MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Timberland Home Center INC., d/b/a Timberland Lumber Company,

Appellant-Plaintiff,

v.

Martinsville Real Property, LLC,

Appellee-Defendant,

September 30, 2021

Court of Appeals Case No. 21A-CT-616

Appeal from the Marion Superior Court

The Honorable Gary L. Miller, Judge

Trial Court Cause No. 49D03-1910-CT-044548

Robb, Judge.

Case Summary and Issues

[1] Timberland Home Center Inc., d/b/a Timberland Lumber Company ("Timberland") appeals the trial court's granting of partial summary judgment in favor of Martinsville Real Property, LLC ("Martinsville"). Timberland raises multiple issues for our review, which we restate as: (1) whether Timberland judicially admitted the mechanic's lien it filed against real property owned by Martinsville was untimely; and (2) if not, whether its mechanic's lien was timely.

[2] Concluding that Timberland did not judicially admit the mechanic's lien was untimely but there exists a genuine issue of material fact regarding the lien's actual timeliness, we reverse and remand for further proceedings.

Facts and Procedural History

[3] Martinsville contracted with Rynard Enterprises a/k/a Robert L. Rynard Development Corporation, Inc. ("Rynard") for the construction of a nursing home located on property owned by Martinsville (the "Nursing Home"). Portions of Rynard's work on the Nursing Home were subsequently subcontracted to Timberland by Rynard. Timberland's on-site work began in August of 2018.

[4] For its work on the Nursing Home, Timberland sent six Application and Certification for Payment forms to Rynard. The forms are standard American

Institute of Architects ("AIA") electronic fillable forms. Timberland sent the forms on the following dates for the corresponding amounts:

Timberland AIA #1	08/31/2018	$234,400.00
Timberland AIA #2	09/30/2018	$784,869.16
Timberland AIA #3	10/31/2018	$110,452.00
Timberland AIA #4	11/30/2018	$162,944.40
Timberland AIA #5	12/31/2018	$25,991.22
Timberland AIA #6	06/20/2019	$662,694.69

Appellee's Appendix, Volume 2 at 123-34.

[5] Each of the Application and Certification for Payment forms state:

> The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents . . . .

Id. at 133. This statement is required to be signed and notarized. Timberland sent Timberland AIA #6 ("Final Payment Application") via email to Rynard. In the body of the email, Matthew Bowman, Timberland Account Manager, stated, "I have the final 2 replacement slabs in the works. I will let you know a delivery date as soon as they provide one to me." Appendix to Brief of Appellant [Timberland] ("Appellant's App."), Vol. II at 108.

[6] "Slabs" refers to Acrovyn doors for the Nursing Home which had been ordered but had yet to be installed.[1] The cost of the Acrovyn doors was included in the Final Payment Application even though they had not yet been installed. Brad Emmert, President of Timberland, averred in a designated affidavit that Acrovyn's lead-time for delivery was identified as eight to ten weeks after the order was placed; however, the doors were delivered much later than anticipated. Appellant's App., Vol. IV at 78. The Acrovyn doors were delivered in May, June, July, and September of 2019.[2] *Id.* at 79. The last two Acrovyn doors were installed by Timberland on September 9, 2019.

[7] Rynard failed to pay Timberland $1,610,508.25 for its work on the Nursing Home, allegedly because Martinsville failed to pay Rynard. On October 3, 2019, Timberland served Martinsville and Rynard with Notices of Personal Liability. On October 4, 2019, Timberland filed a mechanic's lien against Martinsville's property ("Mechanic's Lien").

[8] On October 23, 2019, Martinsville filed a complaint against Rynard relating to payment disputes on contracts between Martinsville and Rynard. Rynard filed counter and third-party claims, including a third-party claim against Timberland. On February 27, 2020, Timberland filed Counter, Cross, and

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[1] Acrovyn doors are specialized doors for hospitals and nursing homes that are laminate-wrapped for easy cleaning. Appellant's App., Vol. II at 250. Timberland ordered the doors from the Acrovyn Door Systems Division of Construction Specialties, Inc. Appellant's App., Vol. III at 2.

[2] Due to the Acrovyn doors being delivered late, Timberland purchased and installed substitute fire-rated door slabs so that the Nursing Home could pass necessary inspections to open on time. Appellant's App., Vol. III at 156.

Third Party Claims against Martinsville, among others, including a claim seeking foreclosure of its lien against Martinsville. Martinsville filed a crossclaim against Timberland to quiet title and for slander of title. Martinsville alleged the Mechanic's Lien was untimely, invalid, and improperly filed. Martinsville then filed a motion for partial summary judgment, seeking entry of judgment quieting title on its property. Martinsville argued that Timberland judicially admitted that the Mechanic's Lien was invalid due to being untimely. On December 21, 2020, Timberland filed its brief in support of its cross-motion for partial summary judgment and response to Martinsville's summary judgment motion. Following a hearing, the trial court granted Martinsville's motion, concluding:

> The work covered by [Timberland's Final Payment Application] was 100% completed by no later than June 19, 2019 as described in [Timberland's] sworn AND notarized documents. In combination with the date of recordation of the Mechanic's Lien, Timberland has judicially admitted that the Mechanic's Lien is untimely.

Appealed Order at 10. Timberland now appeals. Additional facts will be provided as necessary.

Discussion and Decision

I. Standard of Review

[9] Our standard of reviewing a trial court's grant of summary judgment is well-settled: in reviewing a trial court's summary judgment decision, an appellate

court applies a de novo standard of review. *Alldredge v. Good Samaritan Home, Inc.*, 9 N.E.3d 1257, 1259 (Ind. 2014). Summary judgment is appropriate only where there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C); *Mangold ex rel. Mangold v. Ind. Dep't of Nat. Res.,* 756 N.E.2d 970, 973 (Ind. 2001). All facts and reasonable inferences drawn from those facts are construed in favor of the nonmovant. *Mangold,* 756 N.E.2d at 973. "On appeal, the trial court's order granting or denying a motion for summary judgment is cloaked with a presumption of validity." *Van Kirk v. Miller,* 869 N.E.2d 534, 540 (Ind. Ct. App. 2007), *trans. denied.* The party appealing from the summary judgment order has the burden of persuading us the decision is erroneous. *Id.*

[10] Here, the trial court made findings of fact and conclusions of law in support of its entry of summary judgment. Although such findings aid our review by providing the reasons for the trial court's decision, we are not bound by the trial court's findings and conclusions. *Altevogt v. Brand*, 963 N.E.2d 1146, 1150 (Ind. Ct. App. 2012).

II. Judicial Admission

[11] Timberland argues that its "final invoice date is not a fatal judicial admission of the timeliness of Timberland's Mechanic's Lien[.]" Corrected Brief of Appellant [Timberland] ("Br. of Appellant") at 29. A judicial admission "is an admission in a current pleading or made during the course of trial; it is conclusive upon the party making it and relieves the opposing party of the duty to present

evidence on that issue."[3] *Weinberger v. Boyer,* 956 N.E.2d 1095, 1105 (Ind. Ct. App. 2011), *trans. denied.* "Statements contained in a party's pleadings may be taken as true against the party without further controversy or proof." *Lutz v. Erie Ins. Exch.,* 848 N.E.2d 675, 678 (Ind. 2006). Furthermore, unlike evidentiary admissions which the trier of fact may accept or reject, judicial admissions are conclusive and binding on the trier of fact. *Stewart v. Alunday*, 53 N.E.3d 562, 568 (Ind. Ct. App. 2016).

[12] Exhibit C to Timberland's Counter, Cross and Third Party Claims included six Application and Certification for Payment documents that it had sent to Rynard, including the Final Payment Application. Appellee's App., Vol. 2 at 122-34. The Final Payment Application indicates that the amount invoiced includes work up to June 20, 2019. The Final Payment Application also states that:

> The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents . . . .

Id. at 133.[4]

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[3] A cross-claim is a pleading under Indiana Trial Rule 13. When "a written instrument is attached to the complaint, the written instrument is part of the pleadings." *Buchanan v. State*, 122 N.E.3d 969, 972 (Ind. Ct. App. 2019), *trans. denied.*

[4] Timberland subsequently amended its counter, cross and third-party claims against Martinsville; however, the Final Payment Application Timberland sent to Rynard was again included in the exhibits. *See* Appellee's App., Vol. 3 at 91-109, 135-36.

[13] Judicial admissions are "voluntary and knowing" concessions of fact and statements that contain "ambiguities or doubt" are not binding as judicial admissions. *Harr v. Hayes*, 106 N.E.3d 515, 526-27 (Ind. Ct. App. 2018). In *Harr*, we concluded that "[d]ue to the context" of the plaintiff's statement, it contained an ambiguity and therefore could not be regarded as a binding judicial admission. *Id.* at 527; *see also Vigus v. Dinner Theater of Ind., L.P.*, 153 N.E.3d 1150, 1158 (Ind. Ct. App. 2020) (noting that courts have presumed that a party or its attorney did not intend to make an admission where there is ambiguity or doubt in a statement), *trans. denied*.

[14] We find *Vigus* to be instructive. In *Vigus*, defendant's counsel made statements during a hearing which the plaintiff argued constituted a judicial admission. 153 N.E.3d at 1158. We concluded that counsel's comments were not a judicial admission and stated:

> We decline to cherry pick a particular statement by counsel to the exclusion of other statements. When we consider, as we must, both the content and context of the statements by counsel, as a whole, we conclude that counsel's statements did not amount to a clear and unequivocal statement of fact.

Id. at 1158-59.

[15] Although the case at hand involves a "statement" contained in a pleading rather than an in-court statement by counsel, we believe the principles of *Vigus* still apply. When determining whether a statement presented in a pleading constitutes a judicial admission, the content of the individual pleading as well

as the context of all the pleadings as a whole must be considered. Here, the Final Payment Application states, "to the best of [Timberland's] knowledge, information, and belief the Work covered by this Application for Payment has been completed[.]" Appellee's App., Vol. 2 at 133. However, other pleadings in the record are clear that both parties understood that more work – specifically, installation of the Acrovyn doors – was required after the Final Payment Application was submitted. In the body of the June 21, 2019 email from Bowman to Rynard, Bowman states, "I have the final 2 replacement slabs in the works. I will let you know a delivery date as soon as they provide one to me." Appellant's App., Vol. II at 108. Timberland also designates testimony from Emmert's deposition regarding the temporary doors and the late installation of the Acrovyn doors. Appellant's App., Vol. IV at 76-80.

[16] Emmert testified that the cost of the Acrovyn doors was included in the Final Payment Application even though they had not been installed yet. Appellant's App., Vol. III at 38. However, the Final Payment Application is not the final invoice sent from Timberland to Rynard. The Acrovyn doors were delivered in May, June, July and September of 2019, Appellant's App., Vol. IV at 79, and in July and September, Timberland sent four more invoices to Rynard for the installation of Acrovyn doors,[5] *see id.* at 15-19.

[5] The invoices are dated July 10, 2019, two on September 1, 2019, and September 30, 2019.

[17] The "statement" the trial court determined to be a judicial admission is seemingly boilerplate language contained in an invoice that normally would have been sent after the completion of all work described therein. Further, the same language existed on all Application and Certification for Payment forms and was not specific to the Final Payment Application. It is undisputed that Timberland installed the last set of Acrovyn doors on September 9, 2019. Designated evidence shows regardless of what was stated by the Final Payment Application, all parties were aware that all of Timberland's work on the Nursing Home was not completed by June 20, 2019. Therefore, given the context of the statement, we conclude it is inappropriate to regard it as a judicial admission.

III. Mechanic's Lien

[18] Having concluded the trial court erred in granting summary judgment to Martinsville on the basis of a judicial admission, we consider Timberland's argument that its Mechanic's Lien was timely filed and summary judgment should be granted to it on that issue. A mechanic's lien is a statutory lien meant to prevent unjust enrichment of property owners who enjoy material improvements to their property. *McCorry v. G. Cowser Constr., Inc.,* 636 N.E.2d 1273, 1281 (Ind. Ct. App. 1994), *adopted in part by* 644 N.E.2d 550 (Ind. 1994). To be considered timely, the party seeking to acquire a lien on property must record a sworn statement and notice of intention to hold a lien "[n]ot later than ninety (90) days after performing labor or furnishing materials[.]" Ind. Code § 32-28-3-3(a)(2).

[19] Timberland contends that its Mechanic's Lien "was timely recorded twenty-five days following its last date of work, thereby complying with the strict statutory requirements." Br. of Appellant at 19. Timberland installed the final Acrovyn doors on September 9, 2019 and subsequently filed its Mechanic's Lien on October 3, 2019.[6] It is clear that if September 9 is considered the final day that Timberland "perform[ed] labor or furnish[ed] materials," the Mechanic's Lien would be timely pursuant to Indiana Code section 32-28-3-3.

[20] However, a lien cannot be revived through the performance of some act incidental to the work which is not done with the intention of completing the job. *Abbey Villas Dev. Corp. v. Site Contractors, Inc.*, 716 N.E.2d 91, 98 (Ind. Ct. App. 1999), *trans. denied.* In *Abbey Villas Dev. Corp.,* we stated:

> A mechanic's lien may appropriately be based upon work which was actually called for under the contract or continuing employment relationship performed with the intention of completing the job. However, additional work which is not performed to correct a problem with the work originally contemplated under the contract, but which is performed either gratuitously or under a new contract to make repairs or perform services not contemplated under the original contract, will not serve as a basis for a mechanic's lien for work performed under the original contract.

Id. (internal citation omitted).

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[6] Because the trial court determined that Timberland judicially admitted its lien was untimely, it did not make an actual finding regarding the timeliness of the Mechanic's Lien.

[21] There exists a genuine issue of material fact as to whether the installation of the last two Acrovyn doors was merely incidental, precluding a determination as to whether the Mechanic's Lien was timely filed. The final installation of the Acrovyn doors occurred months after Timberland had completed all other work on the Nursing Home. There were already functioning doors in place prior to the Acrovyn doors' installation, and the Nursing Home had been opened and had residents for multiple months. Further, the record is unclear as to when the Acrovyn doors were included in the Nursing Home plans or whether they were a part of the original contract.[7] Therefore, we conclude that there are factual issues which prevent this issue from being resolved on summary judgment.

Conclusion

[22] We conclude that Timberland did not judicially admit its Mechanic's Lien was untimely but there exists a genuine issue of material fact regarding the lien's timeliness. Accordingly, we reverse and remand for further proceedings.

[23] Reversed and remanded.

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[7] Bowman's affidavit indicates that the Acrovyn doors were specified in the Nursing Home "Plans and Revised Plans[.]" Appellant's App., Vol. III at 155. However, according to the deposition testimony of Stuart Reed, President of Martinsville, the Acrovyn doors were a design change directed by Reed after walking through the project near the end of construction and determining the original doors were not feasible. Appellant's App., Vol. III at 49-50. If it were determined that the installation of the Acrovyn doors was a distinct contract, the installation of the doors would not be a foundation for a mechanic's lien on the entire original contract.

Bradford, C.J., Altice, J., concur.