2010 WL 1966369
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Court of Appeals of Minnesota.

METRO LAND SURVEYING & ENGINEERING COMPANY, INC., Appellant,
v.
John MATTHEWS, et al., Defendants,
Timothy R. O'Keefe, Respondent,
Carla H. Heinke, Respondent.

No. A09-1533.
|
May 18, 2010.

West KeySummary

1 **Mechanics' Liens**
Implied Contract or Consent

Surveyor had the right to bring a mechanic's lien foreclosure action against landowners, even though surveyor had actually entered into a contract with a developer, who attempted to buy the property from landowners but failed to deliver on purchase price. Landowners had known of the improvements and had not objected. M.S.A. §§ 514.01, 514.06.

Cases that cite this headnote

Chisago County District Court, File No. 13-CV-07-698.

Attorneys and Law Firms

Mark D. Luther, St. Louis Park, MN, for appellant.

Timothy R. O'Keefe, Harris, MN, pro se.

Carla H. Heinke, Harris, MN, pro se.

Considered and decided by PETERSON, Presiding Judge; KLAPHAKE, Judge; and STONEBURNER, Judge.

UNPUBLISHED OPINION

PETERSON, Judge.

***1** On appeal from summary judgment in this mechanic's-lien dispute, appellant lienor argues that because respondents had knowledge of the work being done on their property and did not serve notice disclaiming authorization, respondents' interest in the land is subject to a mechanic's lien. We reverse and remand.

FACTS

On February 17, 2005, defendant John Matthews entered into a contract with appellant Metro Land Surveying & Engineering Company, Inc. providing for appellant to perform surveying and engineering services on land-development projects on properties owned by John Matthews. In August 2005, defendant LaFavre Matthews Development LLC entered into a purchase agreement to buy 230 acres of land from respondents Timothy R. O'Keefe and Carla H. Heinke for development purposes at a price of $1,350,000. A contingency clause in the purchase agreement required LaFavre Matthews to obtain a wetland delineation and topographical survey at LaFavre Matthews's expense. A clause in the purchase agreement stated that respondents knew that LaFavre Matthews was buying the property with "the intent to profit by land development and sales." LaFavre Matthews told respondents that a survey company would come out to survey the property in the fall of 2005. Appellant performed services on respondents' property from October 18, 2005, through August 9, 2006.

The closing date for the sale of respondents' property was scheduled for May 1, 2006. The addendum to the purchase agreement provided for a one-month extension of the closing date. LaFavre Matthews failed to deliver the purchase price to respondents by June 1, 2006. On August 5, 2006, respondents sent appellant a letter revoking appellant's right to further proceed on any

conditional-use permit or land development for the property. On October 31, 2006, appellant served on respondents a mechanic's-lien statement, claiming a $67,943.88 lien for land-surveying and engineering services. On January 10, 2007, respondents executed a cancellation of purchase agreement.

Appellant brought this mechanic's-lien-foreclosure action and unjust-enrichment claim against respondents, John Matthews, and LaFavre Matthews. Respondents moved for summary judgment, arguing that prelien notice was required because the property was in agricultural use and that appellant failed to provide prelien notice. The district court denied summary judgment based on its conclusion that a fact issue existed as to whether the property was in agricultural use. Respondents filed a second summary-judgment motion, this time providing additional evidence, including a contract between John Matthews and appellant, a promissory note signed by John Matthews, and an affidavit and exhibit regarding the property's agricultural use. The district court granted summary judgment for respondents on grounds that (1) there was no interest on which the mechanic's lien could be foreclosed because "LaFavre Matthews, the party with whom [appellant] contracted, does not possess an interest that can be sold"; and (2) appellant's unjust-enrichment claim failed as a matter of law because appellant failed to present sufficient evidence to create fact issues on whether respondents benefited from appellant's work, benefited illegally or unlawfully, or took unfair advantage of appellant. The district court granted partial summary judgment for respondents. Appellant filed this appeal, and this court granted discretionary review.

DECISION

***2** On appeal from summary judgment, we review the record to "determine whether there are any genuine issues of material fact and whether a party is entitled to judgment as a matter of law." *In re Collier,* 726 N.W.2d 799, 803 (Minn.2007). A genuine issue of material fact exists if the evidence would "permit reasonable persons to draw different conclusions." *Gradjelick v. Hance,* 646 N.W.2d 225, 231 (Minn.2002). We view the evidence in the record "in the light most favorable to the party against whom judgment was granted." *Fabio v. Bellomo,* 504 N.W.2d 758, 761 (Minn.1993).

Statutory interpretation is a question of law, which we review de novo. *Koes v. Advanced Design, Inc.,* 636 N.W.2d 352, 358 (Minn.App.2001), *review denied* (Minn. Feb. 19, 2002).

> Whoever performs engineering or land surveying services with respect to real estate, or contributes to the improvement of real estate by performing labor, or furnishing skill, material or machinery ... whether under contract with the owner of such real estate or at the instance of any agent, trustee, contractor or subcontractor of such owner, shall have a lien upon the improvement, and upon the land on which it is situated....

Minn.Stat. § 514.01 (2008).

> That a person has performed lienable services is not in itself sufficient to give rise to an enforceable lien, however. The lien must also be enforceable against the interest in the property held by the defendant. Generally speaking, the underlying basis permitting the imposition of a lien on a defendant's particular interest is that person's consent to the improvement to the property. If the person against whose interest the lien is charged contracted for the improvement with the lien claimant, his or her consent is inferred from the contract to perform the improvement. If the person is not a contracting party, however, his or her consent may arise by operation of law under Minn.Stat. § 514.06 (1984).

Korsunsky Krank Erickson Architects, Inc. v. Walsh, 370 N.W.2d 29, 31 (Minn.1985) (*KKE*) (citations omitted).[1]

Minn.Stat. § 514.06 (2008) states:

> When land is sold under an executory contract requiring the vendee to improve the same, and such contract is forfeited or surrendered after liens have attached by reason of such improvements, the title of the vendor shall be subject thereto; but the vendor shall not be personally liable if the contract was made in

> good faith. When improvements are made by one person upon the land of another, all persons interested therein otherwise than as bona fide prior encumbrancers or lienors shall be deemed to have authorized such improvements, in so far as to subject their interests to liens therefor. Any person who has not authorized the same may protect that person's interest from such liens by serving upon the persons doing work or otherwise contributing to such improvement within five days after knowledge thereof, written notice that the improvement is not being made at that person's instance, or by posting like notice, and keeping the same posted, in a conspicuous place on the premises.

***3** In *KKE,* a fee owner entered into an option contract with a developer to sell commercial real estate on which the developer intended to build a shopping center; the developer hired KKE, an architectural firm, to work on the project. 370 N.W.2d at 30. The developer abandoned the contract, and KKE sought recovery against the property owner under Minn.Stat. § 514.06. *Id.* The supreme court held that a lien arose against the fee owner's interest in the property by operation of section 514.06 because the fee owner had actual knowledge of the improvement and failed to disclaim it. *Id* . at 33.

Here, as in *KKE,* the record shows and respondents do not dispute that respondents had actual knowledge of appellant's improvements to their property. Matthews told respondents that surveyors would be doing survey work on the property in the fall of 2005. In February 2006, Carla Heinke e-mailed appellant's employee Peter Muehlbach requesting information and updates regarding development of the property. Timothy O'Keefe, a Fish Lake Township Supervisor, attended three or four township meetings during the preliminary-plat approval process. On August 5, 2006, respondents sent appellant a letter revoking appellant's right to further proceed on any conditional-use permit or land development for the property.

Respondents argue that appellant's claim for foreclosure of its mechanic's lien fails because appellant did not provide them with prelien notice as required under Minn.Stat. § 514.011 (2008). Respondents contend that *KKE* indicates that prelien notice would have been necessary if the property had been residential or agricultural. The *KKE* court noted that "[t]he protection of the owners of this nonagricultural and nonresidential real estate lies in serving the statutory disclaimer notice [under section 514.06]." 370 N.W.2d at 33. The court then noted that Minn.Stat. § 514.011 protects owners of certain residential and agricultural real estate. *Id.* at 33 n. 2. But the prelien notice requirements in Minn.Stat. § 514.011, subds. 1 and 2 (2008), only apply when the owner of an interest in real estate enters into an agreement for an improvement with a contractor and the contractor enters into a subsidiary contract with a subcontractor or a materialman. *Nasseff v. Schoenecker,* 312 Minn. 485, 491-92, 253 N.W.2d 374, 378 (1977). Respondents do not argue on appeal that appellant contracted with any subcontractor or materialman.

Respondents also argue that Minn.Stat. § 514.06 does not apply to this case because the purchase agreement did not require development. But because *KKE* does not indicate that the option contracts to purchase the property in that case required development, and no substantive amendment has been made to the first sentence of section 514.06 since *KKE* was decided, we do not construe the first sentence of Minn.Stat. § 514.06 as limiting the application of the remainder of the statute. *See KKE,* 370 N.W.2d at 31 (listing three requirements that must be met for lien to arise by operation of Minn.Stat. § 514.06:(1) improvement made by one person on land of another, (2) owner had knowledge that improvement was being made, and (3) owner failed to serve notice disclaiming authorization for improvement).

***4** Because respondents had knowledge of the improvements to their property and the record contains no evidence that they served notice disclaiming authorization, we reverse the summary judgment entered for respondents and remand for further proceedings.

Reversed and remanded.

All Citations

Not Reported in N.W.2d, 2010 WL 1966369

Footnotes

[1] Although the district court did not address the application of Minn.Stat. § 514.06, this court must decide cases in accordance with the law. *See State v. Hannuksela,* 452 N.W.2d 668, 673 n. 7 (Minn.1990) ("[I]t is the responsibility of appellate courts to decide cases in accordance with law, and that responsibility is not to be diluted by counsel's oversights, lack of research, failure to specify issues or to cite relevant authorities." (quotation omitted)); *Greenbush State Bank v. Stephens,* 463 N.W.2d 303, 306 n. 1 (Minn.App.1990) (applying *Hannuksela* in civil case), *review denied* (Minn. Feb. 4, 1991). We note that the record provided to this court does not show that the parties brought *KKE* to the district court's attention.

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