

118 Nev. 124
Supreme Court of Nevada.

VENETIAN CASINO RESORT, LLC; [Grand Canal Shops Mall Construction, LLC](#); and Frontier Insurance Company, Petitioners,

v.

The EIGHTH JUDICIAL DISTRICT COURT
OF the STATE of Nevada, in and for the
COUNTY OF CLARK, and the Honorable
James A. Brennan, Senior Judge, Respondents,

and

Lehrer McGovern Bovis, Inc.; Herrick Corporation; [Harris/Arizona Rebar, Inc.](#); Choice Electric; Eberhard/Southwest Roofing, Inc.; and TRM Corporation d/b/a Superior Tile Company, Real Parties in Interest.



No. 37527. | Feb. 27, 2002.

Subcontractors filed legal action to foreclose on mechanic's liens and requested preferential lien hearings. The District Court, Clark County, [James A. Brennan](#), Senior Judge, referred hearings to special master. Owner, construction company, and insurance company sought writ of mandamus. The Supreme Court held that: (1) appointment of a special master to hold preferential lien hearings was justified; (2) special master could not be delegated the authority to determine validity of claims; (3) owner had waived objection to special master's participation on conflict of interest grounds; and (4) special master was not disqualified on ground that her law firm represented parties that had indirect interest in outcome of foreclosure litigation.

Writ granted in part and denied in part.

[Agosti, J.](#), filed a dissenting opinion.

West Headnotes (13)

- [1] **Reference**
 [Examination of Account or Numerous Items](#)
Reference
 [Defects and errors](#)

327 Reference
 327I Nature, Grounds, and Order of Reference
 327k5 Compulsory Reference for Trial of Issues
 327k8 Examination of Account or Numerous Items
 327k8(1) In general
 327 Reference
 327III Report and Findings
 327k84 Findings of Fact and Conclusions of Law
 327k91 Defects and errors

Where matters of account are involved, referral to a special master is only warranted if the matters are beyond the competence of a court, i.e., the matters are not simple, would reach substantial proportions, or would consume an inordinate amount of judicial resources.


[1 Cases that cite this headnote](#)

- [2] **Reference**
 [Matters subject to reference in general](#)

327 Reference
 327I Nature, Grounds, and Order of Reference
 327k3 Matters subject to reference in general
 In all cases, referral to a special master is only warranted when it is necessary, not merely when it is desirable.

[1 Cases that cite this headnote](#)

- [3] **Reference**
 [Numerous items, but only one issue](#)


Reference
 [Difficult questions of law](#)
 327 Reference
 327I Nature, Grounds, and Order of Reference
 327k5 Compulsory Reference for Trial of Issues
 327k8 Examination of Account or Numerous Items
 327k8(5) Numerous items, but only one issue
 327 Reference
 327I Nature, Grounds, and Order of Reference
 327k5 Compulsory Reference for Trial of Issues
 327k9 Difficult questions of law

Trial court's appointment of a special master to hold preferential lien hearings in subcontractors' actions to foreclose on mechanic's liens was justified, as underlying litigation involved matters of account that would reach substantial proportions and would potentially consume

an inordinate amount of judicial resources; underlying litigation involved more than 100 potential claimants, each of which was entitled to request a preferential lien hearing, those hearings could be lengthy and complicated, and one hearing had already involved four days of testimony, 80 exhibits, and an amount claimed in excess of one million dollars. *N.R.S. 108.239*, subd. 5, 108.2421; *Rules Civ.Proc., Rule 53*.

[1 Cases that cite this headnote](#)

[4] Reference

 [Nature and scope of authority in general](#)

327 Reference

327II Referees and Proceedings

327k47 Nature and scope of authority in general

Special masters may only exercise limited authority.

[Cases that cite this headnote](#)

[5] Mechanics' Liens

 [Reference](#)

257 Mechanics' Liens

257XI Enforcement

257k285 Reference

The trial court, not the special master, is primarily responsible for determining the rights of the parties in mechanic's lien foreclosure proceedings. *N.R.S. 108.239*, subd. 5.

[Cases that cite this headnote](#)

[6] Mechanics' Liens

 [Reference](#)

257 Mechanics' Liens

257XI Enforcement

257k285 Reference

In mechanic's lien foreclosure proceedings, special master could not be delegated the authority to preside over preferential lien hearings in their entirety and determine not only the amounts of the claims, but also their validity; trial court was responsible for determining the respective rights of the parties, which included determining validity of the liens. *N.R.S. 108.239*, subd. 5.

[Cases that cite this headnote](#)

[7] Mechanics' Liens

 [Reference](#)

257 Mechanics' Liens


257XI Enforcement

257k285 Reference

Owner waived its right to object to special master's authority as to preferential lien hearings she had already conducted, although trial court's broad delegation of authority to her to determine validity of mechanic's liens was impermissible, where owner waited until special master had conducted several hearings, eight months from time of her appointment and seven months from time trial court referred hearings to her, before filing its motion to vacate her appointment.

[Cases that cite this headnote](#)

[8] Reference

 [Objections and exceptions to order](#)

327 Reference

327I Nature, Grounds, and Order of Reference

327k34 Objections and exceptions to order

A party who wishes to object to the appointment of a special master must do so at the time of appointment, or within a reasonable time thereafter, or else its objection is waived.

[1 Cases that cite this headnote](#)

[9] Mechanics' Liens

 [Reference](#)

257 Mechanics' Liens

257XI Enforcement

257k285 Reference

Owner had, for those preferential lien hearings already conducted in mechanic's lien foreclosure proceedings, waived its ability to object to special master's participation on conflict of interest grounds, where owner was aware of allegedly disqualifying relationships from time of her appointment, or soon thereafter, but failed to object until after she had issued several recommendations.

[Cases that cite this headnote](#)

[10] Reference

 [Objections and exceptions to order](#)

327 Reference

327I Nature, Grounds, and Order of Reference

327k34 Objections and exceptions to order

If a party has constructive or actual knowledge of potentially disqualifying circumstances, but fails to object within a reasonable amount of time, the objection to a special master on conflict of interest ground is waived.

[1 Cases that cite this headnote](#)

[11] Reference

 [Eligibility and qualifications](#)

327 Reference

327II Referees and Proceedings

327k37 Eligibility and qualifications

Because special masters are frequently attorneys, accommodation regarding conflicts of interest is required to account for the likelihood that special masters will be engaged as advocates in matters other than those in which they serve as special masters.

[Cases that cite this headnote](#)

[12] Reference

 [Eligibility and qualifications](#)

327 Reference

327II Referees and Proceedings

327k37 Eligibility and qualifications

Special master presiding over preferential lien hearings was not disqualified on the ground that law firm for which she worked represented four parties that had an indirect interest in outcome of underlying mechanic's lien foreclosure litigation; only one alleged conflict could affect all hearings, law firm agreed to discontinue further representation of that party, remaining alleged conflicts were case specific, and owner could raise specific conflicts regarding future lien claimants with trial court at appropriate time.

[Cases that cite this headnote](#)

[13] Reference

 [Hearing and determination](#)

327 Reference

327III Report and Findings

327k100 Objections and Exceptions, and Hearing Thereof in General

327k100(6) Hearing and determination

The clearly erroneous standard applies only to the trial court's review of a special master's findings of fact; conclusions of law, on the other hand, require de novo review by the trial court.

[1 Cases that cite this headnote](#)

Attorneys and Law Firms

****328 *125** Hale Lane Peek Dennison Howard & Anderson, [Lance C. Earl](#), [Patrick J. Reilly](#), Las Vegas, Lionel Sawyer & Collins, [David N. Frederick](#), [Todd E. Kennedy](#), Las Vegas, for petitioners.

Dixon & Truman, Las Vegas, Harrison Kemp & Jones, Chtd., Las Vegas, Griffin Cochrane & Marshall, [Jennifer W. Fletcher](#), Atlanta, Georgia, for Real Party in Interest Lehrer McGovern Bovis, Inc.

[J. Timothy Bak](#), Las Vegas, Law Offices of Tommy A. Conner, San Francisco, California, for Real Party in Interest TRM Corp. d/b/a Superior Tile.

Peel, Brimley, Spangler & Brown, Henderson, Monteleone & McCrory, LLP, [Joseph A. Miller](#), Los Angeles, California, for Real Party in Interest Herrick Corp.

Peel, Brimley, Spangler & Brown, Henderson, for Real Parties in Interest Harris/Arizona Rebar, Choice Electric, Eberhard Southwest Roofing.

***127** BEFORE THE COURT EN BANC. ¹

OPINION

PER CURIAM.

Petitioner, Venetian Casino Resort, retained real party in interest Lehrer McGovern Bovis, Inc. (LMB), to construct the Venetian Casino Hotel and Resort. LMB ****329** contracted

with several trade contractors that, in turn, contracted with various vendors and subcontractors, resulting in more than 100 subcontractors being retained in several tiers below LMB to construct the Venetian Casino Hotel & Resort. During construction, disputes arose as to the amounts due under the contracts. The various contractors filed mechanic's liens against the property and soon thereafter instituted legal action to foreclose on their liens. Because Venetian had posted surety bonds to clear title to the property, the lien claimants requested preferential lien hearings pursuant to [NRS 108.2421](#). Senior District Judge James A. Brennan referred the preferential lien hearings to Special Master Erika Pike Turner. Turner has since presided over and issued reports for at least four preferential lien hearings.

Venetian, Grand Canal Shops Mall Construction, LLC, and Frontier Insurance Company, hereinafter collectively referred to as Venetian, request extraordinary relief and seek to vacate the appointment of Special Master Turner and the referral to her of the preferential lien hearings. Venetian avers that the referral is improper in terms of both justification and scope, and that Turner is disqualified from the role of special master because her law firm represents four parties that are indirectly related to the Venetian litigation.

DISCUSSION

The district court's appointment of a special master was appropriate in this case, but the district court's delegation of authority to the special master was too broad. In addition, we conclude that Venetian has, thus far, waived its objections to Special Master *128 Turner's participation in the preferential lien hearings on conflict of interest grounds. We hold that Turner may continue to preside over the preferential lien hearings in which she has no conflict of interest, consistent with the limits of authority set forth in this opinion.

The appointment of a special master

[1] [2] We deny, in part, Venetian's request for writ relief because the district court's appointment of a special master in this case was properly justified. In actions not before a jury, [NRCF 53\(b\)](#) authorizes referral to a special master for "matters of account and of difficult computation of damages" or "upon a showing that some exceptional condition requires it." Referral to a special master for lien foreclosure actions is specifically authorized by [NRS 108.239\(5\)](#). Where matters

of account are involved, referral to a special master is only warranted if the matters are "beyond the competence of a court,"² *i.e.*, the matters are not simple, would reach substantial proportions, or would consume an inordinate amount of judicial resources.³ In all cases, referral to a special master is only warranted when it is necessary, not merely when it is desirable.⁴

[3] Judge Brennan's order of reference to Special Master Turner simply states that "[d]ue to anticipated congestion of proceedings in the instant case, it appears necessary to appoint a Hearing Master." Although no further justification for the reference is provided, looking at the record, as a whole, it is clear that the underlying litigation involves matters of account that would reach substantial proportions and would potentially consume an inordinate amount of judicial resources. The underlying litigation involves more than 100 potential claimants, each of which is entitled to request a preferential lien hearing pursuant to [NRS 108.2421](#). These hearings may be lengthy and complicated. One of the hearings conducted thus far involved four days of testimony, eighty exhibits, and an amount claimed in excess of one million dollars. Therefore, the district court's appointment of a special master was authorized by [NRCF 53](#) and [NRS 108.239](#).

The scope of Special Master Turner's authority.

[4] [5] We grant, in part, Venetian's petition for a writ of mandamus *129 because the **330 district court, by referring the preferential lien hearings in their entirety to Special Master Turner, has conferred too much authority to the special master. Special masters may only exercise limited authority. This court has explained that "[m]asters are appointed 'to aid judges in the performance of specific judicial duties, as they may arise in the progress of a cause,' and not to place the trial judge into a position of a reviewing court."⁵ The role a special master may play in lien foreclosure proceedings is specifically limited by [NRS 108.239\(5\)](#) to ascertaining and reporting upon the "liens and the amount justly due thereon." The district court, not the special master, is primarily responsible for determining the rights of the parties.⁶

[6] Here, Special Master Turner was given the authority to preside over the preferential lien hearings in their entirety and has determined not only the amounts of the claims, but also their validity. The original order of appointment made the following delegation:

The Special Master is hereby vested with all the authority that a Special Master has under the Nevada Rules of Civil Procedure and The Rules of Practice for the Eighth Judicial District Court (“EDCR”). However, the Special Master is limited to the hearing of matters expressly conferred upon her by this Court.

The district court subsequently referred authority over the preferential lien hearings, with no limitation, to the special master.⁷

After Special Master Turner conducted several hearings, the district court issued an order to clarify her role as special master. *130 Although the district court claims that the preferential lien hearings are primarily aimed at determining the amount due under the contracts, the referral order states that, “[a]ssuming the defendants in the preferential lien hearings raise defenses involving the validity of the liens themselves the Special Master shall also have to make recommendations or ‘report upon’ the validity of the liens.” The district court, on other occasions, has confirmed that the special master will hear and make recommendations regarding the validity of the liens.

This broad delegation of authority to Special Master Turner to determine the validity of the liens is impermissible. The special master's role must, under [NRS 108.239\(5\)](#), be limited to determining the amount of the claims due, not their validity. The district court is responsible for determining the respective rights of the parties, which, in this case, includes determining the validity of the liens.

[7] [8] Venetian has, however, waived its right to object to Special Master Turner's authority as to those hearings she has already conducted. A party who wishes to object to the appointment of a special master must do so at the time of appointment, or within a reasonable time thereafter, or else its objection is waived.⁸ Venetian waited until Special Master Turner had conducted several preferential lien hearings, and eight **331 months from the time of her appointment, and seven months from the time the district court referred the preferential lien hearings to her, before filing its motion to vacate her appointment. Venetian has, therefore, waived its right to object to the special master's role as to those hearings she has already conducted.

Special Master Turner's alleged conflict of interest

[9] [10] Venetian has, for those hearings already conducted, likewise, waived its ability to object to Special Master Turner's participation on conflict of interest grounds. If a party has constructive or actual knowledge of potentially disqualifying circumstances, but fails to object within a reasonable amount of time, the objection is waived.⁹ Venetian was aware of the allegedly disqualifying relationships *131 from the time of Special Master Turner's appointment, or soon thereafter, but failed to object until after she had issued several recommendations.¹⁰ Therefore, as to the hearings already conducted, Venetian has waived its right to object to Special Master Turner's alleged conflicts of interest.

[11] In addition, the conflicts of interest alleged by Venetian do not rise to such a level so as to require Special Master Turner to recuse herself from the underlying litigation. Canon 3E(1) of the NCJC states, in relevant part:

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

....

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter....

The NCJC expressly applies to special masters.¹¹ However, because special masters are frequently attorneys, accommodation is required to account for the likelihood that special masters will be engaged as advocates in matters other than those in which they serve as special masters.¹²

[12] The conflicts alleged by Venetian involve parties that are represented by Gordon and Silver, the law firm for which Turner works. These parties have only an indirect interest in the outcome of the underlying litigation. In addition, only one of the conflicts Venetian alleged would, if it were in fact a conflict, affect all of the preferential lien hearings. Gordon and Silver has agreed to discontinue further representation of this party. The remaining alleged conflicts are case specific, as they relate to some of the individual lien claimants, not to Venetian. Special Master Turner may, therefore, within

the limits set forth in this opinion, preside over further lien hearings in the Venetian litigation. If Venetian believes there is some conflict of interest as to some future lien *132 claimant, it may raise it with the district court at the appropriate time.

The district court's review of the special master's findings

[13] Judge Brennan appears to have incorrectly reviewed Special Master Turner's recommendations using a clearly erroneous standard.¹³ The clearly erroneous standard **332 applies only to the district court's review of a special master's findings of fact; conclusions of law, on the other hand, require de novo review by the district court.¹⁴ Thus, the district court manifestly abused its discretion in applying the incorrect standard of review.

CONCLUSION

For the foregoing reasons, we deny the petition to the extent that it challenges the district court's decision to refer the lien foreclosure proceedings to Special Master Turner. Additionally, we deny the petition to the extent that it challenges Special Master Turner on conflict of interest grounds, as petitioners have waived, with regard to

the hearings already conducted, any alleged conflict. We grant the petition with respect to the scope of the district court's referral order and its review of the special master's recommendations. By making too broad a referral to Special Master Turner, and by failing to apply the proper standard of review to her recommendations, the district court abused its discretion. We therefore direct the clerk of this court to issue a writ of mandamus¹⁵ compelling the district court to enter an order clarifying and limiting the scope of Special Master Turner's authority, consistent with this opinion, and to reevaluate the special master's recommendations using the proper standard of review.¹⁶

AGOSTI, J., dissenting.

I dissent. The district judge who appointed the special master was himself appointed to assist the district court with the burden of its civil caseload. Now, the specially appointed senior judge has in turn appointed a master to relieve him of the burden of his civil *133 caseload. This is certainly a misuse of resources. I believe the senior judge ought to handle this case himself.

Parallel Citations

41 P.3d 327

Footnotes

- 1 The Honorable A. William Maupin, Chief Justice, and the Honorable Myron E. Leavitt, Justice, voluntarily recused themselves from participation in the decision of this matter.
The Honorable Archie E. Blake, Judge of the Third Judicial District Court, was designated by the Governor to sit in place of the Honorable Cliff Young, Justice. [Nev. Const. art. 6, § 4.](#)
- 2 [Russell v. Thompson](#), 96 Nev. 830, 834, 619 P.2d 537, 540 (1980).
- 3 *Id.* at 835 n. 3, 619 P.2d at 540 n. 3.
- 4 *Id.* at 834, 619 P.2d at 540.
- 5 [Russell](#), 96 Nev. at 834, 619 P.2d at 539 (quoting *Ex parte Peterson*, 253 U.S. 300, 312, 40 S.Ct. 543, 64 L.Ed. 919 (1920)); *see also La Buy v. Howes Leather Co.*, 352 U.S. 249, 256, 77 S.Ct. 309, 1 L.Ed.2d 290 (1957).
- 6 NRS 108.239(5) states, in pertinent part:
The court shall enter judgment according to the right of the parties, and shall, by decree, proceed to hear and determine the claims in a summary way, or may, if it be the district court, refer the claims to a master to ascertain and report upon the liens and the amount justly due thereon.
- 7 The Order of Reference states only that the statement of claims filed by the parties, shall include, *but is not limited to*:
(a) The amount claimed as due under the terms of lien claimant's contract, including a breakdown of costs for labor and materials claimed by the lien claimant;
(b) The costs associated with preparing and filing the lien claim and estimated costs related to preparing for the preferential hearing; and,
(c) Attorney's fees incurred preparing the lien and representing the lien claimant to date as well as estimated attorney's fees incurred for representation of the lien claimant in the preferential hearing.

(Emphasis added; citations omitted.)

- 8 *Burlington Northern v. Department of Revenue*, 934 F.2d 1064, 1069 (9th Cir.1991); *Adriana Intern. Corp. v. Thoeren*, 913 F.2d 1406, 1410 (9th Cir.1990); *Spaulding v. University of Washington*, 740 F.2d 686, 695 (9th Cir.1984).
- 9 See *Las Vegas Downtown Redev. Agency v. Hecht*, 113 Nev. 644, 651, 940 P.2d 134, 139 (1997); *Ainsworth v. Combined Ins. Co.*, 105 Nev. 237, 260, 774 P.2d 1003, 1019 (1989); *Jacobson v. Manfredi*, 100 Nev. 226, 230, 679 P.2d 251, 254 (1984); see also *Preston v. U.S.*, 923 F.2d 731, 733 (9th Cir.1991).
- 10 See *Ainsworth*, 105 Nev. at 260, 774 P.2d at 1019 (“Well-reasoned authority supports a conclusion ... that counsel, knowing facts assertively supportive of a motion for ... recusal ... based upon charges of bias and impropriety, ‘may not lie in wait’ and raise those allegations in a motion ‘only after learning the court’s ruling on the merits.’ ” (quoting *Phillips v. Amoco Oil Co.*, 799 F.2d 1464, 1472 (11th Cir.1986))).
- 11 NCJC, Application, sec. A.
- 12 *Jenkins v. Sterlacci*, 849 F.2d 627, 630 n. 1, 632 (D.C.Cir.1988).
- 13 Although Judge Brennan alleged in one order that he has been using a de novo standard of review, all of his decisions to either reject or adopt the special master’s findings have, in fact, been stated in terms of a clearly erroneous standard.
- 14 See *Cosner v. Cosner*, 78 Nev. 242, 245, 371 P.2d 278, 279 (1962).
- 15 See NRS 34.160; see also *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 603–04, 637 P.2d 534, 536 (1981); *Russell v. Thompson*, 96 Nev. 830, 832–33, 619 P.2d 537, 538 (1980).
- 16 We also lift the partial stay we issued on May 9, 2001.

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