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IN THE COURT OF APPEALS OF IOWA

CITIZENS STATE BANK,)

Plaintiff-Appellee,)

vs.)

JOY LONEY, as Recorder for Wayne County, Iowa, and RICHARD L. HARDEN, JANICE E. HARDEN, d/b/a HARDEN WELDING & MANUFACTURING,)

Defendants-Appellants.)

8-600
87-1588

Appeal from the Iowa District Court for Wayne County (20808), Peter A. Keller, Judge.

Appellants appeal from a district court finding requiring the county recorder to expunge common law lien documents from her records on property now owned by the bank. **AFFIRMED.**

Richard L. Harden and Janice E. Harden, Lineville, pro se.

Rodney P. Kubat, Des Moines, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson and Hayden, JJ.

PER CURIAM

The Hardens appeal from a district court finding requiring the county recorder to expunge common law lien documents from her records on property now owned by the bank and permanently enjoining the Hardens from filing any more common law or equitable liens on the property. We affirm.

In May 1985, Richard and Janice Harden executed several documents entitled common law liens on specified personal and real property previously owned by the Hardens but now owned by the Bank. The county recorder filed the documents. In June 1985, the Bank commenced this action by filing a petition for mandamus and permanent injunction. The Bank sought to have the liens removed and to have the Hardens prevented from filing any additional liens. The Bank argued the presence of the liens was improper and made it impossible for the Bank to sell the property.

In July 1985, Hardens filed bankruptcy. This present action was stayed until February 1986. Several interrogatories and motions were filed prior to trial. Trial was eventually held on August 20, 1987. On August 21st the Hardens purportedly transferred their interest in the liens to their son, Bryan.

In October 1987, the district court granted the Bank the relief it sought. The court noted there was no basis to justify the validity of the liens. The court further noted the liens were not properly recorded, thereby permitting the mandamus action. The court also enjoined Hardens from filing any additional common law liens. Hardens have appealed.

The primary issue here centers on whether the district court erred by determining the common law liens filed by the Hardens to be invalid and whether the bank's mandamus action was the proper avenue for expunging the liens. In addition, we address Hardens' contentions regarding rulings on a number of evidentiary matters.

Our review of equity matters is de novo. Iowa R. App. P. 4.

We first examine the issue of whether Hardens are entitled to a lien on the property in question.

Recently our supreme court outlined the principles underlying the right of parties similarly situated to the Hardens to have a legally cognizable lien against a bank's property. Federal Land Bank of Omaha v. Boese, 373 N.W.2d 118 (Iowa 1985). The court held:

> In ordinary use a lien is a charge upon property for the payment of a specific obligation that is independent of the lien. . . . This lien or charge on the property serves as security for the debt or obligation of the property owner. . . .
>
> A common-law lien is the right to retain the possession of a chattel or personal property until some debt or demand due the person in possession is paid. . . .
>
> Equitable liens, however, may attach to real estate. . . . The essential elements of an equitable lien "include a debt, duty, or obligation owing by one person to another, and a

> res to which that obligation fastens." . . . It is a remedy for a debt and provides a method for the enforcement of an obligation. . . .

Id. at 120-121 (citations omitted).

Evidence produced at trial indicates Hardens claimed common law liens on both the bank's real and personal property. As the foregoing language indicates, a common law lien cannot apply to real estate, therefore these liens are ineffective as to the real estate claimed to be subject to the liens.

Two days after the parties filed trial briefs in this matter, the Hardens attempted to amend the common law liens to make them equitable liens. Even if we determine the liens are equitable rather than common law, it would have no effect on their validity in this case. As pointed out above, in order for Hardens to have either an equitable lien against the bank's real estate or a common law lien against its personalty, there must be some debt or demand due from the bank to the Hardens. Id. We determine no evidence in this record indicates there is a debt or any obligation due the Hardens from the bank. Therefore, we hold the trial court was correct in finding:

> 12. For the foregoing reasons, the Court specifically finds that the Hardens' claimed common law and/or equitable liens are invalid, illegal, unenforceable, and not, in fact, liens of any kind or nature whatsoever and that, in any event, Hardens are not entitled to any lien.

Next we determine the propriety of the mandamus action for the purposes it is used in this matter.

Principles directing mandamus are well established. It is an extraordinary remedy to be employed only under exceptional circumstances. Hewitt v. Ryan, 356 N.W.2d 230, 233 (Iowa 1984).

It is not to be used to establish rights but to enforce rights which have already been established. Id. If there is a plain, speedy, and adequate remedy at law, mandamus does not lie. Id. The other available remedy however, "must be competent to afford relief on the very subject matter in question and be equally convenient, beneficial and effectual." Id. (quoting Virginia Memor. Inc. v. City of Sioux City, 261 N.W.2d 510, 514-15 (Iowa 1978)).

In this case the bank sought mandamus to force the Wayne County recorder to perform the legal duties imposed under Iowa Code section 331.602. Under this statute the recorder is only to accept recording instruments that are in proper recordable form. Iowa Code § 331.602 (1987).

In Proctor v. Garrett, 378 N.W.2d 298 (Iowa 1985), the supreme court held a recorder could not refuse to record a common law lien document based upon its legality. Id. at 299. However, also clear from the case is the rule a recorder may accept for recording only those instruments in proper recordable form. It is under this rationale, the district court ruled the bank was entitled to mandamus and ordered the recorder to expunge all common law lien documents from the records. We agree with this holding.

The record here exposes a number of infirmities in the form and filing of the lien documents. The trial court determined the lien documents were not in recordable form because:

> a. [T]hey neither contain the typed or legible printed name of the acknowledging officer beneath his signature nor are they accompanied by affidavit correctly spelling in legible print or type such signatures as required by § 331.602; and/or
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> b. they do not contain an acknowledgement that satisfies the requirements of § 558.30 or § 558.39(1), which apply to all instruments purportedly encumbering real estate as the lien documents purport to do.

We agree with the trial court and hold under the facts here mandamus was the proper remedy for the bank.

The Hardens raise additional claims on appeal, however we determine they are without merit.

AFFIRMED.