

STATE OF MICHIGAN
COURT OF APPEALS

WAYNE CARPENTER and LYNDA
CARPENTER,

UNPUBLISHED
September 27, 1996

Plaintiffs-Appellees,

v

No. 179793
LC No. 94-3812 CH

KAY LORRAINE-LAURO,

Defendant-Appellant.

Before: Michael J. Kelly, P.J., and O'Connell and K.W. Schmidt,* JJ.

PER CURIAM.

Defendant appeals as of right the order granting summary disposition in favor of plaintiffs. We affirm.

In 1987, defendant sought to purchase three lots owned by plaintiffs in the city of Owosso. While a purchase agreement was signed by the parties, the deal fell through when, apparently, defendant was unable to obtain financing. The parties then entered into a month-to-month lease. Defendant made monthly payments from 1987 through 1994, when she received a notice to quit. In response, defendant recorded a common law lien on the property, contending that she had expended over \$20,000 in labor, services, improvements and materials on the property. Because defendant's lien constituted a cloud on the title, plaintiffs brought suit, seeking to quiet title on the property. Upon plaintiffs' motion, the court granted summary disposition in favor of plaintiffs, declaring the lien "to be void, a nullity and of no legal effect"

On appeal, defendant contends, in essence, that the decision of the court was marred by errors of law and procedural irregularities sufficient to warrant reversal. We find no errors of law. The instant dispute concerns defendant's placement of a common law lien on plaintiffs' property. A common law lien is "the right of detention, in persons who have bestowed labor upon an article, or done some act in reference to it, and who have the right of detention till reimbursed for their expenditures and labor." *Aldine Mfg Co v Phillips*, 118 Mich 162, 164; 76 NW 371 (1898), quoting *Oakes v Moore*, 24 ME

* Circuit judge, sitting on the Court of Appeals by assignment.

219 (41 Am Dec 379). Thus, such a lien always involves the possession of chattel, *Aldine, supra*, and typically arises in the present day in the context of the repair of goods, particularly, automobiles. Therefore, because the present defendant was not in possession of chattel belonging to another but, instead, sought to encumber real property, her assertion of a common law lien was inappropriate. Accordingly, we find no error in the court's legal conclusions and agree that plaintiffs were entitled to have the lien declared void *ab initio*.

We also fail to find procedural irregularities sufficient to warrant reversal. Defendant alleges that she failed to attend the hearing on plaintiffs' motion for summary disposition because of confusion as to the date of the hearing caused by the court administrator. However, the court did not grant summary disposition based on defendant's failure to appear, but because of its correct conclusion that defendant's asserted defense of a valid common law lien had no basis in law. Similarly, while defendant's request for adjournment should have been granted pursuant to MCR 2.116(G)(a)(i), in light of the fact that defendant could have presented no argument at the hearing that could possibly have influenced the validity of such a common law lien in the context of real property, we find no prejudice to defendant. In short, given the lack of merit in defendant's legal argument, any procedural irregularities occurring below do not justify reversal.

Affirmed.

/s/ Michael J. Kelly

/s/ Peter D. O'Connell

/s/ Kenneth W. Schmidt