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Tracie K. Lindeman
Clerk of Supreme Court

7 **FIFTH DISTRICT COURT**
8 **NYE COUNTY, NEVADA**

9 PROIMTU MMI LLC, a Nevada limited liability
company,

CASE NO.: CV-36747

DEPT. NO.: I

10 Petitioner,

11 vs.

NOTICE OF APPEAL

12 TRP INTERNATIONAL, INC., a Delaware
13 corporation, TONOPAH SOLAR ENERGY,
LLC, a Delaware limited liability company;
14 COBRA THERMOSOLAR PLANTS, INC., a
Nevada Corporation; STATE OF NEVADA ex
15 rel. the NEVADA STATE CONTRACTORS
BOARD, THE INSURANCE COMPANY OF
16 THE STATE OF PENNSYLVANIA, a
Pennsylvania corporation, DOES I-X, ROE
COMPANIES I-X;

17 Respondents.
18

19 Notice is hereby given that Proimtu MMI LLC ("Proimtu"), Petitioner above named,
20 appeals to the Supreme Court of Nevada from the Findings of Fact, Conclusions of Law and Order
21 on Motion to Dismiss Complaint and Final Judgment Pursuant to NRCP 54(b) entered in this
22 action on the 16th day of February, 2016.

23 DATED this 25 day of March, 2016.

24 **FENNEMORE CRAIG, P.C.**

25 By: 

26 Christopher H. Byrd, Esq. (No. 1633)
27 Brenoch Wirthlin (No. 10282)
300 S. Fourth Street, Suite 1400
28 Las Vegas, Nevada 89101
Attorneys for Petitioner

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 25th day of March, 2016, I served a copy of the **NOTICE**
3 **OF APPEAL** upon the parties to this action by mailing a copy thereof, postage prepaid, via
4 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 Respondent*

William J. Wray, Esq.
Donna DiMaggio, Esq.
Holley, Driggs, Walch, Fine,
Wray, Puzey & Thompson
400 S. 4th Street, 3rd Floor
Las Vegas, NV 89191
Attorneys for Cobra Defendants

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12 An employee of Fennemore Craig, P.C.
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10 Attorneys for Petitioner/Appellant

Handwritten signature: Tanner Dacus

11
12 **FIFTH DISTRICT COURT**
13
14 **NYE COUNTY, NEVADA**

15 PROIMTU MMI LLC, a Nevada limited liability
16 company,

CASE NO.: CV-36747

DEPT. NO.: I

17 Petitioner,

18 vs.

CASE APPEAL STATEMENT

19 TRP INTERNATIONAL, INC., a Delaware
20 corporation, TONOPAH SOLAR ENERGY,
21 LLC, a Delaware limited liability company;
22 COBRA THERMOSOLAR PLANTS, INC., a
23 Nevada Corporation; STATE OF NEVADA ex
24 rel. the NEVADA STATE CONTRACTORS
25 BOARD, THE INSURANCE COMPANY OF
26 THE STATE OF PENNSYLVANIA, a
27 Pennsylvania corporation, DOES I-X, ROE
28 COMPANIES I-X;

Respondents.

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

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

2. **Identify the judge issuing the decision, judgment, or order appealed from:**
Judge Steven Elliott; Findings of Fact, Conclusions of Law and Order on Motion to Dismiss Complaint and Final Judgment Pursuant to NRCP 54(b) entered in this action on the 16th day of February, 2016 ("Judgment").

///

///

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.
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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**
29 **attorney permission to appear under SCR 42 (attach a copy of any district court order**
30 **granting such permission):** All attorneys are licensed to practice law in Nevada.

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

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

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

4 **9. Indicate the date the proceedings commenced in the district court (e.g., date**
5 **complaint, indictment, information, or petition was filed):** TRP's Motion to Dismiss Proimtu's
6 Complaint (the "Motion") was filed on or about August 19, 2015.

7 **10. Provide a brief description of the nature of the action and result in the district**
8 **court, including the type of judgment or order being appealed and the relief granted by the**
9 **district court:** In or around October 16, 2012, Proimtu entered into a contract ("Contract") with
10 TRP International Inc. for the assembly and erection of heliostats (mirrors) for the Crescent Dunes
11 Thermosolar Power Plant ("Project"). TRP did not pay Proimtu in full for the work. Proimtu sued
12 to foreclose on a mechanics' lien and the resulting surety bond releasing the property from the
13 lien. Proimtu also sued to recover on TRP's contractors' bond and pursued other claims all arising
14 from non- payment for the work performed. The district court granted TRP's Motion to Dismiss
15 and entered Findings of fact Conclusions of law and Order on Motion to Dismiss and Final
16 Judgment Pursuant to NRCP 54(b) ("Judgment"). Proimtu appeals from the Judgment.

17 **11. Indicate whether the case has previously been the subject of an appeal to or**
18 **original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court**
19 **docket number of the prior proceeding:** This dispute resulted in two prior appeals, involving
20 the expungement of Proimtu's lien and the amount of attorneys' fees and costs awarded. The
21 caption of the previous appeals is *Proimtu MMI LLC vs. TRP International, Inc.*, case no.: 68942
22 and 69336.

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

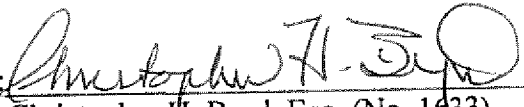
25 ///

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27 ///

1 13. If this is a civil case, indicate whether this appeal involves the possibility of
2 settlement: This is a civil case but there is no possibility of settlement until the first appeal is
3 resolved.

4 DATED this 25 day of March, 2016.

5 FENNEMORE CRAIG, P.C.

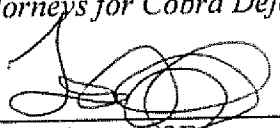
6
7 By: 
8 Christopher H. Byrd, Esq. (No. 1633)
9 Brenoch Wirthlin (No. 10282)
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12 Attorneys for Petitioner/Appellant
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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of March, 2016, I served a copy of the **CASE APPEAL STATEMENT** upon the parties to this action by mailing a copy thereof, postage prepaid, via regular U.S. Mail, addressed as follows:

Becky A. Pintar, Esq.
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Pintar Albiston LLP
6053 S. Fort Apache Road, Suite 120
Las Vegas, NV 89148
Attorneys for Respondent

William J. Wray, Esq.
Donna DiMaggio, Esq.
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Las Vegas, NV 89191
Attorneys for Cobra Defendants


An employee of Pennemore Craig, P.C.

Case #: CV-0036747

Judge: STEVEN P ELLIOT

Date Filed: 05/07/15 Department: 09

Case Type: PP OTH PERSONAL PROPERTY OTHER

Title/Caption: PROIMTU MMI LLC

vs

TRP INTERNATIONAL, INC., a Delaware corporation; TONOPAH SOLAR ENERGY, LLC, a Delaware limited-liability company; COBRA THERMOSOLAR PLANTS, INC., a Nevada corporation; STATE OF NEVADA ex rel. the NEVADA STATE CONTRACTORS BOARD, DOES I-X ROW COMPANIES I-X

Comments: FILE IN PAHRUMP ***JUDGE WANKER RECUSED***

Defendant(s)	Attorney(s)
TRP INTERNATIONAL, INC	No "Attorney 1" Listed
Defendant(s)	Attorney(s)
TONOPAH SOLAR ENERGY, LLC	No "Attorney 1" Listed
Defendant(s)	Attorney(s)
COBRA THERMOSOLAR PLANTS, INC	No "Attorney 1" Listed
Defendant(s)	Attorney(s)
STATE OF NEVADA	No "Attorney 1" Listed
Defendant(s)	Attorney(s)
NEVADA STATE CONTRACTORS BOARD	No "Attorney 1" Listed
Defendant(s)	Attorney(s)
INSURANCE COMPANY OF PENN...	No "Attorney 1" Listed
Plaintiff(s)	Attorney(s)
PROIMTU MMI LLC	WIRTHLIN, BRENOCH

Disp/Judgment: MTDS Date: 03/01/16

Filings:

Date	Pty	Filing	Fees
5/07/15	P	COMPLAINT	
5/07/15	P	INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)	
5/07/15	C	SUMMONS (ISSUED - COBRA THERMOSOLAR PLANTS, INC.)	
5/07/15	C	SUMMONS (ISSUED - TONOPAH SOLAR ENERGY, LLC)	
5/07/15	C	SUMMONS (ISSUED - TRP INTERNATIONAL, INC.)	
5/07/15	C	SUMMONS (ISSUED- STATE OF NEVADA EXREL STATE CONTRACT BOARD)	
5/07/15	P	NOTICE OF PENDENCY OF ACTION AFFECTING REAL PROPERTY	
6/25/15	P	NOTICE OF FORECLOSURE OF LIEN	
7/10/15	P	FIRST AMENDED COMPLAINT	
7/10/15	P	RELEASE OF LIS PENDENS	
7/10/15	C	SUMMONS (ISSUED - INSURANCE CO. OF THE STATE OF PENNSYLVANIA)	
7/10/15	C	AMENDED SUMMONS (ISSUED - TONOPAH SOLAR ENERGY LLC)	

7/10/15	C	AMENDED SUMMONS (ISSUED - TRP INTERNATIONAL INC)	
7/10/15	C	AMENDED SUMMONS (ISSUED - COBRA THERMOSOLAR PLANTS INC)	
7/10/15	C	AMENDED SUMMONS (ISSUED - STATE OF NEVADA EX REL. THE NEVADA STATE CONTRACTORD BOARD)	
7/27/15	P	AFFIDAVIT OF SERVICE (TONOPAH SOLOR ENERGY LLC)	
7/27/15	P	AFFIDAVIT OF SERVICE (TRP INTERNATIONAL, INC)	
7/27/15	P	AFFIDAVIT OF SERVICE (STATE OF NEVADA/CONTRACTOR'S BOARD)	
7/27/15	P	AFFIDAVIT OF SERVICE (NEVADA CONTRACTOR'S BOARD)	
8/07/15	P	AFFIDAVIT OF SERVICE (THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA)	
8/12/15	P	NOTICE OF PUBLISHING FORCLOSURE OF LIEN	
8/12/15	P	AFFIDAVIT OF SERVICE	
8/13/15	D	DEFENDANT THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA ANSWER TO PLAINTIFF PROIMTU MMI LLC'S COMPLAINT	
8/18/15	D	DEFENDANTS TONOPAH SOLAR ENERGY, LLC AND COBRA THERMOSOLAR PLANTS, INC.'S ANSWER TO PLAINTIFF PROIMTU MMI LLC'S FIRST AMENDED COMPLAINT AND CROSSCLAIM AGAINST TRP INTERNATIONAL, INC.	228.00
8/20/15	D	MOTION TO DISMISS PROIMTU'S COMPLAINT	
8/20/15	D	OPPOSITION TO RESPONDENT PROIMTU'S EMERGENCY MOTION TO STAY	
8/24/15	C	ORDER OF RECUSAL AND REQUEST FOR SENIOR JUDGE	
8/27/15	D	CERTIFICATE OF SERVICE FOR MOTION TO DISMISS PROIMTU'S COMPLAINT	
8/27/15	D	CERTIFICATE OF SERVICE FOR MOTION FOR ATTORNEY FEES	
9/08/15	P	OPPOSITION TO MOTION TO DISMISS COMPLAINT	
10/12/15	D	DEFENDANTS TONOPAH SOLAR ENERGY, LLC, COBRA THERMOSOLAR PLANTS, INC. AND THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA'S MOTION FOR SUMMARY JUDGMENT	220.00
10/16/15	D	REPLY TO PROIMTU'S OPPOSITION TO MOTION TO DISMISS COMPLAINT *****END OF FILE #1*****	
10/28/15	P	PROIMTU MMI, LLC'S OPPOSITION TO DEFENDANTS TONOPAH SOLAR ENERGY, LLC, COBRA THERMOSOLAR PLANTS, INC. AND THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA'S MOTION FOR SUMMARY JUDGMENT	
11/09/15	P	DEFENDANTS TONOPAH SOLAR ENERGY, LLC, COBRA THERMOSOLAR PLANTS, INC. AND THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	
12/07/15	D	CERTIFICATE OF SERVICE FOR NOTICE OF ENTRY OF ORDER GRANTING MOTION FOR ATTORNEY FEES AND NOTICE OF ENTRY OF ORDER DENYING MOTION FOR EMERGENCY STAY	
2/16/16	D	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING DEFENDANTS TONOPAH SOLAR ENERGY, LLC, COBRA THERMOSOLAR PLANTS, INC. AND THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA'S MOTION FOR SUMMARY JUDGMENT	
2/16/16	D	FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER ON MOTION TO DISMISS COMPLAINT AND FINAL JUDGMENT PURSUANT TO NRCP 54 (B)	
2/16/16	D	NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSION OF LAW AND ON MOTION TO DISMISS COMPLAINT AND FINAL JUDGMENT PURSUANT TO NRCP 54 (B)	
2/18/16	D	FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER GRANTING DEFENDANTS TONOPAH SOLAR ENERGY, LLC, COBRA THERMOSOLAR PLANTS, INC. AND THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA'S MOTION FOR SUMMARY JUDGMENT AND FINAL JUDGEMENT PURSUANT TO NRCP 54 (B)	
3/01/16	D	CERTIFICATE OF SERVICE FOR NOTICE OF ENTRY OF ORDER GRANTING FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER	

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Case Summary

Page 3
DC2100

3/15/16 P TO DISMISS COMPLAINT
PROIMTU MMI, LLC'S MOTION TO AMEND JUDGMENT OR,
ALTERNATIVELY, MOTION FOR RECONSIDERATION
3/25/16 P NOTICE OF APPEAL
3/25/16 P CASE APPEAL STATEMENT

24.00

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Attorneys for Defendant
TRP INTERNATIONAL, INC.

FILED

2016 FEB 16 P 1:59

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CLERK
DEPUTY

**FIFTH JUDICIAL DISTRICT COURT
NYE COUNTY, NEVADA**

PROIMTU MMI LLC, a Nevada limited liability
company

Plaintiff,
v.

TRP INTERNATIONAL, INC., a Delaware
corporation; TONOPAH SOLAR ENERGY, LLC,
a Delaware limited liability company; COBRA
THERMOSOLAR PLANTS, INC., a Nevada
Corporation; STATE OF NEVADA ex rel. the
NEVADA STATE CONTRACTORS BOARD,
THE INSURANCE COMPANY OF THE STATE
OF PENNSYLVANIA, a Pennsylvania
corporation, DOES I-X, ROE COMPANIES I-X;

Defendants.

CASE NO. CV36747
DEPT. NO.: 1

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER ON MOTION TO
DISMISS COMPLAINT AND FINAL
JUDGMENT PURSUANT TO NRCP 54 (b)**

The Court having considered Defendant TRP INTERNATIONAL, INC.'s ("TRP") Motion to Dismiss Complaint, as against Plaintiff PROIMTU MMI LLC ("Proimtu") and all pleadings on file, and after hearing oral argument from the parties on November 12, 2015, the Court makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. TRP is a foreign corporation in Nevada based in Spain that constructs solar projects.
2. Proimtu is a Nevada limited liability company that is a subsidiary of Grupo Mara, a company with its main headquarters in Spain.

CLERK OF THE STATE
COURT
NYE COUNTY, NEVADA

1 3. TRP and Proimtu entered into a contract for heliostat assembly and field erection
2 ("Contract") on a solar project in Tonopah, Nevada, known as the Crescent Dunes Thermosolar
3 Plant (the "Project").

4 4. Proimtu alleged that TRP breached the Contract by failing to render payment for certain
5 amounts that Proimtu claims TRP owes to it for performance under the Contract.

6 5. Proimtu filed a First Amended Complaint with the following claims against TRP
7 including: breach of contract, breach of good faith and fair dealing, negligent misrepresentation,
8 unjust enrichment, quantum meruit/cardinal change (collectively "Contract and Tort Claims"), and
9 violation of NRS 624 and a claim on the license bond posted with the Nevada State Contractor's
10 Board (collectively "Statutory Claims").

11 6. TRP filed a Motion to Dismiss Proimtu's Contract and Tort Claims based on a
12 forum-selection clause in the Contract and the doctrine of forum non conveniens.

13 7. TRP also sought dismissal of Proimtu's Statutory Claims pursuant to NRCP 12(b)(5) for
14 failure to state a claim upon which relief can be granted.

15 8. The Contract provides the following forum selection clause:

16 The CONTRACT throughout its scope of application shall be governed by
17 Spanish law and be interpreted in accordance therewith. On a subsidiary basis to
18 the arbitration arrangements established, the CONTRACTOR and the
19 SUBCONTRACTOR expressly agree to be bound by the jurisdiction of the
20 Courts of Madrid, expressly waiving any other legal forum or domicile to which
21 they might have been entitled.

22 9. The Court determined that both TRP and Proimtu are subsidiaries of Spanish companies,
23 with the Contract being executed in Spain, subject to Spanish law, with a majority of the payments
24 on the Contract being made in Spain.

25 10. TRP filed this Motion to Dismiss and Tonopah Solar Energy, LLC, Cobra
26 Thermosolar Plants, Inc. ("Cobra") and The Insurance Company of the State of Pennsylvania filed a
27 Motion for Summary Judgment (collectively the "Motions"). This Court's ruling on the Motions
28 resolved all of the claims asserted by Proimtu.

 11. The Court finds that Proimtu would be prejudiced by having to wait to appeal and
that the decision on appeal will not affect the outcome of the cross claims asserted by Cobra against

1 TRP. The Court also finds there would be no prejudice to either TRP or Cobra from an immediate
2 appeal. Thus, there is no just reason to delay entry of final judgment on the claims asserted by
3 Proimtu against TRP so that an appeal may proceed.

4 12. Proimtu made an oral motion to stay the litigation at the conclusion of the hearing to
5 prevent proceedings in Spain while Proimtu appeals the expungement of the lien and the ruling on
6 the Motions. The Court denied the motion to stay because the Court ruled that Proimtu's claims
7 should be resolved in Spain under the terms of the Contract.

8 CONCLUSIONS OF LAW

9 1. The Supreme Court has established a strong policy in favor of the enforcement of forum
10 selection clauses." *E. & J. Gallo Winery v. Andina Licores S.A.*, 446 F.3d 984, 992 (9th Cir.2006)

11 2. A forum-selection clause should be "given controlling weight in all but the most
12 exceptional cases." *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 33, 108 S. Ct. 2239, 101 L. Ed. 2d
13 22 (1988).

14 3. "[T]he party seeking to avoid a forum selection clause bears a 'heavy burden' to establish a
15 ground upon which ... the clause is unenforceable." *Doe I v. AOL LLC*, 552 F.3d 1077, 1083 (9th
16 Cir.2009).

17 4. The Nevada Supreme Court has recognized the freedom parties have in drafting agreements
18 that contain forum selection clauses when they are entered into freely and voluntarily. *Tuxedo*
19 *International Inc. v. Rosenberg*, 127 Nev. Adv. Op. 2, 251 P.3d 690, 697 (2011); *Tandy Computer*
20 *Leasing v. Terina's Pizza, Inc.*, 105 Nev. 841, 843, 784 P.2d 7, 8 (1989).

21 5. Forum selection clauses will be enforced as written when the terms are "clear, unambiguous,
22 and complete." *Ringle v. Bruton*, 120 Nev. 82, 93, 86 P.3d 1032, 1039 (2004).

23 6. Forum selection clauses come in two varieties: permissive and mandatory.

24 7. A mandatory forum selection clause is presumed valid and is to be strictly enforced. *Bremen*
25 *v. Zapata Off-Shore Co.*, 407 U.S. 1, 12, 92 S.Ct. 1907, 32 L.Ed.2d 513 (1972).

26 8. The forum selection clause in the Contract is mandatory as it provides that the Courts of
27 Madrid shall have exclusive jurisdiction over disputes arising from the Contract and that both TRP
28 and Proimtu have *expressly waived* any other legal forum to which they might have been entitled.

1
2 9. The forum selection clause in the Contract was the product of a freely negotiated agreement
3 between the parties, and "where such forum-selection provisions have been obtained through "freely
4 negotiated" agreements and are not "unreasonable and unjust, their enforcement does not offend due
5 process." *Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15, 92 S.Ct. 1907, 1916, 32 L.Ed.2d 513
6 (1972).

7 10. Proimtu argues that enforcement of the forum selection clause would contravene Nevada's
8 strong public policy of barring application of forum-selection clauses set forth in NRS 108.2453(2)(d)
9 which prohibits any "litigation, arbitration or other process for dispute resolution on disputes arising
10 out of the contract or other agreement to occur in a state other than this State."

11 11. The plain meaning of the words used in NRS 108.2453(2)(d), when "examining the context
12 and the spirit of the law," and "the causes which induced the legislature to enact [NRS 108.2453]"
13 are consistent with an interpretation that conditions enforcement of its provisions on the validity of a
14 lien claimant having lien rights. *Leven v. Frey*, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007)). NRS
15 §§108.2453(2)(a) and (b) specifically address a valid lien claimant's rights, obligations, and
16 liabilities set forth in NRS §§108.221 to 108.246.

17 12. "When construing an ambiguous statutory provision, "this court determines the meaning of
18 the words used in a statute by examining the context and the spirit of the law or the causes which
19 induced the legislature to enact it." *Leven v. Frey*, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007).

20 13. The Legislative purpose in amending Nevada's mechanic's lien laws, specifically the
21 addition of NRS 108.2453, was "to assist lien claimants" by "facilitat[ing] payments to lien claimants."
22 *See Hardy Companies, Inc. v. SNMARK, LLC*, 126 Nev. Adv. Op. 49, 245 P.3d 1149, 1153 (2010)
23 (quoting Hearing on S.B. 343 Before the Assembly Comm. on Judiciary, 73d Leg. (Nev., May 13,
24 2005)).

25 14. The Court finds that the statutory rights provided to lien claimants set forth in NRS Chapter
26 108 require a valid lien claim.

27 15. The Court rejects Proimtu's argument that TRP waived the forum selection clause and
28 subjected itself to the jurisdiction of this Court by litigating with Proimtu in Nevada in the Fifth

1 Judicial District Court, Nye County, case CV-36431, ('Lien Litigation'). The Court granted TRP's
2 motion to expunge Proimtu's lien in the Lien Litigation case. TRP argued that it had not waived the
3 forum selection clause in this case either because it filed a motion to dismiss instead of answering
4 and litigating on the merits.

5 16. Therefore, based upon the Court's decision in the Lien Litigation, the Court finds that
6 Proimtu is not a valid lien claimant and this Court's enforcement of the forum-selection clause does
7 not contravene NRS 108.2453(2)(c) and (d) that provides that any condition, stipulation or provision
8 in a contract that (i) makes the contract subject to the laws of a state other than Nevada; or (ii)
9 requires any litigation or arbitration or other dispute resolution to occur in a state other than Nevada,
10 is void and unenforceable 18. The Court finds unpersuasive Proimtu's argument that NRS
11 108.2453(2)(c) and (d) preclude the enforcement of the forum selection clause in the Contract
12 because Proimtu's argument contradicts the legislative history and purpose of adding NRS 108.2453
13 to Nevada's mechanics' lien laws, which is to facilitate payment to lien claimants.

14 17. Therefore, "the interest of justice" would be served by holding Proimtu to its original
15 bargain of being expressly bound by the jurisdiction of the Courts of Madrid, and would not contravene
16 the strong judicial policy in favor of enforcing the parties forum selection clause.

17 18. Whatever "inconvenience" Proimtu would suffer by being forced to litigate in the
18 contractual forum as they agreed to do was clearly foreseeable at the time of contracting.

19 19. NRS 624.031(8) states in pertinent part: "The Provisions of this chapter do not apply
20 to: The construction, alteration, improvement or repair financed in whole or in part by the Federal
21 Government and conducted within the limits and boundaries of a site or reservation, the title of
22 which rests in the Federal Government."

23 20. In the Fourth Claim for Relief, Proimtu stated that the "Project was financed with a
24 loan guaranteed by the Department of Energy". See Complaint, ¶51.

25 21. Therefore, pursuant to NRS 624.031(8), the Court finds that both TRP and Proimtu
26 were exempt from the provisions of NRS Chapter 624 because the Project was federally funded in part
27 by the Federal Government.

28 22. The Court further finds that Proimtu has not asserted a legally sufficient claim upon

1 which relief may be granted in either the Second Claim for Relief (Violation of NRS Chapter 624) or
2 the Seventh Claim for Relief (Recovery of Bond Amount against the Board) as NRS Chapter 624
3 applies to neither Proimtu, nor TRP, because the Project was partially funded by the Federal
4 Government.

5 23. Accordingly, Proimtu's Second Claim for Relief regarding TRP's alleged violation of
6 NRS Chapter 624 and Seventh Claim for Relief for recovery against the \$100,000 cash bond posted
7 pursuant to NRS Chapter 624 are dismissed as a matter of law for failure to state a claim pursuant to
8 NRCP 12(b)(5) IT IS THEREFORE ORDERED that the Motion to Dismiss is granted; and

9 IT IS FURTHER ORDERED that a Judgment is hereby entered and certified as final
10 pursuant to NRCP 54(b) as to all claims brought by Proimtu against TRP in the First, Second, Third,
11 Fourth, Fifth, Sixth and Seventh Claims for Relief in the First Amended Complaint; and ///

12 IT FURTHER ORDERED that Proimtu's motion to stay this order is denied.

13
14 Dated: FEB. 16, 2016

Steven Elliott
15 JUDGE OF THE DISTRICT COURT

16
17 Respectfully submitted by:
PINTAR ALBISTON LLP

18 By: Becky A. Pintar
19 Becky A. Pintar, Esq., NSB # 7867
20 Attorney for Petitioner TRP INTERNATIONAL, INC.

21 Reviewed by:
22 FENNEMORE CRAIG JONES VARGAS

23
24 By: [Signature]
25 Brenoch R. Wirthlin, Esq.
Attorney for Petitioner PROIMTU MMI LLC
26
27
28

Case #: CV-0036747

Judge: STEVEN P ELLIOT

Date Filed: 05/07/15 Department: 09

Case Type: PP OTH PERSONAL PROPERTY OTHER

Title/Caption: PROIMTU MMI LLC

vs

TRP INTERNATIONAL, INC., a Delaware corporation; TONOPAH SOLAR ENERGY, LLC, a Delaware limited-liability company; COBRA THERMOSOLAR PLANTS, INC., a Nevada corporation; STATE OF NEVADA ex rel. the NEVADA STATE CONTRACTORS BOARD, DOES I-X ROW COMPANIES I-X

Comments: FILE IN PAHRUMP ***JUDGE WANKER RECUSED***

Defendant(s)
TRP INTERNATIONAL, INC

Attorney(s)
No "Attorney 1" Listed

Defendant(s)
TONOPAH SOLAR ENERGY, LLC

Attorney(s)
No "Attorney 1" Listed

Defendant(s)
COBRA THERMOSOLAR PLANTS, INC

Attorney(s)
No "Attorney 1" Listed

Defendant(s)
STATE OF NEVADA

Attorney(s)
No "Attorney 1" Listed

Defendant(s)
NEVADA STATE CONTRACTORS BOARD

Attorney(s)
No "Attorney 1" Listed

Defendant(s)
INSURANCE COMPANY OF PENN...

Attorney(s)
No "Attorney 1" Listed

Plaintiff(s)
PROIMTU MMI LLC

Attorney(s)
WIRTHLIN, BRENOCH

Disp/Judgment: MTDS Date: 03/01/16

Hearings:

Date	Time	Hearing
9/09/15	9:00	MOTION TO DISMISS
JUDGE: STEVEN P ELLIOT		
CLERK: AMY DOWERS		
APP: BECKY PINTAR; BRENOCK WIRTHLIN; DONNA DI MAGGIO		
HEARING CONTINUED TO NOVEMBER 12, 2015 @ 9:00 AM		

Reference

11/12/15	9:00	MOTION TO DISMISS
11/12/15	9:00	MOTION FOR SUMMARY JUDGMENT

CV 36747 PROIMTU MMI LLC

VS

**TRP INTERNATIONAL, INC., TONOPAH SOLAR
ENERGY, LLC; COBRA THERMOSOLAR PLANTS,
INC; STATE OF NEVADA ex rel. the NEVADA STATE
CONTRACTORS BOARD; THE INSURANCE
COMPANY OF THE STATE OF PENNSYLVANIA**

.....
Date: November 12, 2015

Senior Judge: Steven Elliot

Clerk: Amy Dowers

Appearances:

William J. Wray, James W. Puzey and Donna DiMagio, Esq. for Cobra
Thermosolar Plants, Inc., Tonopah Solar Energy, LLC and The Insurance
Company of the State of Pennsylvania

Becky Pintar, Esq. for TRP International Inc.

Brenoch R. Wirthlin, Esq. and Gabriel Gonzalez for Proimtu MMI LLC

The Court states we will begin today with the Tonopah Solar Energy, LLC, Cobra Thermosolar Plants, Inc. and the Insurance Company of Pennsylvania's Motion for Summary Judgment.

The parties agree the case is ready for argument.

Ms. Pintar argues for granting the Motion for Summary Judgment.

Ms. Pintar states the solar project is unique in that the parties involved are all Spanish companies. Ms. Pintar contends that the project is kind of a hybrid because it is on Fedral land, subject to David Bacon but no Miller Bond was posted. Ms. Pintar states the major issue is the jurisdiction and whether the Forum Selection Clause is enforceable.

Ms. Pintar states the contract mandates that any disputes with the contract must be litigated in Spain because of the Forum Selection Clause. Ms. Pintar states that a mandatory Forum Selection Clause must be enforced. Ms. Pintar states that the plaintiff does not meet the criteria to be exempt from the Forum Selection Clause.

Ms. Pintar states that Proimtu is a Spanish company even though it has a Nevada LLC. Ms. Pintar states she has affidavits that she just received from the officers of TRP, in Spain. Ms. Pintar states everything has taken place in Spain except for the work on the

project. Ms. Pintar states having the case litigated in Spain would not cause irreparable harm.

Ms. Pintar argues that the Forum Selection Clause is not a permissive clause. Ms. Pintar states any other jurisdiction has been waived.

Ms. Pintar argues that NRS 108.2453 is exclusively for lien claimants and cannot be invoked. Ms. Pintar states this Court has found that Proimtu is not a valid lien claimant.

Ms. Pintar addresses the contractor's bond claim under chapter 624. Ms. Pintar argues that on Federal projects a contractor does not have to be licensed in the area that the project is to take place. Ms. Pintar contends that this solar project is ruled more by Federal law than by State law. Ms. Pintar argues that Federal projects on Federal land are not subject to lien.

Ms. Pintar addresses the Forum Selection Clause. Ms. Pintar cites the Atlantic Marine Construction case from 2013. Ms. Pintar states the plaintiff does not meet the standard to invoke NRS 108.2453 because they are not a valid lien claimant. Ms. Pintar states Proimtu has waived the right to be litigated in Nevada in the foreign selection clause.

Ms. Pintar discusses the difference between a mandatory and a permissive Forum Selection Clause. Ms. Pintar cites American First Federal Credit Union vs. Soro in 2015. Ms. Pintar states the clause in this case is a mandatory Forum Selection Clause. Ms. Pintar states the contract requires that litigation be done in Spain.

Ms. Pintar states the Court must dismiss this action and enforce the Forum Selection Clause.

Ms. Pintar address whether dismissal is warranted under the doctrine of forum non conveniens. Ms. Pintar cites the Ninth Circuit Courts five public interest guideposts. Ms. Pintar states Proimtu has not met the public interest burden.

Ms. Pintar provides the Court with affidavits that state all the payments and negotiations have been made in Spain.

Ms. Pintar states NRS 624 is not applicable in this case. Ms. Pintar states the title to the property rests in Federal Government hands.

Ms. Pintar states Proimtu has failed to substantiate that it is strictly a Nevada LLC and that it would be unjust to litigate this matter in Spain. Ms. Pintar further states Proimtu has failed to establish irreparable harm. Ms. Pintar argues the Forum Selection Clause is unambiguously mandatory and forum non conveniens is not a valid argument.

Ms. Pintar requests the Court grant the Motion to Dismiss this action in full.

The Court asks Ms. Pintar for clarification.

Ms. Pintar states the Federal case Atlantic Marine Construction Company vs. The United States District Court for the Western District of Texas is on page 2 of her Reply and explains that it is the Supreme Court case that discusses mandatory versus permissive foreign selection clauses. Ms. Pintar also refers to the American 1st Federal Credit Union case, which is a Nevada Supreme Court case, on page 7 of her Reply.

The Court states he must have been looking at a different brief.

Mr. Wray clarifies that there are two different reply briefs, one from Cobra and one from TRP.

Ms. DiMaggio argues for the Motion for Summary Judgment.

Ms. DiMaggio states her client, Cobra, has basically the same arguments as TRP made. Ms. DiMaggio states that Cobra is also a Spanish company and all the negotiations were made in Spain. Ms. DiMaggio contends it is unreasonable to subject Cobra to Nevada jurisdiction is unreasonable under the case law that has been cited.

Ms. DiMaggio refers to the first claim stating there is no longer a claim against the bond and therefore the claim must be dismissed as a matter of law.

Ms. DiMaggio states all parties expressly agreed to jurisdiction in Spain.

Ms. DiMaggio states Proimtu is no longer a valid lien claimant.

Ms. DiMaggio states the Forum Selection Clause is mandatory and the language of NRS 108 only applies to lien claimants. Ms. DiMaggio states it is unreasonable to subject Cobra to Nevada jurisdiction when Proimtu is no longer of the class that the Mechanics Lien Law was designed to protect.

Mr. Wirthlin introduces himself and Mr. Gonzalez, from Proimtu, to the Court.

Mr. Wirthlin offers to address any questions the Court might have.

Mr. Wirthlin makes a Motion to Strike the Late Filed Affidavits that were filed by TRP two days before the hearing. Mr. Wirthlin states he has not had the opportunity to review them. Mr. Wirthlin states that he addressed the pleadings as a Motion to Dismiss not as a Motion for Summary Judgment.

The Court states he does not have the opportunity to review the documents that were filed today and Mr. Wirthlin should not have to respond to the things filed today.

Mr. Wirthlin will address the matter as a Motion to Dismiss and a Motion for Summary Judgment.

Mr. Wirthlin states there are two contracts. Mr. Wirthlin states the content of the contracts is not in dispute.

Mr. Wirthlin seeks to clarify Proimtu's status as a lien claimant. Mr. Wirthlin contends that whether or not a lien is determined to be valid is not the statutory definition of a lien claimant. Mr. Wirthlin presents the Court with a copy of the statute pertaining to the definition of a Lien Claimant.

Mr. Wirthlin reads the statutory definition of a lien claimant. Mr. Wirthlin argues that if you do more than \$500.00 worth of work then you are a lien claimant. Mr. Wirthlin argues that Proimtu is a valid lien claimant.

Mr. Wirthlin states the Order Expunging the lien is on Appeal. Mr. Wirthlin argues that the issue has not been totally decided.

Mr. Wirthlin cites the JD Construction case.

Mr. Wirthlin argues that Proimtu is a valid lien claimant under the statutory definition. Mr. Wirthlin contends that whether or not the Nevada Supreme Court determines that Proimtu's lien is valid or not is not the issue.

Ms. Pinter objects to anything that is not contained in Mr. Wirthlin's Opposition.

The Court overrules Ms. Pinter and states that the documents given the Court by Mr. Wirthlin are simply copies of Nevada Revised Statutes.

Mr. Wirthlin provides the Court with a copy of NRS 108.2453. Mr. Wirthlin reads NRS 108.2453 section 2 subsection B, C and D. Mr. Wirthlin argues Nevada Statutes clearly state any provision that requires the litigation to take place in Spain is void. Mr. Wirthlin NRS 108.2543 makes the Forum Selection Clause void and unenforceable.

Mr. Wirthlin argues concerning the Order from the Court concerning the lien. Mr. Wirthlin states that Kevin Smith, the owner and CEO, knew that Proimtu was on the project. Mr. Wirthlin does not deny that Proimtu was a Spanish company but that they created a Nevada Entity so they are subject to Nevada law.

The Court directs Mr. Wirthlin to address the issue in regard to the claims that Proimtu has in its complaint that fall outside the Forum Selection Clause and the contract. The Court refers to sections 34 and 35 of the Contract. The Court states 34 and 35 talk about arbitration. The Court asks Mr. Wirthlin if they are claiming something outside the scope of the arbitration clause.

Mr. Wirthlin offers to file a supplemental brief that addresses the issues that are outside of the scope. Mr. Wirthlin states there are some claims outside the scope like Unjust Enrichment.

Mr. Wirthlin argues the motions should be denied for several reasons. Mr. Wirthlin cites NRS 108.2543 and states Proimtu fits within the public policy exception. Mr. Wirthlin states Proimtu fits within the policy that states parties go out to a project and do \$500.00 worth of work fit within the exception.

4. In the Order from the Court
stating the owner and CEO,
Kevin Smith, the owner and CEO,
knows that Proimtu's
claim is outside the scope.

Mr. Wirthlin argues that the project is not a Federal project. Mr. Wirthlin states statute 624 applies to Federally funded project. Mr. Wirthlin contends that this project is Federally guaranteed not Federally funded.

Mr. Wirthlin speaks to the arbitration provision. Mr. Wirthlin refers to Mr. Gonzalez's affidavit stating that it makes clear that Proimtu did not understand that the Forum Selection Clause was mandatory.

Mr. Wirthlin states the contract says that if the case was filed in Spain then the right to another jurisdiction was waived by the Forum Selection Clause. Mr. Wirthlin argues that in order for the arbitration to be held in Spain the defendant's would have had to of filed in Spain.

Mr. Wirthlin disputes that all payments were made in Spain.

Mr. Wirthlin states if the Court grants the motions, he would make an oral Motion to Stay.

Ms. Pintar offers rebuttal. Ms. Pintar states Proimtu does not have lien rights. Ms. Pintar states NRS 108 does not apply at this point.

Ms. Pintar argues that the Nevada State Contractor's Board stated that they did not have jurisdiction in the project because it is a Federal project.

Ms. Pintar states they had no choice but to bring an action in Nevada because they had to expunge the lien. Ms. Pintar states they have not subjected themselves to Nevada jurisdiction.

Ms. Pintar states whether all payments were made in Spain is not a material fact of this case.

Ms. DiMagio offers rebuttal. Ms. DiMagio points out that the claim against bond must be dismissed as a matter of law as there is no longer a lien or bond releasing the lien. Ms. DiMagio states that would release the surety from this case who is the Insurance Company of the State of Pennsylvania.

Ms. DiMagio submits that it is incredible that a corporation as large as Proimtu to state that they did not understand the Forum Selection Clause is an incredible statement.

Ms. DiMagio states all the arguments fall within the contract. Mr. DiMagio states these matters need to be litigated in Spain.

Ms. DiMagio states the only proper outcome is to enforce the Foreign Selection Clause for all three Spanish companies.

The Court grants the Motion for Summary Judgment and the Motion to Dismiss.

The Court states it is clear in the contract that this is a mandatory Forum Selection Clause. The Court finds that they are all Spanish companies and agreed to abide by Spanish law. The Court sees no irreparable harm to Proimtu to go to the Spanish Courts. The Court states the equitable claim of unjust enrichment should not get separated from the contractual claims. The Court does not find any undue burden in litigating the disputes in Spain. The Court states the bottom line is these are Spanish companies and quite capable of litigating these disputes in Spain.

The Court finds that at this point Proimtu is not a lien claimant and does not have a proper standing to a claim under NRS 108.2543.

The Court directs that an appropriate Finding of Facts and Conclusion of Law be prepared by the prevailing parties.

Mr. Pintar presents the Court with two orders from the last hearing for the Court to sign. Ms. Pintar presents the Court with the Order to Grant Attorney's Fees and the Order Denying the Motion for Emergency Stay. The Court signs the orders.

Mr. Wirthlin asks for clarification on his oral Motion to Stay. Mr. Wirthlin asks for a Motion to Stay. Mr. Wirthlin asks that the Motion for Summary Judgment and Motion to Dismiss be stayed pending the outcome of the appeal regarding the Lien Expungement.

Ms. Pintar asks what purpose a stay would have.

Mr. Wirthlin explains his reason for stay.

The Court right now would not be willing to grant the stay. The Court suggest Mr. Wirthlin could write up the Motion for Stay for further consideration of the Court.

CERTIFICATION OF COPY

**STATE OF NEVADA
COUNTY OF NYE**

I, **SANDRA L. MERLINO**, the duly elected, qualifying and acting Clerk of Nye County, in the State of Nevada, and Ex-Officio Clerk of the District Court, do hereby certify that the foregoing is a true, full and correct copy of the original:

PROIMTU MMI LLC,)	
Appellant,)	
)	
VS)	
)	
TRP INTERNATIONAL, INC., et al.)	
Respondent.)	
_____)	DC Case # CV36747

now on file and of record in this office.

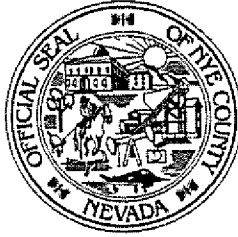
IN WITNESS THEREOF, I have hereunto set my hand and affixed The Seal of the Court at my office, Pahrump, Nevada, this 30th day of March, 2016 A.D.

SANDRA L. MERLINO, CLERK

By: _____

Tanner Davis, Deputy

**OFFICE OF THE NYE COUNTY CLERK
SANDRA L. MERLINO**



Tonopah Office
Nye County Courthouse
P.O. Box 1031
101 Radar Road
Tonopah, Nevada 89049
Phone (775) 482-8127
Fax (775) 482-8133

Pahrump Office
Government Complex
1520 East Basin Avenue
Pahrump, Nevada 89060
Phone (775) 751-7040
Fax (775) 751-7047

March 30, 2016

NOTICE OF DEFICIENCY: Supreme Court filing fee was not collected at the Time the appeal was filed.

VIA E-FILE

Ms. Tracie Lindeman
Supreme Court Clerk
201 South Carson Street, #201
Carson City, NV 89701-4702

Re: CV36747
PROIMTU MMI LLC, Appellant, v. TRP INTERNATIONAL, INC., et al.,
Respondent.

Dear Ms. Lindeman:


Enclosed please find the Notice of Appeal and supporting documentation in the above referenced case.

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

Sincerely,

SANDRA L. MERLINO
NYE COUNTY CLERK

By:


Tanner Davis, Deputy