged that Cobra had notice of Proimtu's involvement in the Project.

7 12. As set forth in Proimtu's opposition to the Petition and at the hearing on this matter,
8 Proimtu supported its arguments through an email sent by TRP to Cobra dated November 30, 2012,
9 in which TRP introduced Proimtu as a subcontractor for the Project. In that email, TRP states that it
10 is asking for "authorization for contracting the company Proimtu to provide assembly-related labor
11 services at the Tonopah plant."

12 13. At the hearing on this matter TRP stipulated that Kevin Smith, the owner's
13 representative and CEO, was physically present at the Project at the time Proimtu was working on
14 the Project and knew of Proimtu's work and involvement on the Project at the time Proimtu was
15 retained.

16 CONCLUSIONS OF LAW

17 1. NRS 108.2275 provides the provisions for the release of frivolous or excessive liens.

18 2. NRS Chapter 108.245 provides that,

19 ...every lien claimant, other than one who performs only labor, who claims
20 the benefit of NRS 108.221 to 108.246, inclusive, shall, at any time after the
21 first delivery of material or performance of work or services under a
22 contract, deliver in person or by certified mail to the owner of the property a
23 notice of right to lien...

24 3. NRS Chapter 108 does not provide a definition of labor.

25 4. NRS 624.020 provides that a contractor is defined as:

26 A contractor is any person, except a registered architect or a licensed
27 professional engineer, acting solely in a professional capacity, who in any
28 capacity other than as the employee of another with wages as the sole
compensation, undertakes to, offers to undertake to, purports to have the
capacity to undertake to, or submits a bid to, or does himself or herself or by
or through others, construct, alter, repair, add to, subtract from, improve,
move, wreck or demolish any building, highway, road, railroad, excavation or
other structure, project, development or improvement, or to do any part

1 thereof, including the erection of scaffolding or other structures or works in
2 connection therewith.

3 5. The Court finds that Proimtu was acting as a contractor in its scope of work with TRP
4 pursuant to NRS 624.020 and therefore was required to serve a notice of right to lien to the owner
5 pursuant to NRS 108.245.

6 6. The Court finds that Proimtu failed to comply with NRS 108.245 by failing to serve a
7 notice of right to lien to the owner.

8 7. The Court also finds that even if Cobra, the general contractor, had actual notice of
9 Proimtu being on the Project, that knowledge cannot be imputed to the owner and was not sufficient
10 to put the owner on actual notice of either the scope of work being performed by Proimtu.

11 8. The Court also finds that TRP is also entitled to its at costs and reasonable attorney's
12 fees for bringing the Petition the amount to be determined after a Motion for Attorney Fees is filed
13 with the Court.

14 IT IS THEREFORE ORDERED that the lien is expunged.

15 IT IS FURTHER ORDERED that the bond, recorded on January 2, 2015 as Doc # 825596 in
16 Nye County, Bond No. 915209, in the amount of \$3,536,965.50, is hereby exonerated and released
17 upon recording of this Order in Nye County.

18 IT IS FURTHER ORDERED that the Petitioner shall be awarded its costs and reasonable
19 attorney fees, the amount to be determined after briefing.

20
21 IT IS SO ORDERED.

22 Dated: September 9, 2015

23 *Steven P. [Signature]*
24 JUDGE OF THE DISTRICT COURT

25 Respectfully submitted by:
26 PINTAR ALBISTON LLP

27 By: Becky A. Pintar

28 Becky A. Pintar, Esq., NSB # 7867
 Attorney for Petitioner TRP INTERNATIONAL, INC.

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Reviewed by:
FENNEMORE CRAIG, P.C.

By: 
Drenoch R. Wirthlin, Esq.
Attorney for Petitioner PROIMTU MMI LLC

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6
7 Attorneys for Plaintiff
TRP INTERNATIONAL, INC.

**FIFTH DISTRICT COURT
NYE COUNTY, NEVADA**

10 TRP INTERNATIONAL, INC., a foreign
11 corporation,

12 Petitioner,

13 v.

14 PROIMTU MMI LLC, a Nevada limited liability
company,

15 Respondent.

Case No.: CV-36431
Dept.: I

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER ON PETITION TO
EXPUNGE LIEN**

17 The Court having considered Petitioner's TRP INTERNATIONAL, INC. ("TRP") Petition to
18 Expunge Lien ("Petition"), as against Respondent PROIMTU MMI LLC ("Proimtu") and all
19 pleadings on file, and after hearing oral argument, the Court makes the following Findings of Fact,
20 Conclusions of Law and Order.

FINDINGS OF FACT

21
22 1. TRP is a company based in Spain that constructs solar projects and it entered into a
23 contract with the prime contractor, Cobra Thermosolar Plants, Inc. ("Cobra"), to fabricate and erect
24 heliostats on a solar project in Tonopah, Nevada, known as the Crescent Dunes Thermosolar Plant
25 (the "Project").

26
27 2. In turn, TRP and Respondent PROIMTU MMI LLC ("Proimtu") entered into a contract
28 for heliostat assembly and field erection ("Contract").

3. In the Contract, TRP is referred to as the Contractor and Proimtu is referred to as the

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[Handwritten signature]

CLERK
DEPUTY

1 Subcontractor, with the scope of work including:

- 2 • Close monitoring of the procedure to assemble heliostats, according to the requirements
- 3 issued by the client.
- 4 • Monitoring of all documentary and procedural requirements required by the customer
- 5 • Care, maintenance and use of the tools provided to do the job.
- 6 • Strictly following the procedures defined for the tasks, included as ANNEX by TRP for
- 7 each point on the assembly line and the implementation of appropriate controls to ensure the
- 8 proper execution of the work.
- 9 • Installation of 10,375 or heliostats heliostats at 80 days after the learning period to meet
- 10 customer requirements.
- 11 • Comply with the quality requirements imposed by the client in the assembly of heliostats.
- 12 • Establish and incorporate shifts working staff needed to produce 400 heliostats a week,
- 13 having also the possibility of increasing its resources to a production of 500 heliostats a
- 14 week without any additional cost to TRP.
- 15 • Meet calibrations according to the specifications of the quality plan approved by the client.
- 16 Using stations verification and calibration equipment needed for 100% of the heliostats
- 17 within tolerances.
- 18 • Use of the means provided by the Contractor for quality control and traceability of
- 19 heliostats mounted.
- 20 • Transport from the assembly line to the final erection on site. Includes all equipment and
- 21 lifts, vehicles and manpower needed to carry out the implementation on the foundation of the
- 22 pedestals or heliostats corresponding (sic)
- 23 • Preparation and submission for approval of procedures by TRP pedestal and heliostat
- 24 erection on field.
- 25 • Providing tools, hand tools, jigs and other equipment of any kind to be established in the
- 26 lifting procedure once approved by TRP to perform transport and lifting the heliostat s on the
- 27 site. This equipment must be in good condition for the implementation of the scope defined
- 28 in this contract.

- 1 • Maintenance of all equipment according to the instructions of TRP
- 2 • Strict monitoring of lifting procedures, and generating reports and monitoring quality
- 3 control to ensure the smooth implementation of the lifting.
- 4 • Final and perfect leveling and alignment of heliostat according to the specifications of
- 5 COBRA.
- 6 • Adapt the resource needs to reach heliostats and pedestals erection to meet the requirement
- 7 of 400 heliostats a week, with potential to increase to 500 heliostats a week at no additional
- 8 cost to TRP.
- 9 • Previous verification of screws already in the solar field to confirm you have the correct
- 10 position and verticality and that are on the side of tolerance
- 11 • Reporting quality control and production control applications to ensure the smooth
- 12 implementation of the lifting.
- 13 • Final leveling and fit and alignment pedestals and heliostats according to specifications.
- 14 • Final reports Quality Control
- 15 • Re-Galvanization of damaged items during the course of the work if necessary .
- 16 • Preparation of Risk Assessment for the work required and must be approved by the
- 17 contractor before the work begins.
- 18 • Preparation of Environmental Management Reports and waste required by the Customer.
- 19 Strict monitoring of environmental management Standards required by the client.
- 20 • Certificates of materials used if it is the case.
- 21 • Issuance of Certificates of Inspection of equipment that require own.
- 22 • Generation and contribution in a timely manner of the documentation required by the
- 23 American authorities and the client on the recruits.
- 24 • Completion of Documents and Project Quality required.
- 25 • Implementation of temporary facilities as OSHA requirements and health and safety by the
- 26 subcontractor.
- 27 • Lights when necessary work areas, exterior or interior and means to do so if outdoors.
- 28 Excluding general vials, responsibility. (sic)

1 • All activities necessary to conduct the proper execution of the work according to the
2 conditions, which are considered by the subcontractor are included.

3 • Contribution in case of personnel certificates

4 • In compliance with the operational requirements of the site, including:

5 Wage Requirements as Davis Bacon as indicated in Annex 4.

6 • Delivery of the required data from DBA & STA indicated In Annex 4 regularly.

7 4. Ultimately, a dispute arose between TRP and Proimtu regarding the payments each side
8 alleged were due under the Contract.

9 5. Due to the dispute for payment, Proimtu subsequently recorded a mechanics lien,
10 pursuant to NRS 108.222 (the "Lien") in the amount of \$2,357,977 against the real property more
11 commonly known as APN Nos. 012-141-01, 012-151-01, 612-141-01, 012-031-04, 012-131-03 and
12 012-131-04 (the "Real Property") in Nye County, Doc # 823637, on November 12, 2014.

13 6. On January 2, 2015, Cobra posted a bond, Bond No. 915209, in the amount of
14 \$3,536,965.50, recorded as Doc # 825596 in Nye County, pursuant to NRS 108.413 to 108.2425, to
15 release the lien from the Real Property.

16 7. TRP argues that the Lien is invalid and should be expunged, pursuant to 108.2275, as
17 Proimtu has allegedly failed to comply with mandatory statutory requirements for a valid lien by by
18 allegedly failing to serve a notice of right to lien pursuant to NRS 108.245.

19 8. Proimtu argues that NRS 108.245(1) provides an exception to the requirements of NRS
20 108.245 to provide a notice of intent to lien if the lien claimant only provides labor to the
21 construction project.

22 9. Proimtu argues that it only provided labor to the Project.

23 10. In the alternative, Proimtu argues that if the Court finds that it did not provide only labor
24 to the Project, thereby exempting it from compliance with NRS 108.245, then "a lien claimant
25 substantially complies with NRS 108.245's pre-lien requirement when the property owner has actual
26 knowledge of the potential lien claim and is not prejudiced." *Hardy Cos. v. SNMARK, LLC*, 126
27 Nev. Adv. Rep. 49, 245 P.3d 1149 (2010).

28 11. Proimtu also argues that, pursuant to NRS 108.22104, an "agent of the owner" means

every architect, builder, contractor, engineer, geologist, land surveyor, lessee, miner, subcontractor or other person having charge or control of the property, improvement or work of improvement of the owner, or any part thereof. Therefore, if Cobra, the general contractor, had notice of Proimtu being on the Project, then that knowledge should be imputed to the owner to satisfy the requirements of NRS 108.245 to provide a notice of intent to lien. At the hearing on this matter TRP acknowledged that Cobra had notice of Proimtu's involvement in the Project.

12. As set forth in Proimtu's opposition to the Petition and at the hearing on this matter, Proimtu supported its arguments through an email sent by TRP to Cobra dated November 30, 2012, in which TRP introduced Proimtu as a subcontractor for the Project. In that email, TRP states that it is asking for "authorization for contracting the company Proimtu to provide assembly-related labor services at the Tonopah plant."

13. At the hearing on this matter TRP stipulated that Kevin Smith, the owner's representative and 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.

CONCLUSIONS OF LAW

1. NRS 108.2275 provides the provisions for the release of frivolous or excessive liens.
2. NRS Chapter 108.245 provides that,
 - ...every lien claimant, other than one who performs only labor, who claims the benefit of NRS 108.221 to 108.246, inclusive, shall, at any time after the first delivery of material or performance of work or services under a contract, deliver in person or by certified mail to the owner of the property a notice of right to lien...
3. NRS Chapter 108 does not provide a definition of labor.
4. NRS 624.020 provides that a contractor is defined as:

A contractor is any person, except a registered architect or a licensed professional engineer, acting solely in a professional capacity, who in any capacity other than as the employee of another with wages as the sole compensation, undertakes to, offers to undertake to, purports to have the capacity to undertake to, or submits a bid to, or does himself or herself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project, development or improvement, or to do any part

5. The Court finds that Proimtu was acting as a contractor in its scope of work with TRP pursuant to NRS 624.020 and therefore was required to serve a notice of right to lien to the owner pursuant to NRS 108.245.

6. The Court finds that Proimtu failed to comply with NRS 108.245 by failing to serve a notice of right to lien to the owner.

7. The Court also finds that even if Cobra, the general contractor, had actual notice of Proimtu being on the Project, that knowledge cannot be imputed to the owner and was not sufficient to put the owner on actual notice of either the scope of work being performed by Proimtu.

8. The Court also finds that TRP is also entitled to its at costs and reasonable attorney's fees for bringing the Petition the amount to be determined after a Motion for Attorney Fees is filed with the Court.

IT IS THEREFORE ORDERED that the lien is expunged.

IT IS FURTHER ORDERED that the bond, recorded on January 2, 2015 as Doc # 825596 in Nye County, Bond No. 915209, in the amount of \$3,536,965.50, is hereby exonerated and released upon recording of this Order in Nye County.

IT IS FURTHER ORDERED that the Petitioner shall be awarded its costs and reasonable attorney fees, the amount to be determined after briefing.

IT IS SO ORDERED.

Dated: September 9, 2015

JUDGE OF THE DISTRICT COURT

Respectfully submitted by:
PINTAR ALBISTON LLP

By:

Becky A. Pintal, Esq., NSB # 7867
Attorney for Petitioner TRP INTERNATIONAL, INC.

1 Reviewed by:
2 FENNEMORE CRAIG, P.C.

3 By: _____

4 Brenoch R. Wirthlin, Esq.
5 Attorney for Petitioner PROIMTU MMI LLC
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**OFFICE OF THE NYE COUNTY CLERK
SANDRA L. MERLINO**

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Fax (775) 482-8133



Pahrump Office
Government Complex
1520 East Basin Avenue
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Phone (775) 751-7040
Fax (775) 751-7047

October 5, 2015

NOTICE OF DEFICIENCY: The Petitioner failed to provide the \$24 fee for the District Court and the \$500 bond.

VIA E-FILE

Supreme Court Clerk
201 S. Carson Street, #201
Carson City, NV 89701-4702

Re: CV 36431

TRP INTERNATIONAL, INC., a foreign corporation, Petitioner,
Vs.
PROIMTU MMI LLC, a Nevada limited liability company, Respondent.

Dear Ms. Lindeman:

I am enclosing the documentation required to submit the above-referenced matter on appeal.

This is a civil case. I will be forwarding the fee of \$250.00 via US Mail.

If I can be of any assistance, please feel free to contact me at our Tonopah office.

Sincerely,

SANDRA L. MERLINO
NYE COUNTY CLERK

By:

A handwritten signature in cursive script, appearing to read "Amy Dowers".
AMY DOWERS, Deputy Clerk / Tonopah