

FILED

NO. \_\_\_\_\_

Case No. 02-CV-0156

Dept. No. II

RECEIVED

2003 JUN -5 PM 1:32

JUN 15 2003

BARBARA REED  
CLERK

BY **B. PHENIX**

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

DOUG DEES CONSTRUCTION, INC.,

Plaintiff,

vs.

ORDER

CENTRAL SIERRA CONSTRUCTION INC.,  
ROMAN CATHOLIC BISHOP OF RENO,  
DOES 1-10, and CORPORATIONS A-Z,  
inclusive,

Defendants.

THIS MATTER comes before the court upon Defendant Roman Catholic Bishop of Reno and His Successors, a Corporation Sole, dba St. Gall Catholic Church (St. Gall Church) Motion for Order to Show Cause Why Lien Should not Be Released. Plaintiff Doug Dees Construction Inc. (Doug Dees) opposes the motion.

The court, having reviewed the pleadings and relevant documents herein, and good cause appearing therefor, hereby GRANTS St. Gall Church's Motion.

FACTS

In May 2000, St. Gall Church entered into a contract with Defendant Central Sierra Construction, Inc. (Central Sierra). The latter was in the process of building an addition to the

1 church property located at 1343 Centerville Lane, Gardnerville,  
2 Nevada. In a subcontract dated May 22, 2000, Central Sierra  
3 retained Doug Dees as a subcontractor to supply labor and  
4 materials necessary to complete site grading and underground  
5 utilities.

6 St. Gall Church asserts that Doug Dees began work on its  
7 portion of the job on June 14, 2000, and performed no labor or  
8 delivered no materials therefor after January 18, 2001.  
9 According to St. Gall Church, the project was completed on June  
10 27, 2001. On that date, Central Sierra recorded a Notice of  
11 Completion; a Temporary Certificate of Occupancy was obtained  
12 on June 22, 2001; a second Temporary Certificate was issued on  
13 July 13, 2001. St. Gall Church sought issuance of the Final  
14 Certificate of Occupancy on October 25, 2001. In the interim,  
15 the church was involved in completing landscaping that was not  
16 part of the contract with Central Sierra.

17  
18 On May 30, 2002, Doug Dees filed a Complaint to Foreclose  
19 Mechanic's Lien and Other Relief, naming Central Sierra and St.  
20 Gall Church as defendants. St. Gall Church now moves the court  
21 for an Order to Show Cause Why Lien Should Not Be Released.

22 ANALYSIS

23 NRS 108.226(1) provides that a lien must be recorded  
24 within 90 days after completion of the work of improvement,  
25 which includes occupation or use of a building or improvement  
26 by the owner, accompanied by cessation of labor on the project.  
27 NRS 108.226(3). It also includes recording a notice of  
28

1 completion. NRS 108.226(3)(d). The statutes in question do  
2 not mention Certificates of Occupancy. However, Doug Dees  
3 implies that a Certificate of Occupancy is tantamount to giving  
4 notice of completion. In the instant case, however, the  
5 Temporary Certificates of Occupancy clearly indicated that the  
6 work left to be performed was landscaping. The landscaping was  
7 the subject of a distinct contract. Moreover, Central Sierra  
8 had filed its Notice of Completion on June 27, 2001. Doug  
9 Dees filed its lien 150 days after the completion of work of  
10 improvement, arguing that it was misled by St. Gall Church's  
11 filing of Temporary Certificates of Occupancy. The court finds  
12 no such deception; the landscaping work arose out of a  
13 different contract. The work to be done was not pursuant to a  
14 continuing contract between St. Gall Church and Doug Dees.

15  
16 Ongoing maintenance and repair, once the work of  
17 improvement is complete, do not extend the contract work. In  
18 *Re Payless Cashways, Inc.*, 230 B.R. 120, 130 (1999).

19 The court concurs in St. Gall Church's contention that the  
20 information provided by the Douglas County Building Department  
21 was sufficient to impart notice to Doug Dees that the contract  
22 with Central Sierra was complete. NRS 108.226(3) indicates  
23 that the time in which a contractor may record a lien begins to  
24 run upon the filing of a notice of completion or when the owner  
25 begins to occupy the improvement coupled with a cessation of  
26 labor. Doug Dees did not do this.

27  
28 ----

0581799

BK0603PG16102

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

As there is no basis for a continuing contract theory, the court, pursuant to NRS 108.2275, hereby GRANTS St. Gall Church's Motion and directs that the lien be released. The court, however, does not find that the lien filing by Doug Dees was frivolous or excessive, within the meaning of NRS 108.2275, and therefore denies the award of attorney fees.

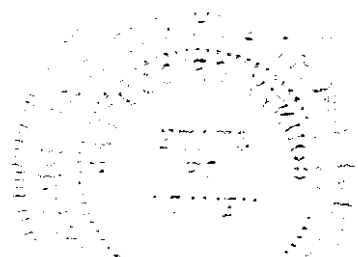
IT IS SO ORDERED.

Dated this 5 day of June, 2003.

*David G. Carle, Jr.*  
MICHAEL P. GIBBONS  
District Judge

Copies served by mail this 5<sup>th</sup> day of June, 2003, to:  
Phillip L. Kreitlein, Esq., 555 S. Center Street, Reno, NV 89501; Sean L. Brohawn, Esq., 327 California Avenue, Reno, NV 89509; Michael L. Matuska, Esq., 1590 Fourth Street, Minden, NV 89423; Newel B. Knight, Esq., 401 Ryland Street, Suite 330, Reno, NV 89509; Sharon M. Parker, Esq., and Richard O. Kwapil, Esq., 6100 Neil Road, Suite 500, Reno, NV 89505.

*Ursula K. McManus*  
Ursula K. McManus



0581799

**CERTIFIED COPY**

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

DATE: June 27 2003

Clerk of the 9th Judicial District Court  
of the State of Nevada, In and for the County of Douglas,

By [Signature] Deputy

REQUESTED BY  
Don L Ross Esq  
IN OFFICIAL RECORDS OF  
DOUGLAS CO. NEVADA

2003 JUN 27 PM 4: 24

WERNER CHRISTEN  
RECORDER

18<sup>00</sup> PAID KA DEPUTY

SEAL

0581799

BK0603PG16104