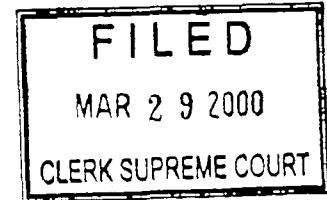


IN THE COURT OF APPEALS OF IOWA

No. 1999-365 (9-618) / 98-1921
Filed March 29, 2000



DEWITT BANK AND TRUST COMPANY,
Plaintiff-Appellee,

vs.

MONARCH DEVELOPMENT CO., INC., GERALD R. WELVAERT, RHONDA R. WELVAERT, PAYLESS CASHWAYS, INC., JIM KIME, individually, and d/b/a A & K CONSTRUCTION, PETERSEN-HAGGE FURNITURE, UNITED STATES OF AMERICA INTERNAL REVENUE SERVICE, GARY L. FOSTER, ROBIN R. PETERSEN, CITY OF DEWITT, IOWA, DEB DANIELS, individually and d/b/a WAPSI RIVER ART GALLERY, INC., and HEARTLAND CONSTRUCTION & REMODELERS CO.,
Defendants.

and

SCHUMACHER ELECTRIC CO., INC.
Defendant-Appellant.

Appeal from the Iowa District Court for Clinton County, C. H. Pelton,
Judge.

Schumacher Electric Company appeals from a grant of summary judgment in a foreclosure action, claiming its mechanic's lien has priority over the appellee's deed of trust. **AFFIRMED.**

~~Kenneth~~ E. Payne of the Pasternak Law Firm, P.C., Davenport, for appellant.

Terry M. Giebelstein of Lane & Waterman, Davenport, for appellee.

Considered by Sackett, C.J., and Vogel and Hecht, JJ.

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HECHT, J.

~~Defendant~~ Schumacher Electric Company appeals from a grant of summary judgment in a foreclosure action in favor of DeWitt Bank, claiming its mechanic's lien has priority over DeWitt Bank's deed of trust. We affirm.

I. Factual Background and Proceedings. On April 29, 1995, Monarch Development Company ("Monarch") entered into a loan agreement with DeWitt Bank and Trust ("DeWitt Bank"). Monarch executed a promissory note in the principal sum of \$72,000 and secured it by a deed of trust on real estate in the City of DeWitt, Iowa. The deed of trust contained the following language:

NOTICE: This mortgage secures credit in the amount of \$350,000. Loans and advances up to this amount, together with interest, are senior to indebtedness to other creditors under subsequently recorded or filed mortgages or liens.

DeWitt Bank filed the deed of trust on August 7, 1995.

On May 1, 1996, Monarch began construction of the building on the real estate. Monarch hired Schumacher Electric Company ("Schumacher") as the electrical subcontractor for the project. Schumacher began work on the project on October 17, 1996.

On April 1, 1997, Monarch and DeWitt Bank entered into a second loan agreement for the principal sum of \$85,000. Schumacher completed its work on the property on April 7, 1997, and filed a mechanic's lien against the property on April 8, 1997. Schumacher filed its petition to foreclose on the mechanic's lien on July 8, 1997.

DeWitt Bank filed its petition for foreclosure against Monarch and several other defendants on September 4, 1997. On February 5, 1998, the bank filed a

~~motion for summary judgment against all defendants.~~ Schumacher filed a limited resistance ~~to the~~ motion for summary judgment on March 4, 1998. On the same date, ~~the district~~ court entered its judgment and decree of foreclosure. In the decree, the court granted Schumacher additional time to submit a brief and argument in support of the contention the mechanic's lien had priority over DeWitt Bank's lien.

DeWitt Bank filed its second motion for summary judgment on August 11, 1998. Thereafter, the district court granted the motion on the ground that DeWitt Bank's prior recorded mortgage enjoyed priority over Schumacher's mechanic's lien. Schumacher appeals.

II. Standard of Review. Our scope of review is for errors at law. Iowa R. of App. P. 4. The court will uphold summary judgment when the moving party shows no genuine issue of material fact exists and it is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c); *C-Thru Container Corp. v. Midland Mfg. Co.*, 533 N.W.2d 542, 544 (Iowa 1995). In order to decide whether the moving party has met this burden, we review the record in the light most favorable to the party opposing summary judgment. *Hoffnagle v. McDonald's Corp.*, 522 N.W.2d 808, 811 (Iowa 1994).

III. Merits. Schumacher claims the district court erred in holding the lien arising ~~from the~~ bank's deed of trust is entitled to priority over the mechanic's lien. We disagree. DeWitt Bank recorded its deed of trust securing the loan and any future advances to Monarch on August 7, 1995. The deed of trust contained a notice provision regarding future loans and advances. Iowa Code section

654.12A specifically authorizes mortgage liens to cover future advances as follows:

Subject to section 572.18, if a prior recorded mortgage contains the notice prescribed in this section and identifies the maximum credit available to the borrower, then loans and advances made under the mortgage . . . are senior to indebtedness to other creditors under subsequently recorded mortgages and other subsequently recorded or filed liens even though the holder of the prior recorded mortgage has actual notice of indebtedness under a subsequently recorded mortgage or other subsequently recorded or filed lien. So long as credit is available to the borrower, payment of the outstanding mortgage balance to zero shall not extinguish the prior recorded mortgage if it contains the notice prescribed by this section. The notice prescribed by this section for the prior recorded mortgage is as follows:

NOTICE: This mortgage secures credit in the amount of _____. Loans and advances up to this amount, together with interest, are senior to indebtedness to other creditors under subsequently recorded or filed mortgages and liens.

Iowa Code § 654.12A (1997). The notice provision in DeWitt Bank's deed of trust is identical to the notice provision required in section 654.12A. Though the initial loan amount was \$72,000, the recording lien provided notice that future advances by the bank up to a total of \$350,000 could be secured. Thus, the second advance of \$85,000 extended by the bank to Monarch on April 1, 1997, was also secured by the deed of trust. We also note DeWitt Bank loaned both the original amount and the future advance to Monarch before Schumacher filed its April 8, 1997, mechanic's lien, and its July 8, 1997, petition to foreclose its lien. Therefore, under section 654.12A, DeWitt Bank's mortgage enjoys priority over Schumacher's mechanic's lien.

A mechanic's lien may enjoy priority over another lien if the work for which it is filed ~~was~~ commenced before the competing lien was recorded. Section 572.18 provides, in relevant part:

Mechanics' liens shall be preferred to all other liens which may attach to or upon a building or improvement and to the land upon which it is situated, except liens of record prior to the time of the original commencement of the work or improvements.

Iowa Code § 572.18. Schumacher correctly asserts a building contractor's mechanic's lien for work accrues from the date from which the actual on-site work began. See *Diversified Mortgage Investors v. Gepada, Inc.*, 401 F. Supp. 682, 685 (S.D. Iowa 1975) (construing Iowa Code § 572.18). The record indicates construction did not begin until May 1, 1996. Schumacher's work on the site did not begin until October 17, 1996, more than a year after DeWitt Bank filed its mortgage lien. Thus, the district court correctly concluded the bank's mortgage lien is superior to Schumacher's mechanic's lien. Accordingly, we affirm the district court's grant of summary judgment in favor of DeWitt Bank.

AFFIRMED.