

No. 74876

IN THE SUPREME COURT OF THE STATE OF NEVADA

WASTE MANAGEMENT OF NEVADA, INC.

Appellant,

vs.

WEST TAYLOR STREET, LLC,

Respondent.

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Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Second Judicial District Court, The Honorable
Connie J. Steinheimer (Case No. CV12-02995)

RESPONSE TO AMICUS CURIAE BRIEF

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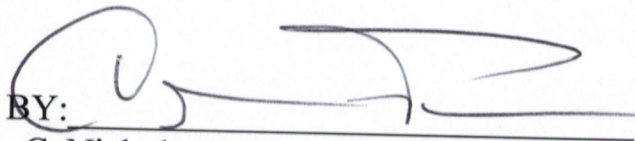
I. NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the justices of this Court may evaluate possible disqualifications or recusal.

Respondent West Taylor Street, LLC is a Limited Liability Company.

The undersigned counsel C. NICHOLAS PEREOS, LTD. appears in these proceeding on behalf of West Taylor Street, LLC.

DATED this 4th day of October, 2018

BY: 

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IV. BACKGROUND

The exclusive franchise agreement with Waste Management of Nevada, Inc. (to be referred to as WM) via Reno Disposal Company, Inc. (Volume I, Joint Appendix 0184) has language that permits Waste Management to terminate service. WM has exercised this right to stop service when it “claims” that a customer has not paid fees and money due WM and the City of Reno has done nothing to address these issues. (Facts known to the undersigned) The customer has no recourse under the terms of this franchise agreement. The problem is compounded in that the City of Reno has no ordinances that address dispute resolutions (https://library.municode.com/nv/reno_code). In other words, a customer of WM has no vehicle for recourse.

V. RESPONSE TO STATEMENT OF INTEREST

The glaring difference between WM and Republic is that Republic can not refuse to pick up the property owner’s waste if a property owner fails to pay

Republic. Republic claims that the decision of the District Court would “inevitably cause harm to Republic’s customers and to Republic’s ability to recover for the vital waste management services it provides” (Amicus Brief, page 3) but Republic fails to demonstrate the inevitable harm. What language in the District Court’s decision takes away the lien rights of Republic?

VI. ARGUMENT

PREAMBLE

Republic fails to demonstrate how the District Court’s ruling is inconsistent with the language of the statute. Republic fails to demonstrate how the ruling of the District Court that parallels the foreclosure of the mechanics lien with the foreclosure of garbage lien is harmful to Republic or takes away any legal rights of Republic. In fact, the opinion of the District Court is to provide a “constitutionally sound reading of NRS 444.520”.

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A. Well Settled Principles of Statutory Interpretation

Republic recites four well settled principles of statutory interpretation in connection with construing NRS 444.520. First, Republic argues that any statutory interpretation must give meaning to all parts and language of the statute. Second the statute is to be construed as a whole. The District Court did that! Third, the statute is to be interpreted in harmony with other statutes. What other statutes or laws exist that are not in harmony with the decision? Fourth, the interpretation should avoid an absurd result. The District Court sought to address the issues of “due process”.

B. NRS 444.520 Requires Compliance with the Mechanic Lien Statutes Given the Language in the Statutes

Republic argues that WM is not permitted to refuse pick up of garbage by reason of health issues”. This argument fails for several reasons. First, it is not consistent with the language of the franchise agreement and its practices and

procedures. It is not consistent with the City of Reno codes. Second, NRS 444.520 (3) does not discuss "collection" of money. If there was a procedural mechanism for collection, there would be an opportunity for the property owner to dispute the legitimacy of the lien.

C. Legislature Enabled Municipalities to Implement Ordinances

Republic argues that the District Court should not invade the province of the Legislature that enabled Municipalities to address these issues. What happens if your Municipality does not address the issue?

D. Time Requirements for Lien

Republic complains the decision posts a time requirement in connection with the lien. Republic seems to argue that the District Court's decision that there is a limitation period for the recording of the lien. This is not consistent with the decision of the District Court wherein the District Court observed "after that time has lapsed the lien will last in perpetuity". In other words, WM may not be able to

foreclose under Chapter 108 of NRS but the lien is still on the property. WM can pursue other methods of collection of its lien but no priority of lien as dictated under Chapter 108. There is nothing in the decision of the District Court that takes away the lien rights of WM. There may be issues regarding priority of the lien when there is no compliance with Chapter 108. Suggestion by Republic that the decision of the District Court goes contrary to NRS 444.520 is not consistent with the decision. Why should WM have a lien in perpetuity to date of recording without opportunity to be heard by property owner until the lawsuit filed years later?

If WM wants to use the vehicle in Chapter 108 to foreclose the lien and the priority of the lien, the Court is telling WM they must comply with the mandated time requirement for the placement of the lien. Republic would have the Court accept the proposition that WM can record a lien for delinquent garbage fees even after the property has been sold and the new owner has no constructive notice of

the lien. NRS 111.315; NRS 111.320; NRS 111.325. Republic argues that the statutes of NRS 108.226 can not apply to garbage lien on property because it is outside the definition of a “work of improvement” (Page 20 of Amicus Brief). Any suggestion by Republic that picking up garbage does not benefit the property or is an “improvement” defies logic. The debt does not become delinquent until the quarter following nonpayment delinquency of the last quarter and is not tied to the date of the garbage pickup! What should be the priority for the lien if WM waits? The failure to comply with Chapter 108 takes away the priority status of the lien. Nowhere in the findings of the District Court does it prohibit the pursuit of a lawsuit to collect on a lien. If you are going to address the issue of priority of the lien which is not addressed in the statute, the District Court’s decision requiring compliance with Chapter 108 is sound.

When reading the statute as it appears, there is a clear vacuum in connection with enforcement of the perpetual lien. There is a vacuum with regard with the

“due process” provisions that would give a property owner an opportunity to dispute the legitimacy of the lien. Republic can not clean that up! It is left to the Court to resolve those issues.

VII. CONCLUSION

If this Court wants to reconcile the concept of a perpetual lien with the concept of no time limitation, Respondent submits that if Republic wants a lien priority from the date of the recording of the lien, Chapter 108 applies.

VIII. CERTIFICATE OF COMPLIANCE

PURSUANT TO RULE 28.2 AND ORDER GRANTED

1. I hereby certify that this brief complies with the formatting requirement of NRAP 32 (a)(4), the typeface requirements of NRAP 32 (a)(5) and the type style requirements of NRAP 32 (a)(6) because:

This brief has been prepared in a proportionally spaced typeface using WordPerfect in 14 font and Times New Roman type.

2. I further certify that this brief complies with the page- or type-volume limitations of the Order filed September 13, 2018 because, excluding the parts of the brief exempted by NRAP 32 (a)(7)(c), it does not exceed 2,295 words.

3. Finally, I certify that I have read this appellate brief, and the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28 (e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found, I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

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DATED this 4th day of October, 2018

BY: 

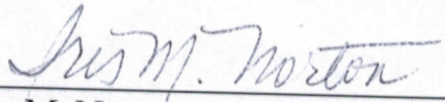
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IX. CERTIFICATE OF SERVICE

PURSUANT TO NEVADA RULES OF APPELLATE PROCEDURE, I certify that I am an employee of C. NICHOLAS PEREOS, LTD., and that on the date listed below, I caused to be served a true copy of the RESPONSE TO AMICUS CURIAE BREF on all parties to this action by electronically filing the foregoing with the Clerk of the Court by using the Supreme Court Electron Filing System which served the following parties electronically:

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DATED this 4th of October, 2018


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