

STATE OF MICHIGAN
COURT OF APPEALS

PAGEANT HOMES, INC,

Plaintiff/Appellant-Cross Appellee,

v

WILLIAM E. BRADLEY, WILLIAM WILFORD,
and PATRICIA WILFORD,

Defendants,

and

DEUTSCHE BANK NATIONAL TRUST,

Defendant/Appellee-Cross
Appellant.

UNPUBLISHED

January 20, 2011

No. 293359

Ingham Circuit Court

LC No. 07-001867-CH

Before: METER, P.J., and M. J. KELLY and RONAYNE KRAUSE, JJ.

PER CURIAM.

Plaintiff Pageant Homes, Inc. appeals as of right the trial court's order dismissing its lien foreclosure action. On cross-appeal, defendant Deutsche Bank appeals the trial court's denial of its motion for summary disposition. Because we conclude Pageant Homes' issue on appeal is purely hypothetical, we dismiss it. Further, given our resolution of Pageant Homes' appeal, we dismiss Deutsche Bank's cross-appeal as moot.

Pageant Homes, a supplier of building materials, contracted with defendant William E. Bradley to supply materials for the repair of defendants William and Patricia Wilford's home, which was damaged in a fire. Pageant Homes sued to foreclose on its construction lien after the Wilfords allegedly paid Bradley and Bradley allegedly refused to pay Pageant Homes. Pageant Homes joined Deutsche Bank as the holder of the Wilfords' mortgage.

Pageant Homes obtained a default judgment against Bradley and the Wilfords on the breach of contract claim. On the foreclosure claim, Deutsche Bank moved for summary disposition on the basis that Pageant Homes failed to timely record its construction lien. It was undisputed that Pageant Homes last delivered materials to the property on July 20, 2007, and that it recorded the construction lien within 90 days of that date. Deutsche Bank alleged, however,

that the July delivery was not agreed to or accepted by the Wilfords, and the material delivered was not used for the improvement of the property. Deutsche Bank argued that the last legitimate delivery of materials was in February 2007, and that the time limit for filing ran out in May 2007.

The trial court determined that there was question of fact as to whether the July 20 delivery restarted the clock on the lien filing and denied Deutsche Bank's motion for summary disposition. Deutsche Bank then moved to discharge Pageant Homes' construction lien on the basis of William Wilford's affidavit of payment filed under MCL 570.1203(1).¹ Deutsche Bank also sought a determination that its mortgage lien had priority over Pageant Homes' construction lien. The trial court agreed with Deutsche Bank, and dismissed it from the action, finding also that its mortgage would have priority and explicitly allowing Pageant Homes to reopen the action to recover from the homeowner construction lien recovery fund under MCL 570.1203(3).

On appeal, Pageant Homes only argues that the trial court erred in finding that Deutsche Bank's mortgage lien had priority over its construction lien. It is evident from the entire record that the trial court discharged Pageant Homes' lien because Wilford filed an affidavit of payment under MCL 570.1203(1). Pageant Homes has not challenged the trial court's decision in this regard. Thus, the question of the priority of the liens becomes entirely hypothetical. And, for that reason, we decline to address the priority issue, as it would have "no practical legal effect" on this case. *People v Richmond*, 486 Mich 29, 34-35; 782 NW2d 187 (2010). Accordingly, we dismiss the appeal.

Given our resolution of this issue, we need not address whether the trial court should have granted Deutsche Bank's earlier motion for summary disposition because that issue is now moot; Deutsche Bank has received the relief it requested. *Id.*

The appeal and cross-appeal are dismissed.

/s/ Patrick M. Meter
/s/ Michael J. Kelly
/s/ Amy Ronayne Krause

¹ Repealed 2010 PA 147, effective August 23, 2010.