DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

UNITED METRO MATERIALS, INC., an Arizona corporation dba RINKER MATERIALS, Plaintiff/Counterdefendant/Appellee, v. US DEVELOPMENT LAND, L.L.C., an Arizona limited liability company; WESTERN SURETY COMPANY, a South Dakota corporation; BEAZER HOMES HOLDINGS CORP., a Delaware corporation; STANDARD PACIFIC OF ARIZONA, INC., a Delaware corporation; MONTELENA MASTER COMMUNITY ASSOCIATION, an Arizona non-profit corporation, Defendants/Counterclaimants/Appellants.	1 CA-CV 09-0127 DEPARTMENT C **MEMORANDUM DECISION** (Not for Publication – Rule 28, Arizona Rules of Civil Appellate Procedure)

Appeal from the Superior Court in Maricopa County

Cause No. CV2006-008033

The Honorable Edward O. Burke, Judge

AFFIRMED IN PART; REVERSED IN PART AND REMANDED

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I R V I N E, Presiding Judge

¶1 US Development Land, L.L.C., Western Surety Company, Beazer Homes Holdings Corp., Standard Pacific of Arizona, Inc., and Montelena Master Community Association (collectively "Appellants") appeal from the trial court's order granting United Metro Materials, doing business as Rinker Materials, motions for summary judgment. Appellants also appeal the judgment entered against USDL and Western Surety in an amount that exceeded the penal sum of the bond that included an award of attorneys' fees in favor of Rinker. For the following reasons, we affirm in part, reverse in part and remand.

I. FACTS AND PROCEDURAL HISTORY

¶2 In January 2004, US Development Land, L.L.C. ("USDL") purchased a large tract of land in Queen Creek that would be developed as a master planned community named Montelena. USDL subdivided the property and recorded the plat in February 2004.

USDL conveyed Lots 1-101 to Beazer Homes Holding Corp. ("Beazer"), Lots 102-222 to Standard Pacific of Arizona, Inc. ("Standard Pacific"), and retained ownership of Lots 223-403. Within Lots 223-403, USDL conveyed Tracts A through F and H through W to the Montelena Master Community Association ("the Association"), and Tracts G, X, Y, and A-A to the town of Queen Creek.

¶3 In April 2004, USDL, Beazer, Standard Pacific, and the Association entered into a Joint Development Agreement (the "Agreement"). The Agreement provided that USDL would serve as Contract Administrator, which entailed, among other tasks, administering the construction and installation of certain off-site improvements and in-tract finished lot improvements.[1] The Agreement further provided that each of the owners/builders would pay part of the anticipated costs of the improvements, that USDL would pay any cost overruns, and that USDL could not change the plans for the improvements without obtaining the consent of the other owners/builders.

¶4 USDL hired ReQuip, L.L.C. ("ReQuip"), to construct the roads throughout the Montelena subdivision. ReQuip then purchased aggregate and asphalt from Rinker. Rinker supplied

[1] USDL was also responsible for ensuring that the improvements were completed in accordance with the plat and supporting plans and the hiring of engineers and contractors as necessary to construct the improvements.

these materials to the subdivision between August 16, 2005, and November 22, 2005. Pursuant to supplying materials to ReQuip, Rinker prepared and mailed preliminary twenty day notices to ReQuip on May 13, 2005, October 21, 2005, and November 23, 2005.[2] The May 13 and November 23 Notices were also sent to Beazer, and the October 21 Notice was sent to USDL. These notices were sent after Rinker sent job information requests to ReQuip. In response to the first request in May 2005, ReQquip indicated that Beazer was the owner of the property to which the materials were to be supplied. The second request was sent in October 2005, with ReQuip indicating that USDL was the owner.

¶5 Because ReQuip did not pay Rinker in full for the materials, labor, and trucking supplied, Rinker recorded a notice and claim of lien against Montelena, indicating that it was owed $669,543.75, not including lien fees and accruing interest.[3] Shortly after the lien was recorded, Western Surety

[2] The November 23 Notice served as an amendment to the May 13 Notice.

[3] The lien sought to encumber all of the property encompassing Montelena, but excluded the tracts owned by the Town of Queen Creek.

posted a lien discharge bond on behalf of USDL in the amount of $1,004,316.00.[4]

¶6 On May 26, 2006, Rinker filed its complaint against Appellants. The complaint sought: (1) damages for breach of contract against Requip; (2) discharge of the lien bond against USDL and Western Surety; (3) unjust enrichment/quantum meruit against USDL, Beazer, and Standard Pacific; (4) declaratory relief confirming that the bond is valid, the bond covers the entire lien, and that the bond discharged the lien against USDL, Western Surety, Beazer, Standard Pacific and Association; (5) negligence against Beazer, USDL, and Compass Bank (the lender); and (6) negligent misrepresentation by omission against Beazer and USDL.[5] Appellants answered and counterclaimed, contending that the lien was invalid.

¶7 On September 7, 2007, Rinker filed a "Motion for Partial Summary Judgment #2 re Validity of Notice and Claim of Lien as to USDL and Beazer Homes." Rinker's motion sought findings that: (1) the preliminary twenty day notices served on USDL and Beazer substantially complied with A.R.S. § 33-992.01

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[4] To discharge a lien on the property, the interested party must obtain a surety bond in favor of the lien claimant in an amount one and one-half times the amount of the claimed lien and record it with the county recorder. Ariz. Rev. Stat. ("A.R.S.") § 33-1004(B) (2007).

[5] The trial court granted Appellants' motion to dismiss the negligence and negligent misrepresentation claims.

(2007); (2) USDL and Beazer were precluded from asserting as a defense that inaccuracies existed in the preliminary twenty day notices pursuant to A.R.S. § 33-992.01(I); and (3) Rinker's lien against the Montelena subdivision was valid. The motion further sought an order pursuant to Rule 56(d) specifying the relevant facts that are without substantial controversy. Rinker later filed a "Motion for Partial Summary Judgment #3 RE (1) Validity of Rinker Materials' Lien Claim as to Entire Montelena Subdivision Property; and (2) Owner Defendants' Counterclaim."[6] In opposition, Appellants filed a Renewed Motion for Partial Summary Judgment. Appellants argued that: the lien was invalid as to the property owned by Standard Pacific and the Association, the property owned by USDL for the materials supplied under the May 13 and November 23 Notices, and the property owned by Beazer for the materials supplied under the October 21 Notice, and the property owned by the town of Queen Creek; the maximum amount of Rinker's claim was $170,903.21; and the statutory discharge bond be reduced to $256,354.82 and immediately released and discharged.

¶8 After a hearing on the motions, the trial court ruled that Rinker's lien was valid as to all portions of Montelena,

[6] At the hearing on the motions, Rinker stated that the motions address very similar issues and seek the same thing – the adequacy of the preliminary twenty day notices.

and denied Appellants' Renewed Motion for Summary Judgment. The court entered judgment in favor of Rinker totaling $1,110,945.10, which included the principal sum of the discharge lien bond, pre-judgment and post-judgment interest, and attorneys' fees. Appellants filed a Motion to Alter or Amend the court's judgment, seeking for the judgment to be limited to the penal sum of the bond. The trial court denied the motion and Appellants timely appealed. We have jurisdiction pursuant to A.R.S. §§ 12-2101(A),(B) (2003) and 12-120.21(A) (2003).

II. DISCUSSION

¶9 We review a trial court's granting of a motion for summary judgment de novo and view all facts and reasonable inferences therefrom in the light most favorable to the party against whom judgment was entered. *Lowe v. Pima County*, 217 Ariz. 642, 646, ¶ 14, 177 P.3d 1214, 1218 (App. 2008) (citing *Bothell v. Two Point Acres, Inc.,* 192 Ariz. 313, 315, ¶ 2, 965 P.2d 47, 49 (App. 1998). Summary judgment is appropriate only when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Orme Sch. v. Reeves,* 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990).

A. Validity of the Lien

¶10 Arizona's lien statutes are remedial in nature and therefore are liberally construed to effectuate their primary purpose of protecting laborers and materialmen who enhance the

value of another's property. *Performance Funding, L.L.C. v. Ariz. Pipe Trade Trust Funds,* 203 Ariz. 21, 24, ¶ 10, 49 P.3d 293, 296 (App. 2002); *see also Ranch House Supply Corp. v. Van Slyke,* 91 Ariz. 177, 181, 370 P.2d 661, 664 (1962) ("The Arizona Lien Statutes are remedial and to be liberally construed. Their purpose is that laborers and materialmen *enhancing the value* of another's property should be protected.") (emphasis in original) (citation omitted). At the same time, the statutory requirements for a materialmen's lien must be strictly followed to perfect the lien. *MLM Constr. Co. v. Pace Corp.,* 172 Ariz. 226, 229, 836 P.2d 439, 442 (App. 1992). These seemingly inconsistent principles are harmonized by requiring that *all* the statutory steps for perfecting a lien be followed but permitting substantial (rather than literal) compliance with *any* particular step so long as the purposes of the materialmen's liens statutes are achieved. *Id.* Further, we interpret the statutes in a manner consistent with the "realities of the construction industry." *Bonus Elec., Inc. v. Slosser*, 141 Ariz. 381, 384, 687 P.2d 389, 392 (App. 1984).

¶11 Appellants' central argument is that Rinker failed to name and serve various parties with the preliminary twenty day notices so the lien is not valid as to all of their properties. Section 33-992.01(B) states: "every person who furnishes labor, professional services, materials, machinery, fixtures or tools

for which a lien otherwise may be claimed under this article shall, as a necessary prerequisite to the validity of any claim of lien, serve the owner or reputed owner . . . with a written preliminary twenty day notice as prescribed by this section."

¶12 As mentioned above, Rinker issued three preliminary twenty day lien notices. The May 13 Notice listed $850,000 as the estimated amount of materials, labor, and trucking to be supplied to Montelena. This Notice only named Beazer as the owner or reputed owner of Montelena. The October 21 Notice listed $27,000 as the estimated amount of materials, labor, and trucking to be supplied to Montelena. This Notice only named USDL as the owner or reputed owner of Montelena.[7] The November 23 Notice listed $2,500,000 as the estimated amount of materials, labor, and trucking to be supplied, and only named Beazer as the owner or reputed owner.

¶13 Appellants first contend that Rinker failed to comply with A.R.S. § 33-992.01(B) regarding the May 13 and November 23 Notices because Beazer was not the reputed owner of the properties owned by Standard Pacific, USDL, and the Association. Similarly, they argue the October 21 Notice sent to USDL cannot cover properties owned by Standard Pacific, Beazer, and the Association. A reputed owner is one having "for all appearances

[7] Appellants do not assert that this Notice was not received or otherwise invalid for any reason.

the title and possession of [the] property." *Lewis v. Midway Lumber*, 114 Ariz. 426, 431, 561 P.2d 750, 755 (1977). If a lien claimant names a reputed owner, it must establish that it took reasonable efforts to ascertain the owner or reputed owner of the property. *Id.* at 432, 561 P.2d at 756.

¶14 Appellants rely on *Williams v. A.J. Bayless Markets, Inc.*, 13 Ariz. App. 348, 476 P.2d 869 (1970). In *Williams*, a trucking company (Williams) brought suit in connection with the services it rendered in hauling fill to the construction site of a market. *Id*. at 349, 476 P.2d at 870. Williams was not paid for its services and Williams therefore brought suit to foreclose on the lien that he had filed; however, the notice and claim of lien listed the former owner of the property as the reputed owner of the premises. *Id*. at 350, 476 P.2d at 871. Williams then served the lien on the general contractor's attorney, who also sat on the board of the company that owned the market. *Id*. The trial court directed a verdict in favor of the market's owner. *Id*. On appeal, Williams argued that pursuant to A.R.S. § 33-981 (2007), service upon the general contractor constituted

service upon the market's owner.[8] *Id*. at 351, 476 P.2d at 872. In affirming the trial court, this court held "that the 'agency' created by § 33-981 was not that broad agency which includes the right to serve the owner by serving the contractor[]" and noted that Williams presented no evidence as to the basis for the use of the wrong name as the reputed owner. *Id*. at 351-53, 476 P.2d at 872-74. The court also stated that Williams failed to produce evidence showing that it made reasonable efforts to list and serve the record owner of the property. *Id*. at 353, 476 P.2d at 874.

¶15 Citing *Williams*, Appellants argue that Rinker improperly relied on the Request for Information form submitted to ReQuip, made no attempt to verify the information of the Request for Information, and as of July 22, 2005, knew that USDL had an ownership interest in some of the property. We disagree. As Rinker argues, *Williams* does not provide an explicit requirement that a lien claimant search the title records. In *Williams*, the court found that a materialman who could provide no basis for his naming of the incorrect owner had not

[8] Section 33-981(B) provides: "Every contractor, subcontractor, architect, builder or other person having charge or control of the construction, alteration or repair, either wholly or in part, of any building, structure or improvement, is the agent of the owner for the purposes of this article, and the owner shall be liable for the reasonable value of labor or materials to his agent."

established a reasonable basis for naming him/her in the lien. 13 Ariz. App. at 353, 476 P.2d at 874. Further, the court acknowledged that it could visualize situations when the claimant may need to resort to naming a reputed owner due to the complexity of the surrounding circumstances. *Id*.

¶16 Here, Rinker followed the procedure prescribed by statute for determining the identity of the owner – it asked ReQuip. *See* A.R.S. § 33-992.01(I). Using the information received from ReQuip, it sent the notices to the persons listed as owners. At that point, the statute required "the owner or other interested party" to furnish a written statement detailing information needed by a contractor asserting a lien, including the "name and address of the owner or reputed owner." *Id*. There is no dispute that neither Beazer nor USDL responded in any way to Rinker's notices or attempted to provide more detailed information regarding the ownership of Montelena. Consequently, the Appellants are barred from asserting the notices were sent to the wrong person. A.R.S. § 33-992.01(J) ("Failure of the owner or other interested party to furnish the information required by this section . . . stop[s] the owner from raising as a defense any inaccuracy of the information in a preliminary twenty day notice."). *See also Cashway Concrete & Materials v. Sanner Contracting Co.*, 158 Ariz. 81, 82, 761 P.2d 155, 156 (App. 1988) (supplier who asked the identity of the party to be

served had met its duty of reasonable inquiry pursuant to *Williams*).

¶17 Appellants contend, however, that Beazer's and USDL's failure to provide the information required by A.R.S. § 33-992.01(I) does not preclude the non-served Appellants from contesting the validity of Rinker's lien. Appellants argue that A.R.S. § 33-992.01(J) "must be interpreted so that the only person prohibited from raising the inaccuracy of the information as a defense is the owner or other party that actually has some form of ownership interest in the property." Rinker counters that A.R.S. § 33-992.01 requires any interested party who actually receives notice to correct any inaccuracies in the legal description of the property or the identification of the owner, contractor, and the construction lender that appear on the notice within ten days of receipt. A.R.S. § 33-992.01(D). Rinker contends that if an interested party who receives the notice fails to correct the inaccurate information, then the owner or owners are barred from making any challenge to the adequacy of the notice based on inaccurate information pursuant to A.R.S. § 33-992.01(J).

¶18 Section 33-992.01(I) provides that "within ten days of the receipt of a preliminary twenty day notice, the owner or other interested party" shall furnish the person a written statement containing specific relevant information. Further,

A.R.S. § 33-992.01(J) provides that the "[f]ailure of the owner or other interested party to furnish the information required by this section does not excuse any claimant from timely giving a preliminary twenty day notice, but it does stop the owner from raising as a defense any inaccuracy of the information in a preliminary twenty day notice, provided the claimant's preliminary twenty day notice of lien otherwise complies with the provisions of this chapter."

¶19 We find that all the Appellants, as owners of property within Montelena, were barred from contesting the accuracy of the identification of the owner in the notices because the notices were properly sent to an "interested party," in this case Beazer and USDL. An "interested party" is "[a] party who has a recognizable stake (and therefore standing) in a matter." Black's Law Dictionary 1154 (8th Ed. 2004). The record is clear that Beazer had an interest in Lots 1 through 100. Similarly, USDL owned Lots 223 to 403. Further, the fact that Beazer and USDL entered into the Agreement with the other parties demonstrates that they had an interest in the entire development of Montelena, particularly the roads throughout the subdivision. The Agreement provided that any modification to the existing improvement plans required the owners' consent. The Agreement also provided that each owner/builder was responsible to pay for its allocable share of the total cost of the improvements. We

conclude that Beazer and USDL were interested parties who were served with the preliminary twenty day notices. Therefore, the other Appellants were precluded from raising as a defense any inaccuracy of the information in the notices pursuant to A.R.S. § 33-992.01(I),(J).

¶20 Appellants further contend that Rinker did not substantially comply with A.R.S. § 33-992.01(B) because the facts presented to the trial court did not establish that Beazer received the May 13 Notice. Therefore, Appellants assert the trial court's granting of summary judgment was improper. Specifically, Appellants contend that "receipt" of a preliminary twenty day notice is a condition precedent to providing the information under A.R.S. § 33-992.01(I).

¶21 "In interpreting a statute, we are required to read the statute as a whole and give meaningful operation to all of its provisions and ensure an interpretation that does not render meaningless other parts of the statute." *Hanson Aggregates Arizona, Inc. v. Risslilng Const. Group, Inc.*, 212 Ariz. 92, 94, ¶ 6, 127 P.3d 910, 912 (App. 2006) (citing *Welch-Doden v. Roberts,* 202 Ariz. 201, 206, ¶ 22, 42 P.3d 1156, 1171 (App. 2002); *see also Wylie v. Douglas Lumber Co.,* 39 Ariz. 511, 8 P.2d 256 (1932)).

¶22 In *Columbia Group, Inc. v. Jackson*, 151 Ariz. 76, 725 P.2d 1110 (1986), our supreme court made it clear that the

mailing and not the receipt is conclusive proof of service. As the supreme court stated, A.R.S. § 33-992.01(B) requires persons seeking to claim a materialman's lien to "serve the owner or reputed owner." *Id.* at 79, 725 P.2d at 1113. Subsection G sets forth the requirements for service and states that "[s]ervice is complete at the time of the deposit of notice in the mail." A.R.S. § 33-992.01(F). While we recognize that subsection (I) was added to the statute after the supreme court's decision in *Columbia Group* and uses the word "receipt," we must read A.R.S. § 33-992.01 in its entirety. Sections 33-992.01(B) and (F) expressly provide that service is required. Therefore, "it is the 'mailing' and not the 'receipt' which is conclusive proof of service. . . ." *Columbia Group*, 151 Ariz. at 79, 725 P.2d at 1113.

¶23 Here, on May 13, 2005, Rinker mailed the May 13 Notice to Beazer.[9] On October 21, 2005, Rinker mailed the October 21 Notice to USDL and USDL acknowledged that it received this notice. Further, on November 23, 2005, Rinker mailed the November 23 Notice to Beazer in which Beazer found in its files. After oral argument on the parties' motions for summary judgment, the court found that service of the May 13 Notice was complete as of the date shown on the mailing certificate. We

[9] A certificate of mailing confirms the mailing of this Preliminary Twenty Day notice by first class mail.

find no error. Sections 33-992.01(B), (E), and (F) specifically reference "service" and explain how service is completed. Because "[s]ervice is complete at the time of the deposit of notice in the mail," Rinker properly accomplished service.

B. Judgment Exceeding Penal Sum of Bond

¶24 USDL, Beazer, Standard Pacific, and the Association argue that the trial court erred in awarding a judgment that exceeded the penal sum of the bond. Western Surety separately argues that the trial court erred in ruling that it was liable for the entire judgment. Conversely, Rinker argues that it is entitled to recover the entire judgment amount from both USDL and Western Surety.

¶25 The question is one of statutory construction. We thus review the trial court's decision de novo. *Scruggs v. State Farm Mut. Auto. Ins. Co.,* 204 Ariz. 244, 248, ¶ 17, 62 P.3d 989, 993 (App. 2003). As previously mentioned, in interpreting a statute, we are required to read the statute as a whole and give meaningful operation to all of its provisions and ensure an interpretation that does not render meaningless other parts of the statute. *Welch-Doden*, 202 Ariz. at 206, ¶ 22, 42 P.3d at 1171.

¶26 At the time the statutory discharge of lien bond was recorded by Western Surety, A.R.S. § 33-1004(E) (2006) stated:

> In an action to foreclose a lien under this article, where a bond has been filed and served as provided herein, a judgment for the claimant on the bond shall be against the principal and his sureties for the reasonable value of the labor and material furnished and shall not be against the property.

Following a 2008 amendment, § 33-1004(E) (Supp. 2009) currently states:

> In an action to foreclose a lien under this article, where a bond has been filed and served as provided herein, a judgment for the claimant on the bond shall be against the principal and his sureties for the reasonable value of the labor and material furnished and shall not be against the property. A judgment for the claimant on the bond, including any recovery for interest, expenses, costs and attorney fees awarded by the court, shall not exceed the penal sum of the bond. If the amount the claimant recovers exceeds the penal sum of the bond, the claimant shall also be entitled to judgment against the principal for the excess amount.

¶27 In interpreting the statute, the trial court entered its judgment against both USDL, as principal, and Western Surety, as surety. The trial court stated that it "finds that because the pre-2008 version of A.R.S. § 33-1001(E) provided for judgment against the surety for the reasonable value of the labor and material furnished, Defendant Western Surety Company is also liable for the entire judgment. If this were not the case there would have been no need for the clarification the legislature provided in the 2008 amendment."

¶28 USDL, Beazer, Standard Pacific, and the Association contend that at the time of A.R.S. § 33-1004(E)'s enactment in 1973, the common law provided that no personal or deficiency judgment may be rendered against the property owner unless the owner personally contracted for the improvements. They further contend that the purpose of requiring that the bond be one and one-half times the amount of the lien was to allow the lien claimant to recover its interest, attorneys' fees and costs against the bond and not against the principal.

¶29 In support of its contention, USDL, Beazer, Standard Pacific, and the Association cite *Keefer v. Lavender*, 74 Ariz. 24, 25, 243 P.2d 457, 458 (1952); *James Weller, Inc. v. Hansen*, 21 Ariz. App. 217, 223, 517 P.2d 1110, 1116 (1973); and *Stratton v. Inspiration Consolidated Copper Co.*, 140 Ariz. 528, 531, 683 P.2d 327, 330 (App. 1984). We are not persuaded that these cases provide that "no personal or deficiency judgment may be rendered against the property owner unless the owner personally contracted for the improvements." Instead, we interpret these cases for the proposition that when a materialman does not have a valid lien claim, it can only recover personally against parties with whom it had a direct contract. *See Keefer*, 74 Ariz. at 25-26, 243 P.2d at 458-59; *Stratton*, 140 Ariz. at 530-31, 683 P.2d at 329-30; *James Weller, Inc.*, 21 Ariz. App. at 223, 517

P.2d at 1116. Therefore, we conclude that USDL, as principal, is liable for the entire amount of the judgment.

¶30 We agree with Western Surety, however, that the trial court erred in awarding a judgment against it that exceeded the penal sum of the bond. As Western Surety argues, the 2008 amendment to A.R.S. § 33-1004(E) was a clarification of the prior statute. We do not construe a statute "to require something not within the plain intent of the legislature as expressed by the language of the statute." *Michael M. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 230, 234, ¶ 14, 172 P.3d 418, 422 (App. 2007); *State v. Affordable Bail Bonds*, 198 Ariz. 34, 37, ¶ 13, 6 P.3d 339, 342 (App. 2000). "It is an accepted rule of statutory construction that when 'determining the intent of the legislature, the court may consider both prior and subsequent statutes in pari material." *State v. Sweet*, 143 Ariz. 266, 270, 693 P.2d 921, 925 (1985). "In considering such statutes, 'an amendment which, in effect, construes and clarifies a prior statute will be accepted as the legislative declaration of the original act.'" *State v. Barragan-Sierra*, 219 Ariz. 276, 283, ¶ 21, 196 P.3d 879, 886 (App. 2008) (quoting *City of Mesa v. Killingsworth*, 96 Ariz. 290, 297, 394 P.2d 410, 414 (1964)).

¶31 In *American Surety Co. of New York v. Hatch*, our supreme court clearly stated "the liability of a surety is not to be extended . . . beyond the terms of his contract." 24 Ariz.

66, 76, 206 P. 1075, 1078 (1922) (quoting *Miller v. Stewart*, 9 Wheat. 680, 702, 6 L. Ed. 189 (1824)). The court further stated it would have been error for the trial court to refuse to give an instruction limiting the damages to the bond if the evidence had presented facts indicating that the damages under the bond exceeded the face amount. *Id*.

¶32 Likewise, in *United Metro Materials, Inc. v. Pena Blanca Prop., L.L.C.*, 197 Ariz. 479, 4 P.3d 1022 (App. 2000), this court recognized that a surety's liability was limited to the terms of the bond. There, a landowner obtained a bond pursuant to A.R.S. § 33-1004 to discharge a lien that had been recorded against its property by a materials supplier. *Id*. at 480, ¶¶ 1-2, 4 P.3d at 1023. The materials supplier filed suit to recover on the bond and prevailed on summary judgment for the amount stated in the lien. *Id*. The landowner appealed, but the surety did not. *Id*. On appeal, we stated that the landowner "fail[ed] to cite any authority indicating [the surety] . . . can be found liable to [the landowner] except to the extent of the bond." *Id*. at 483, ¶ 25, 4 P.3d at 1026.

¶33 Rinker contends that *In re the Guardianship of Pacheco*, 219 Ariz. 421, 199 P.3d 676 (App. 2008), expressly limits *Hatch*. We do not believe that *Pacheco* prevents us from concluding that the trial court erred in awarding a judgment against it that exceeded the penal sum of the bond. In *Pacheco*,

a court-appointed guardian recorded a conservator's bond pursuant to A.R.S. § 15-5411. *Id*. at 423, ¶¶ 2-4, 199 P.3d at 678. After learning that the guardian had misappropriated proceeds from a sale of certain property, the estate filed a petition seeking to recover against the surety for the entire amount of the bond. *Id*. at 424, ¶ 6, 199 P.3d at 679. The trial court granted the petition and ordered the surety to pay an amount that exceeded the penal sum of the bond due to prejudgment interest. *Id*. at 424, 428, ¶¶ 9, 27, 199 P.3d at 679, 683. On appeal, this court held that the surety was liable for the full judgment awarded by the trial court, including the amount that exceeded the bond. *Id*. at 428-29, ¶¶ 29-34, 199 P.3d at 683-84. The court noted that *Hatch* did not address whether prejudgment interest may be awarded in excess of the bond and concluded that prejudgment interest is a matter of right on liquidated claims. *Id*.

¶34 *Pacheco* is distinguishable from this case. As Western Surety notes, *Pacheco* involved a different bond statute. The conservator bond statute at issue in *Pacheco* does not require an inflated bond amount that contemplates recovery of costs that may be incurred as a result of litigation. Further, *Pacheco* only addressed prejudgment interest and did not address the impact of attorneys' fees. Therefore, like the court in *United Metro Materials*, we fail to see any basis in which Western Surety

should be liable for an amount that exceeds that amount stipulated in the bond.

C. Attorneys' Fees

¶35 Appellants argue that the trial court erred because it did not reduce the amount of Rinker's attorneys' fees based on its use of block billing. We review the trial court's award of attorneys' fees for an abuse of discretion. *Phoenix Newspapers, Inc. v. Keegan*, 201 Ariz. 344, 348, ¶ 13, 35 P.3d 105, 109 (App. 2001).

¶36 Here, the trial court originally awarded $200,312.65 in attorneys' fees, which included a 20% reduction for block billing. Rinker then filed a Reply in Support of Motion for Award of Attorneys' Fees and Taxable Costs. Rinker argued that *China Doll* only requires that the fee application contain sufficient detail to permit the court to assess the reasonableness of time incurred. *See Orfaly v. Tucson Symphony Society*, 209 Ariz. 260, 266, ¶¶ 22-23, 99 P.3d 1030, 1036 (App. 2004) (relying on *Schweiger v. China Doll Rest., Inc.*, 138 Ariz. 183, 673 P.2d 927 (App. 1983)). After considering the motion, the trial court concluded that Rinker's attorneys' fees should not be reduced because of block billing and awarded Rinker $235,456.15.

¶37 Here, the billing records submitted by Rinker describe in detail the work that was performed. Further, the trial court

stated that it "spent a substantial amount of time reviewing the 'block billing' time entries by [Rinker]." As we have previously stated, block billing does not violate *China Doll*. *See Orfaly*, 209 Ariz. at 266, ¶¶ 22-23, 99 P.3d at 1036; *see also State v. Gravano*, 210 Ariz. 101, 110-11, ¶¶ 37-41, 108 P.3d 251, 260-61 (App. 2005). Therefore, we conclude that the trial court did not abuse its discretion.

III. CONCLUSION

¶38 For the foregoing reasons, we affirm the trial court's grant of summary judgment in favor of Rinker. Further, we affirm the court's judgment of $1,110,945.10 as to USDL, but reverse as to Western Surety to the extent the judgment exceeded $1,004,316.00. We remand to the trial court to correct the judgment against Western Surety. We grant Rinker's request for reasonable attorneys' fees pursuant to A.R.S. § 33-998(B) (2007), and its costs on appeal, upon its compliance with Arizona Rule of Civil Appellate Procedure 21(a).

/s/
_____
PATRICK IRVINE, Presiding Judge

CONCURRING:
/s/
_____
MICHAEL J. BROWN, Judge

/s/
_____
DONN KESSLER, Judge