

IN THE COURT OF APPEALS OF IOWA

No. 8-073 / 97-0132

Filed April 24, 1998

CORY SHILLING,

Appellant,

vs.

KENNETH G. MORGAN, JACK W.

SMITH, and VICKI A. SMITH,

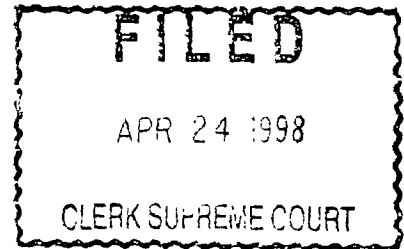
Appellees,

MIDLAND SAVINGS BANK, BETTY

MORGAN, SCOTT R. RUBIN and

TAWNI R. PLATH,

Defendants.



Appeal from the Iowa District Court for Guthrie County, Gene L. Needles,
Judge.

Plaintiff appeals from the district court's ruling granting defendant contract vendors' motion to dismiss and motion for summary judgment in his mechanic's lien foreclosure action. **AFFIRMED.**

Mark D. Reed of Bertroche Law Offices, Des Moines, for appellant.

Dwight L. Dinkla of Taylor, Teilmeyer & Dinkla, Guthrie Center, for appellee
Morgan.

Leonard Hartman, Stuart, for appellee Smith.

Heard by Cady, C.J., and Huitink and Streit, JJ.

HUITINK, J.

Cory Shilling appeals the district court's ruling rendering summary judgment in Kenneth Morgan's favor and granting Jack and Vicki Smith's motion to dismiss. We affirm.

I. Background Facts and Proceedings.

In 1987, Midland Savings Bank sold real property on contract to Kenneth and Betty Morgan.¹ Jack and Vicki Smith purchased the property from the Morgans in 1991. The Smiths sold the property to Babs Shilling in 1993. Between April 1993 and September 1994, Shilling's husband, Cory, claimed expenditures of \$21,362.68 for improvements to the property.² Morgan forfeited out the Smiths and Babs Shilling in August 1994. Notice of forfeiture was served on Cory Shilling as required by Iowa Code section 656.2.

Cory Shilling filed a mechanic's lien on February 19, 1996, alleging he had an oral contract with Babs to make improvements on the property, and Morgan and the Smiths had consented to the improvements. Shilling filed this action to foreclose on the lien on April 29, 1996. The district court dismissed Shilling's case against the Smiths and entered summary judgment in favor of Morgan.

On appeal Shilling argues his mechanic's lien attached and is a valid lien

¹ Betty Morgan died before service of Shilling's petition.

² Babs Shilling died December 20, 1994.

against the property, citing an implied contract with Morgan and the Smiths to improve the property.

II. Standard of Review.

We review the district court's grant of summary judgment to correct errors of law. Iowa R. App. P. 4. Summary judgment is appropriate only if there exists no genuine issue of material fact. *Farm Bureau Mut. Ins. Co. v. Milne*, 424 N.W.2d 422, 423 (Iowa 1988). The moving party has the burden to show the nonexistence of a material fact. *Id.* The evidence must be viewed in the light most favorable to the nonmoving party. *Thorp Credit, Inc. v. Gott*, 387 N.W.2d 342, 343 (Iowa 1986). This procedure is functionally akin to a directed verdict, and every legitimate inference that reasonably can be deduced from the evidence should be afforded the nonmoving party. *Id.* A fact issue is generated if reasonable minds can differ on how the issue should be resolved. *Id.* If the conflict in the record consists only of legal consequences flowing from undisputed facts, entry of summary judgment is proper. *Milne*, 424 N.W.2d at 423.

However, the nonmoving party may not simply rest on its pleadings and allegations once a motion for summary judgment is filed.

When a motion for summary judgment is made and supported as provided in [Iowa R. Civ. P. 237], an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

Iowa R. Civ. P. 237(e).

III. Mechanic's Lien.

Shilling argues there was sufficient evidence for the district court to find his mechanic's lien attached and remains a valid lien against the property.

A mechanic's lien is purely statutory in nature. *Carson v. Roediger*, 513 N.W.2d 713, 715 (Iowa 1994). It is a lien in favor of one who improves real estate by supplying material or labor. A mechanic's lien is a lien on the building and land improved by the materials or labor and is enforceable only against the property owner or his agent. Iowa Code § 572.2. The party asserting a mechanic's lien must establish a contract with the property owner or his agent. *Id.*; *Clemens Graf Droste Zu Vischering v. Kading*, 368 N.W.2d 702, 709 (Iowa 1985)("[f]undamental to establishment of a mechanic's lien on property is proof of . . . an express or implied contractual arrangement binding the person then possessing an ownership interest").

A. Summary Judgment. In his petition Shilling asserts Morgan was aware of and consented to Shilling's alleged oral agreement with Babs to improve the property. However, the owner's knowledge of a purchaser's improvements to property, or his acquiescence, permission, or failure to object to such improvements is insufficient to charge the property with a mechanic's lien for the improvements. *Lane-Moore Lumber Co. v. Kloppenberg*, 215 N.W.637, 638 (Iowa 1927). Shilling does not assert a contract for the improvements existed between himself and Morgan.

We find the summary judgment record, including Shilling's resistance to summary judgment, does not generate a genuine issue of material fact on this issue. *See Farm Bureau Mut. Ins. Co. v. Milne*, 424 N.W.2d at 423.

Moreover, forfeiture of a contract for a deed by the owner of real property cancels the lien of a materialman on the property for improvements added by the purchaser. *Crawford-Fayrom Lumber Co. v. Mann*, 203 Iowa 748, 751, 211 N.W. 225, 226 (Iowa 1927)(citing *Hunt Hardware Co. v. Herzoff*, 196 Iowa 715, 718, 195 N.W. 264, 265 (Iowa 1923)). The effect of forfeiture of a realty contract is to completely divest the vendee of any interest in the property and preclude the attachment of a mechanic's lien to the property based on the vendee's interest. *Miles Homes, Inc. of Iowa v. Grant*, 134 N.W.2d 569, 571 (Iowa 1965)(citing *Hunt Hardware Co. v. Herzoff*, 196 Iowa at 718, 195 N.W. at 265).

Morgan forfeited the real estate contract against both the Smiths and Babs Shilling in 1994. At that time, title to the property completely vested in Morgan. The forfeiture accordingly canceled Shilling's lien on the property. *Id.*

Shilling did not file this mechanic's lien action until 1996, after Babs' interest was divested. Therefore, we find there was no ownership interest in the property to which Shilling's mechanic's lien could attach. *See id.*; *see also Gilcrest/Jewett Lumber Co. v. Moyer*, 448 N.W.2d 711, 712 (Iowa App. 1989)(finding appellees who sold property in question prior to filing of appellant's action had no ownership interest

in the property upon which a mechanic's lien could be granted). The district court did not err. We affirm the district court on this issue.

B. Dismissal. Shilling argues the district court improperly granted the Smiths' motion to dismiss. Our disposition of the challenge to the district court's ruling on summary judgment eliminates the need to consider Shilling's appeal of the district court's order dismissing his claims against Smith.

IV. Motion to Reconsider.

Shilling asserts the district court erred in failing to grant his motion to reconsider its summary judgment ruling. Morgan correctly states Shilling is barred from appealing the court's ruling because he did not timely file his application.

In Iowa a ruling on a motion to reconsider or set aside a previous order is not appealable. Error, if any, is upon the previous ruling. But the rule does not apply where . . . *timely* application under rule 179(b) is filed on a material matter.

Recker v. Gustafson, 271 N.W.2d 738, 739 (Iowa 1978)(citations omitted)(emphasis added).

Rule 179(b) applies when the court enters summary judgment on a case. Iowa R. Civ. P. 237(c). Rule 179(b) requires motions for a new trial be filed within ten days after the court's verdict, decision, or report, unless the court grants additional time, which must not exceed thirty days. Iowa R. Civ. P. 247.

The district court entered an order granting Shilling an extension to file a motion to reconsider up to and including January 3, 1997. Proof of service of

Shilling's motion was noted on January 4, 1997, and the motion itself was file-stamped on January 6, 1997. Therefore, we find Shilling failed to file his motion in a timely manner. Accordingly, Shilling is precluded from appealing the district court's ruling on his motion to reconsider. *Recker v. Gustafson*, 271 N.W.2d at 739.

We affirm the district court's ruling in its entirety.

AFFIRMED.