STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0428

Craig Scherber & Associates, Inc.,
Respondent,

vs.

Matt Bullock Contracting Co., Inc.,
Appellant.

Filed February 14, 2022
Affirmed in part, reversed in part, and remanded
Slieter, Judge

Hennepin County District Court
File No. 27-CV-20-8981

John M. Miller, Halliday, Watkins & Mann, P.C., St. Paul, Minnesota (for respondent)

Justice Ericson Lindell, Greenstein Sellers, P.L.L.C., Minneapolis, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Smith, Tracy M., Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

This appeal and cross-appeal arise from a dispute over grading and soil-correction work for a residential development project. Appellant challenges the dismissal of its unjust-enrichment claim against respondent, arguing that the district court erred by concluding that a mechanic's-lien action was an available remedy at law for appellant

which precluded equitable relief. Because the mechanic's-lien action was an available remedy at law which precludes equitable relief, we affirm.

On cross-appeal, respondent challenges the dismissal of its slander-of-title claim, arguing that the district court erred by concluding that respondent did not allege slander-of-title damages. Because the attorney fees necessary to clear title constitute special damages sufficient to support respondent's slander-of-title claim, we reverse and remand.

FACTS

Because the district court order under review granted both parties' dismissal motions under rule 12.02(e), we construe the facts in favor of each party whose claim was dismissed. *See Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014) (accepting facts alleged in complaint as true and construing all reasonable inferences in favor of nonmoving party).

This appeal involves parties' claims relating to the Stonegate at Rush Creek residential development (the development), which was initially owned by Iverson Homes, Inc. (Iverson). In 2015, appellant Matt Bullock Contracting Co. (Bullock) contracted with Iverson to provide grading and soil correction for the development. Bullock performed work on the property, valued at $127,151.[1] Iverson did not pay Bullock for this work.

In 2016, when Bullock informed Iverson of its intent to file a mechanic's lien, Iverson allegedly convinced Bullock to submit fictitious invoices for unperformed work. This scheme, it was anticipated, would preserve Bullock's ability to subsequently file a

[1] This number does not appear in the parties' pleadings though both parties agree as to its accuracy.

mechanic's lien and allow Iverson to preserve a positive relationship with his lender. From 2016 to 2019, Bullock sent Iverson several fictitious invoices.

In 2018, respondent Craig Scherber & Associates, Inc. (Scherber) agreed to provide supplemental financing to Iverson in exchange for a secondary mortgage on part of the development. That same year, Iverson defaulted on its loan with Scherber. In early 2020, Iverson, Scherber, and Iverson's primary lender began negotiating a work-out agreement whereby Scherber would assume Iverson's debt in exchange for ownership of the entire development. While conducting a title search on the development property, and before closing on the property purchase, Scherber discovered that Bullock filed a mechanic's lien in February 2020. Despite the existence of the mechanic's lien, Scherber closed on the property purchase in March 2020.

Scherber's complaint seeks a declaratory judgment determining that Bullock's mechanic's lien is invalid and also alleges slander of title. Bullock's counterclaim alleges unjust enrichment. Bullock voluntarily withdrew its mechanic's lien in April 2020.

The parties cross-moved for dismissal. The district court construed the parties' motions as motions to dismiss under Minn. R. Civ. P 12.02(e) and dismissed all three claims. Bullock and Scherber cross-appeal the dismissal of their claims.

DECISION

A district court properly dismisses an action pursuant to rule 12.02(e) only if "it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded." *Walsh*, 851 N.W.2d at 602 (emphasis and quotation omitted). "We review *de novo* whether a complaint sets forth a

legally sufficient claim for relief." *Id.* at 606. "We accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party." *Id*.

Bullock raises one issue in its appeal—whether the district court erred by concluding that it had an adequate legal remedy of a mechanic's lien, thereby precluding equitable relief. In its cross-appeal, Scherber argues that the district court erred by dismissing its slander-of-title claim for lack of damages. We address Bullock's appeal before turning to Scherber's cross-appeal.

I. Because Bullock possessed an adequate remedy at law, it may not pursue an equitable remedy.

For Bullock to prove unjust enrichment, it must show that Scherber "has knowingly received something of value, not being entitled to the benefit, and under circumstances that would make it unjust to permit its retention." *Southtown Plumbing, Inc. v. Har-Ned Lumber Co.*, 493 N.W.2d 137, 140 (Minn. App. 1992). Unjust enrichment is an equitable remedy. *Id.*

A party cannot seek an equitable remedy like unjust enrichment if the party has an adequate legal remedy. *ServiceMaster of St. Cloud v. GAB Bus. Servs. Inc.*, 544 N.W.2d 302, 305 (Minn. 1996); *see also Southtown Plumbing*, 493 N.W.2d at 140. A legal remedy *once available* but since expired constitutes an adequate legal remedy and prevents a party from seeking an equitable remedy. *See, e.g.*, *Mon-Ray, Inc. v. Granity Re, Inc.*, 677 N.W.2d 434, 440-41 (Minn. App. 2004), *rev. denied* (Minn. June 29, 2004).[2] Because

[2] A party may argue "compelling circumstances" which allows courts to apply equity in this situation, *id.* at 440, but Bullock does not argue any compelling circumstances.

Bullock had, based on the mechanic's-lien statute, an adequate legal remedy it chose to forgo, it is precluded from seeking the equitable remedy of unjust enrichment. This conclusion is consistent with our decision in *Southtown Plumbing*. There, we concluded that a contractor had an adequate legal remedy even though the contractor failed to enforce its perfected mechanic's lien. *Southtown Plumbing*, 493 N.W.2d at 140-41.

Bullock relies on *Karon v. Kellogg*, 261 N.W. 861 (Minn. 1935), to argue that, because it never perfected—that is, timely filed—its mechanic's lien, unlike the lien holder in *Southtown Plumbing*, it did not have an adequate legal remedy and it is free, therefore, to pursue equitable relief. We are not persuaded.

Bullock misstates the supreme court's holding in *Karon*. The issue in *Karon* did not involve whether a mechanic's lien, perfected or not, precluded recovery pursuant to an unjust-enrichment claim, but whether there was a valid contract between the parties. *Id.* at 862; *see also Lundstrom Constr. v. Dygert*, 94 N.W.2d 527, 532-33 (Minn. 1959) (describing *Karon* as a case involving the challenge of a valid contract for want of an agent's authority to represent the property owner). Moreover, the axiom that equity follows the law is well established in Minnesota. *See ServiceMaster of St. Cloud*, 544 N.W.2d at 305; *Kingery v. Kingery*, 241 N.W. 583, 584 (Minn. 1932) ("[A] court of equity will not disregard statutory law or grant relief prohibited thereby."); *see also U.S. Fire Ins. Co. v. Minn. State Zoological Bd.*, 307 N.W.2d 490, 497 (Minn. 1981) (denying equitable relief when it would circumvent statutory restrictions). And, as it relates to the mechanic's-lien remedy, this axiom relies not on whether the lien is perfected or unperfected but its availability. *Id.* at 306 ("Should a contractor elect not to seek the protection of the clear

and effective method available under the statute, this court will not come to its aid, absent compelling circumstances not present here.").[3]

II. Scherber's slander-of-title claim alleged special damages.

To plead a slander-of-title claim, a party must allege that (1) there was a false statement concerning the plaintiff's real property, (2) the statement was published to others, (3) the publication was malicious, and (4) publication of the false statement caused the plaintiff "pecuniary loss in the form of special damages." *Paidar v. Hughes*, 615 N.W.2d 276, 279-80 (Minn. 2000). The parties only contest whether Scherber pleaded the "special damages" necessary to support its claim.

"Attorney fees and costs reasonably necessary in an action to clear clouds on title resulting from slander of title are special damages that are recoverable in a slander-of-title claim." *Laymon v. Minn. Premier Props., LLC*, 903 N.W.2d 6, 18 (Minn. App. 2017) (quotation omitted), *aff'd*, 913 N.W.2d 449 (Minn. 2018). If the attorney fees were "necessarily incurred" and a "direct result" of the defendant's tortious conduct, then the attorney fees can support a slander-of-title claim. *Id.* (quotations omitted). "The defendant

[3] Bullock also raises three other arguments: (1) its unjust-enrichment claim should not be barred because its legal remedy was against a different defendant, (2) the district court's decision conflicts with the text of the mechanic's-lien statute, and (3) the district court's decision improperly abrogates the common law. The first two arguments were not raised to the district court and are thus forfeited, *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988), and the third was first raised in Bullock's reply brief and is thus also forfeited, *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 887 (Minn. 2010) ("In the past, we have declined to consider issues raised for the first time in a reply brief, particularly when the theory was not raised at the district court level.").

is not liable for attorney fees and costs for legal actions taken by the plaintiff that cannot be traced to the defendant's tortious conduct." *Id.*

Scherber argues that the attorney fees it incurred, as it alleged in its complaint, constitute special damages. We agree. Scherber alleged in its complaint that it learned about Bullock's lien while acquiring the development. After learning about the lien, the bank contacted Bullock and said that, if the lien was invalid, Bullock must immediately release the lien. Any attorney fees incurred to clear title could be "reasonably necessary" and thus are "special damages." *Laymon*, 903 N.W.2d at 18. Therefore, we reverse the district court's dismissal of Scherber's slander-of-title claim and remand.

Affirmed in part, reversed in part, and remanded.