

# NEVADA SUPREME COURT RULING MEANS ADDITIONAL LIABILITY FOR OWNERS, CONTRACTORS AND SUBCONTRACTORS

In a decision that will affect owners, contractors and subcontractors, the Nevada Supreme Court, in *Cashman Equip. Co. v. W. Edna Assoc., Ltd.*, recently held that an unconditional release is void if the check does not clear the bank. The Court also held that equitable fault cannot be used to reduce a mechanic's lien.

In *Cashman*, a higher-tiered contractor (Mojave) was chosen to be the electrical subcontractor for the project. Mojave contracted with a middle-tiered contractor (Cam), who contracted with a lower-tiered contractor (Cashman) for specialty materials for the emergency standby power for the building. Cashman provided an unconditional release to Cam and Mojave. Mojave paid Cam for the labor and supplies that Cashman provided and the check cleared. However, the check that Cam provided to Cashman did not clear the bank, as the owner of Cam had taken off with the funds received from Mojave. The Court ruled that Nevada's public policy disfavored the enforcement of the unconditional release because the purpose of Nevada's mechanic's lien statutes is to ensure payment to those who supply materials and labor on the project. Enforcement of the unconditional waiver could potentially leave Cashman unpaid even though it fully performed according to its contract with Cam.

The Court also rejected the application of the equitable fault analysis to

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reduce a mechanic's lien. The trial court had initially found that Mojave and Cashman were innocent victims but found Mojave 33 percent responsible and Cashman 67 percent responsible for Cam's actions. Based on the percentages, the trial court reduced the mechanic's lien. On appeal, the Nevada Supreme Court concluded that equitable fault analysis was inappropriate to reduce the amount due under the mechanic's lien. Although Cashman did not have a contract with Mojave, the general contractor, or the owner, Cashman's work and materials benefited each of them. In reaching this conclusion, the Court acknowledged that this may require higher-tiered contractors to pay twice when a lower-tiered contractor takes a lien against a project. But, the Court explained, a higher-tiered contractor may protect itself under such circumstances by obtaining a security bond for the payments the middle-tiered contractor will make to the lower-tiered contractor.

Owners, contractors and subcontractors need to be aware that they may be liable for liens on a project even if proper contract payments were made. This is true even if an unconditional release has been received because lower-tiered contractors must actually receive payment for work that benefits the owners, contractors or subcontractors.