STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0459

All, Inc.,
Appellant,

vs.

Christopher Hagen,
Respondent,

Fair & Square Remodeling LLC, et al.,
Defendants.

Filed December 20, 2021
Reversed and remanded; motion denied
Reyes, Judge

Hennepin County District Court
File No. 27-CV-19-4657

Neil Polstein, Polstein Law Offices, P.C., Maplewood, Minnesota (for appellant)

Courtney J. Ernston, Minnesota Construction Law Services, P.L.L.C., Vadnais Heights, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Bratvold, Judge; and Frisch, Judge.

SYLLABUS

Minn. Stat. § 514.03 (2020), provides how to determine the amount and extent of a mechanic's lien when prelien notice of a lien claim is required under Minn. Stat. § 514.011 (2020). In contrast, Minn. Stat. § 514.011, subd. 2, outlines the contents of the prelien notice subcontractors are required to give to an owner as a prerequisite for a valid mechanic's lien.

OPINION

REYES, Judge

Appellant subcontractor argues that the district court erred by granting summary judgment to respondent owner in this mechanic's lien foreclosure action and determining that Minn. Stat. § 514.011, subd. 2, precluded enforcement of appellant's mechanic's lien. Appellant also moves to strike two portions of respondent's brief for relying on extra-record materials. We reverse the summary judgment and remand for proceedings consistent with this opinion. In addition, we deny appellant's motion to strike.

FACTS

We construe the following facts in the light most favorable to appellant ALL, Inc. as the nonmoving party. *See Warren v. Dinter*, 926 N.W.2d 370, 375 (Minn. 2019). Respondent Christopher Hagen owns two condominiums in Minneapolis. Hagen contracted with Fair & Square Remodeling, LLC (Fair & Square) to renovate the condominiums for a contract price of $82,163.06.

Fair & Square placed a purchase order with ALL for cabinets and cabinet installation. In March 2018, ALL installed the cabinets in the condominiums. The parties do not dispute that ALL performed satisfactory work. Fair & Square did not pay ALL for its materials and work, which totaled $7,425.06. In April 2018, ALL sent Hagen a prelien notice of a mechanic's lien. In June 2018, ALL recorded its mechanic's lien statement claiming $7,425.06 and served it on Hagen.

By the time Hagen received ALL's prelien notice in April 2018, Hagen had paid Fair & Square approximately $64,806.09 of the original contract price of $82,163.06.[1] Hagen made no further payments, asserting that Fair & Square breached the contract by failing to perform all of the work and failing to pay its subcontractors. Fair & Square eventually went out of business, and its owner filed for personal bankruptcy.

In January 2019, Fair & Square executed a confession of judgment resolving a breach-of-contract claim with Hagen. Fair & Square admitted that it contracted with Hagen to renovate the condominiums, accepted payment from Hagen, did not complete the required work in the contract, and failed to pay all the subcontractors.

In March 2019, ALL commenced an action to foreclose its mechanic's lien. ALL recorded a notice of lis pendens with the Hennepin County Registrar of Titles in April 2019. The parties cross-moved for summary judgment. The district court, relying solely on the prelien-notice language required by section 514.011, subd. 2, granted Hagen's summary-judgment motion, determining that Hagen had paid Fair & Square in full before receiving ALL's prelien notice. This appeal follows.

[1] There is a discrepancy as to how much Hagen paid Fair & Square. According to one of Hagen's interrogatory responses, he paid $64,806.09. But the district court's summary judgment order stated that Hagen paid Fair & Square $70,814.26. Because the exact amount Hagen paid Fair & Square does not change our analysis, we use the smaller figure so as to construe the facts in the light most favorable to ALL.

ISSUES

I. Did the district court err by determining that Minn. Stat. § 514.011, subd. 2, precluded ALL's mechanic's lien claim?

II. Was ALL required to file a notice of lis pendens within one year of Fair & Square stopping work for its mechanic's lien to be perfected?

III. Is ALL's motion to strike portions of Hagen's brief meritorious?

ANALYSIS

I. The district court erred by determining that section 514.011, subd. 2, precludes ALL's mechanic's lien claim.

ALL argues that the district court erred when it granted Hagen's motion for summary judgment by relying on section 514.011, subd. 2, to determine that, by the time ALL served its prelien notice, Hagen had paid Fair & Square "in full," given the unsatisfactory nature of Fair & Square's performance, and therefore ALL had no right to a mechanic's lien. We agree.

"We review a district court's summary judgment decision de novo." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). "In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Id.* (citation omitted); *see also* Minn. R. Civ. P. 56.01. We affirm summary judgment if we can sustain it on any ground presented to the district court. *See Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 163 (Minn. 2012). Because this case requires us to interpret and apply a statute to the facts of the case, it is mainly a question of law, which we also review de novo. *See STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002). ALL's appeal

involves the district court's interpretation of the mechanic's lien statute, Minn. Stat. §§ 514.01-.17 (2020), a question of law we also review de novo. *See State v. Culver*, 941 N.W.2d 134, 139 (Minn. 2020).

"The first step in statutory interpretation is to determine whether the language of the statute is ambiguous" and, if the language is unambiguous, we apply the plain meaning of the statute. *Id.* To determine whether a statute's meaning is unambiguous, we interpret a statute to "give effect to all of its provisions." *In re Schmalz*, 945 N.W.2d 46, 50 (Minn. 2020) (quotation omitted). "In reading the statute, it is necessary to consider not only the bare meaning of the word or phrase, but also its placement and purpose in the statutory scheme." *Goodman v. Best Buy, Inc.*, 777 N.W.2d 755, 758 (Minn. 2010) (quotations omitted). Thus, we must analyze a statute in the context of its surrounding sections. *See Am. Fam. Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 278 (Minn. 2000).

The parties agree that ALL contributed to the improvement of Hagen's property and complied with the procedural requirements for prelien notice. *See* Minn. Stat. § 514.01 ("Whoever . . . contributes to the improvement of real estate . . . shall have a lien upon the improvement . . . ."); Minn. Stat. § 514.011, subd. 2(a) (providing prelien-notice requirements). Instead, ALL's argument relates to the interplay of the prelien-notice requirements in section 514.011 and the determination of a lien amount in section 514.03. We examine sections 514.011 and 514.03 in turn.

A. Section 514.011 sets forth the contents required for a valid prelien notice by a subcontractor.

In analyzing Minn. Stat. § 514.011, subd. 2(a), we conclude that it is unambiguous. Section 514.011 lays out the required contents of a written notice that a contractor or subcontractor who has contributed to improving real property must give to the property owner in order to be entitled to a mechanic's lien. In relevant part, the prelien notice must state that the subcontractor "may not file a lien if [the property owner] paid [their] contractor in full before receiving this notice." Minn. Stat. § 514.011, subd. 2(a).

Here, the district court relied on this language in the prelien notice to determine that, because Hagen paid Fair & Square for the full value of the work that Fair & Square performed before Hagen received ALL's prelien notice, ALL could not file a lien. Before interpreting the contents of the required prelien notice, we turn to its competing provision in the mechanic's lien statute.

B. Section 514.03 provides how to determine the amount of a mechanic's lien when prelien notice is required to obtain a valid lien.

We turn to Minn. Stat. § 514.03, which defines the extent and amount of a mechanic's lien, and what it means to pay the contractor in full. The relevant statutory text reads:

> With respect to any contract or improvement as to which *notice is required by section 514.011*, the lien shall be as follows:
>
> (a) If the contribution is made *under a contract with the owner and for an agreed price*, the lien as against the owner shall be for the sum agreed upon;

> (b) In all other cases, it shall be for the reasonable value of the work done, and of the skill, material, and machinery furnished. Provided, however:
>
> (c) The total sum of all liens, whether the contribution is made under a contract with the owner or otherwise, shall not exceed the total of *said contract price* plus the contract price or reasonable value of any additional contract or contracts between the owner and the contractor or additional work ordered by the owner, less the total of the following:
>
> (i) Payments made by the owner or the owner's agent to the contractor prior to receiving *any notice prescribed by section 514.011, subdivision 2*;
>
> (ii) Payments made by the owner or the owner's agent to discharge any lien claims as authorized by section 514.07; and
>
> (iii) Payments made by the owner or the owner's agent pursuant to presentation of valid lien waivers from persons or companies contributing to the improvement who have previously given *the notice required by section 514.011, subdivision 2*.

Minn. Stat. § 514.03, subd. 2 (emphases added).

This statutory language is unambiguous. Section 514.03, subd. 2, states how to determine the amount of a mechanic's lien and no fewer than three times refers to the prelien "notice prescribed by section 514.011, subdivision 2." *Id.* From these references, we conclude that we must read the two statutes together.

Reading section 514.011, subd. 2, together with section 514.03, subd. 2, and giving effect to both provisions, we conclude that section 514.011, subd. 2, is a notice requirement that explains what a subcontractor must inform a property owner of in order to validate a mechanic's lien. It does not govern the amount and extent of the mechanic's lien itself, which is addressed by section 514.03, subd. 2.

According to section 514.03, if the owner pays the contractor the full contract price before receipt of prelien notice, then the total amount of all liens would be zero. *See id.*, subd. 2(c)(i). Because section 514.03 provides a calculation to determine whether a contract has been paid in full, it is that section, not section 514.011, that determines whether ALL's mechanic's lien is precluded by Hagen's payment to Fair & Square. Thus, whether Hagen paid Fair & Square "in full" is not answered by section 514.011, but by section 514.03. The district court erred by determining otherwise. We hold that section 514.011 provides the contents of a subcontractors' prelien-notice, while section 514.03 provides how to determine the amount of a mechanic's lien for which the subcontractor has provided the required notice.

C. The plain language of section 514.03 does not support the district court's summary-judgment order.

Section 514.03, subd. 2(b)-(c), provides a calculation for determining the amount of a subcontractor's mechanic's lien. The starting point is "the reasonable value of the work done, and of the skill, material, and machinery furnished." Minn. Stat. § 514.03, subd. 2(b). That amount may be limited, however, by payments described in subdivision (c). The lienholder determines the value of the lien by subtracting from the "contract price" any payments made by the owner to the contractor before receiving the subcontractor's prelien notice. Minn. Stat. § 514.03, subd. 2(c)(i).

ALL's argument hinges on the interpretation of "said contract price" in clause (c). ALL argues that phrase refers to the contract between Hagen and Fair & Square in force when ALL served Hagen with its prelien notice. According to ALL's interpretation, the

amount of the lien would be $17,356.97, or the difference between the $82,163.06 contract price and the $64,806.09 Hagen paid Fair & Square.

The plain language of the statute supports ALL's interpretation. The clear antecedent to the phrase "said contract price" in clause (c) is "a contract with the owner and for an agreed price" in clause (a). Words and phrases must be construed according to rules of grammar and according to their common and approved usage, Minn. Stat. § 645.08(1) (2020), and "contract price" is defined as the price listed in a contract. *See Wallboard, Inc. v. St. Cloud Mall, LLC*, 758 N.W.2d 356, 357 (Minn. App. 2008) (referring to the price written in the contract document as the "contract price"). Thus, the "contract price" here refers to the $82,163.06 price in the contract that was in force between Hagen and Fair & Square when ALL served its prelien notice.

This interpretation of section 514.03 prevents property owners and contractors from renegotiating a contract to invalidate a subcontractor's mechanic's lien. Were the owner of the property and the contractor able to renegotiate the contract after the owner receives a prelien notice, then the owner and the contractor would have the power to invalidate any subcontractor's mechanic's lien. Further, because section 514.03, subd. 2(c)(i), subtracts any *prelien* payments by the owner to the contractor from the amount of the subcontractor's lien, defining the "contract price" as that of the contract in force when the lienholder serves the owner with the prelien notice aligns with the rest of the mechanic's lien statute.

Hagen relies on *E.C.I. Corp. v. G.G.C. Co.* to argue that, when a disputed project has not been completed according to the contract, as is the case here, the resulting mechanic's lien is determined based on common-law contract principles. 237 N.W.2d 627,

630 (Minn. 1976). Because Hagen already paid Fair & Square more than the fair value of the work Fair & Square performed, Hagen asserts that the amount of ALL's lien should be $0.

Hagen's argument is unpersuasive. First, the legislature substantially amended section 514.03 after the supreme court decided *E.C.I.* The version of the statute cited in *E.C.I.* does not include the language found in section 514.03, subd. 2(c)(1). *Compare* Minn. Stat. § 514.03 (1971), *with* Minn. Stat. § 514.03 (2020). Because the legislature made material changes to the mechanic's lien statute after the supreme court decided *E.C.I.*, *E.C.I.*'s persuasive value is diminished. Second, section 514.03, subd. 2(c)(i), supersedes any common law to the contrary. Generally, we "presume that the legislature does not abrogate the common law unless it does so expressly or by necessary implication." *Urban v. Am. Legion Dep't of Minn.*, 723 N.W.2d 1, 10 (Minn. 2006) (quotation omitted). Section 514.03 expressly provides the lien amount in a claim for which prelien notice is required; therefore, it abrogated any contrary common law by necessary implication.

In sum, section 514.011, subd. 2, explains how to give proper prelien notice but does not determine the amount of any resulting mechanic's lien. Instead, section 514.03, subd. 2, provides the necessary calculation to determine the amount of any mechanic's lien, and therefore also determines whether a mechanic's lien may be precluded if the owner has paid a contract in full. The district court therefore erred by relying on section 514.011 alone to grant summary judgment to Hagen.

II. ALL's failure to file a notice of lis pendens within one year does not preclude it from foreclosing on its mechanic's lien.

Hagen argues, as an alternative basis to affirm, that ALL cannot foreclose on its mechanic's lien because it did not record its notice of lis pendens within one year of its last date of work, which Hagen contends is required by Minn. Stat. § 514.12, subd. 3. We are not persuaded.

When a lienholder commences a mechanic's lien foreclosure action, section 514.12 requires the lienholder to file a notice of lis pendens with the county recorder, which puts the world on constructive notice of the mechanic's lien action. The lienholder has one year to file the notice of lis pendens. Minn. Stat. § 514.12, subd. 3.

Hagen's argument relies on the inapplicable third clause in section 514.12, subd. 3, which reads:

> *and, as to a bona fide purchaser, mortgagee, or encumbrancer without notice*, the absence from the record of a notice of lis pendens of an action after the expiration of the year in which the lien could be so asserted shall be conclusive evidence that the lien may no longer be enforced and, in the case of registered land, the registrar of titles shall refrain from carrying forward to new certificates of title the memorials of lien statements when no such notice of lis pendens has been registered within the period.

Id. (emphasis added).

Hagen's argument disregards the introductory clause reading "and, as to a bona fide purchaser, mortgagee, or encumbrancer without notice." This clause is "directed by its first three words—'and, as to'—to a different class of persons: bona fide purchasers, mortgagees, and encumbrancers without notice." *Mavco, Inc. v. Eggink*, 739 N.W.2d 148,

155 (Minn. 2007). The supreme court held that this clause "creates a statutory safe harbor for bona fide purchasers, mortgagees, and encumbrancers without notice" by prohibiting the foreclosure of a mechanic's lien if a notice of lis pendens is not recorded within one year of the lienholder's last day of work on the property. *Id.*

Notably absent from the class of interest-holders protected by the third clause of section 514.12, subd. 3, is the property owner. This makes sense because the lienholder must provide the property owner prelien notice per Minn. Stat. § 514.011, must serve the mechanic's lien statement on the owner per Minn. Stat. § 514.08, and must file the complaint within one year of the last date of work per Minn. Stat. § 514.12, subd. 3. And section 514.12, subd. 1, merely requires recording of the notice of lis pendens "[a]t the beginning of the action."

Hagen points to caselaw holding that the mechanic's lien statute is to be "strictly" construed. *See, e.g.*, *Ryan Contracting Co. v. O'Neill & Murphy, LLP*, 883 N.W.2d 236, 243 (Minn. 2016). However, "the filing of notice of lis pendens is not a condition precedent to a right of action" to foreclose on the lien. *Julius v. Callahan*, 65 N.W. 267, 267 (Minn. 1895). Even though we strictly construe the requirements to perfect a mechanic's lien, ALL's failure to file a notice of lis pendens within a year is not fatal to its foreclosure action against Hagen as the property owner. Because Hagen is not protected by ALL's failure to file a notice of lis pendens within one year, ALL can foreclose on its mechanic's lien.

III. We deny ALL's motion to strike portions of Hagen's brief as moot.

Finally, ALL argues that Hagen relied on extra-record materials in his brief and moves to strike two portions of Hagen's brief. We deny the motion as moot.

The record on appeal consists of only documents filed in the district court, offered exhibits, and any transcripts of the proceedings. Minn. R. Civ. App. P. 110.01. "An appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below." *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988).

The first disputed portion of Hagen's brief is a paragraph replying to ALL's argument that the confession of judgment lacks sufficient detail to support the district court granting Hagen's motion for summary judgment. This paragraph does not address any material aspect of the issues before us, and, as such, we deny ALL's motion to strike this paragraph from Hagen's brief. *See Drewitz v. Motorwerks, Inc.*, 728 N.W.2d 231, 233 n.2 (Minn. 2007) (denying motion to strike as moot when court did not rely on challenged materials). The second disputed portion of Hagen's brief is a footnote responding to ALL's speculation that Hagen and Fair & Square were "in cahoots" when drafting the confession of judgment. This footnote also fails to address any material aspect of the issues before us. We therefore deny ALL's motion to strike this footnote. *Id.*

DECISION

The district court erred by relying solely on the "paid . . . in full" language in section 514.011, subd. 2, to grant summary judgment to Hagen. We therefore reverse because section 514.011, subd. 2, outlines the contents of a subcontractor's prelien notice but does not provide how to determine the about the amount of any resulting lien. On remand, the district court should apply the calculation in section 514.03, subd. 2, to determine the amount of ALL's mechanic's lien. We further conclude that ALL is not

precluded from foreclosing on its mechanic's lien by its failure to record its notice of lis pendens within one year of its last date of work because the third clause of section 514.12, subd. 3, does not apply to property owners. Finally, we deny ALL's motion to strike two portions of Hagen's brief.

Reversed and remanded; motion denied.