

SUPREME COURT OF NEVADA

Las Vegas Development Associates, LLC v. Eighth Judicial District Court

2014 NV 37 · No. 62512 · Decided May 29, 2014

SUMMARY

The Nevada Supreme Court denied a petition for a writ of prohibition or mandamus challenging an order compelling production of attorney-prepared memoranda and handwritten notes used by a witness to refresh his recollection before a deposition. The court held that NRS 50.125 applies to depositions as well as in-court hearings and requires production of writings used to refresh memory, even when protected by the attorney-client privilege or work-product doctrine. The court concluded that the district court properly ordered production of the unredacted memoranda.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Chief Justice Gibbons; Justice Hardesty; Justice Douglas; Justice Saitta
JURISDICTION	Nevada
DECIDED	May 29, 2014
DOCKET	62512
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Original petition for a writ of prohibition or mandamus challenging a district court order compelling production of purportedly privileged documents used by a witness to refresh his recollection before a deposition.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo, even in a writ proceeding. The district court's discovery ruling was reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Las Vegas Development Associates, LLC, Essex Real Estate Partners, LLC, Integrated Financial Associates, Inc., NexBank, SSB, Westchester CLO, Ltd., Gleneagles CLO, Ltd., Stratford CLO, Ltd., Greenbriar CLO, Ltd., Eastland CLO, Ltd., Brentwood CLO, Ltd.,

Jasper CLO, Ltd., Longhorn Credit Funding LLC, Grayson CLO, Ltd., Red River CLO, Ltd. v. Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, The Honorable Elizabeth Goff Gonzalez, The Honorable Mark R. Denton

TOPICS

discovery dispute attorney client privilege work product doctrine statutory interpretation civil procedure

PRACTICE AREAS

civil procedure evidence commercial litigation real estate

QUESTIONS PRESENTED

1. Whether KB Home laid a sufficient foundation to invoke NRS 50.125 for writings reviewed by Holman to refresh his recollection.
2. Whether NRS 50.125 requires disclosure of writings used to refresh a witness's recollection notwithstanding the attorney-client privilege and work-product doctrine.
3. Whether the term "hearing" in NRS 50.125 includes depositions and deposition testimony.
4. Whether the district court properly ordered production of the unredacted attorney-prepared memoranda.

HOLDINGS

1. KB Home established a sufficient foundation because it confirmed that Holman reviewed the memoranda, the purpose of reviewing them, and that the review refreshed his recollection.
2. NRS 50.125 operates as a waiver of attorney-client privilege and work-product protection when a witness uses a privileged writing to refresh recollection before or during testimony, requiring production, inspection, cross-examination, and use of relevant portions for impeachment.
3. NRS 50.125 applies to depositions and deposition testimony as well as to in-court hearings.

KEY QUOTATIONS

"Therefore, we conclude that when a witness uses a privileged document to refresh his or her recollection prior to giving testimony at a deposition, an adverse party is entitled to have the writing produced at the deposition pursuant to NRS 50.125." (at 12)

"We conclude that reviewing a document for the purpose of refreshing one's memory prior to or during testimony serves as a waiver to the attorney-client privilege and the work-product doctrine under NRS 50.125, allowing the adverse party to demand production of the document, inspect it, cross-examine the witness on the contents, and admit the document into evidence for the purpose of impeachment." (at 13)

FACTUAL BACKGROUND

The underlying action arose from a real-estate transaction dispute involving Las Vegas Development Associates and related entities and KB Home Nevada, Inc. During the deposition of Essex Real Estate Partners' principal,

George Holman, Holman acknowledged that he had reviewed two attorney-prepared memoranda and handwritten notes to refresh his recollection and prepare for the deposition. He refused to disclose the documents, asserting attorney-client privilege and work-product protection, but the district court ordered production of the unredacted memoranda under NRS 50.125.

PROCEDURAL HISTORY

During discovery in an underlying real-estate dispute, KB Home deposed George Holman, who testified that he had reviewed attorney-prepared memoranda and handwritten notes to refresh his recollection before and during the deposition. The district court granted KB Home's motion to compel production, and after review by the discovery commissioner, adopted the recommendation requiring production of the unredacted memoranda. The petitioners sought extraordinary writ relief from the Nevada Supreme Court, which denied the petition.

DISPOSITION

writ_denied

CASES CITED

- Las Vegas Sands Corp. v. Eighth Judicial District Court, 130 Nev., 319 P.3d 618 (2014)
- Wardleigh v. Second Judicial District Court, 111 Nev. 345, 891 P.2d 1180 (1995)
- Valley Health Systems, L.L.C. v. Eighth Judicial District Court, 127 Nev., 252 P.3d 676 (2011)
- International Game Technology, Inc. v. Second Judicial District Court, 124 Nev. 193, 179 P.3d 556 (2008)
- Leven v. Frey, 123 Nev. 399, 168 P.3d 712 (2007)
- Great Basin Water Network v. Taylor, 126 Nev. 187, 234 P.3d 912 (2010)
- Sipsas v. State, 102 Nev. 119, 716 P.2d 231 (1986)
- Chanos v. Nevada Tax Commission, 124 Nev. 232, 181 P.3d 675 (2008)
- Sporck v. Fell, 759 F.2d 312 (3d Cir. 1985)
- Heron Interact, Inc. v. Guidelines, Inc., 244 F.R.D. 75 (D. Mass. 2007)
- Magee v. Paul Revere Life Insurance Co., 172 F.R.D. 627 (E.D.N.Y. 1997)
- James Julian, Inc. v. Raytheon Co., 93 F.R.D. 138 (D. Del. 1982)
- Doxtator v. Swarthout, 328 N.Y.S.2d 150 (App. Div. 1972)
- Nelson v. Heer, 121 Nev. 832, 122 P.3d 1252 (2005)
- Hallmark v. Eldridge, 124 Nev. 492, 189 P.3d 646 (2008)