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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2212**

Northdale Construction Co., Inc.,
Respondent,

vs.

Veritas Development, Inc., et al.,
Defendants,
NTC Homes, Inc.,
Appellant.

**Filed July 29, 2013
Reversed and remanded
Stauber, Judge**

Wright County District Court
File No. 86CV0810006

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Considered and decided by Hudson, Presiding Judge; Stauber, Judge; and Willis,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

STAUBER, Judge

Appellant NTC Homes, Inc. (NTC) appeals the district court's entry of default judgment against appellant and foreclosure of respondent Northdale Construction Co., Inc.'s mechanic's lien. Appellant contends that the district court erred as a matter of law by failing to apportion respondent's blanket mechanic's lien against the 17 affected lots on a pro-rata, per-lot basis as required by *Premier Bank v. Becker Development, LLC.*, 785 N.W.2d 753 (Minn. 2010), and thus improperly calculated appellant's share of the amount owed. We reverse and remand.

FACTS

In 2008, respondent Northdale Construction Co., Inc. (Northdale) served and filed a complaint to foreclose its blanket mechanic's lien against the 17 lots that made up a development in Wright County. The complaint alleged that respondent contracted with defendant Veritas Development, Inc. (Veritas) to provide improvements to the 17 lots in a project being developed by Veritas, including sanitary sewer, water main, storm sewer, curb and gutter, and bituminous street. The work constituting the improvements was done between 2005 and late 2007. Appellant NTC owns two of the improved lots, and defendant Copperhead Development, Inc. owns the other 15 lots.

The cost of the improvement was \$193,789.74, of which Copperhead paid respondent \$166,495.59. Appellant NTC did not pay any of the remainder. Respondent Northdale then timely filed a blanket mechanic's lien statement in the office of the Wright County Recorder on February 25, 2008, as Document No. 1080394, reciting an

unpaid lien balance of \$27,294.15.¹ Respondent later filed its lien-foreclosure complaint, alleging that it was still owed \$27,294.15 for the improvement work, plus interest, costs, and disbursements, including attorney fees.

Appellant did not file an answer to the complaint until March 2012, more than three years after the filing of the complaint and did not appear at the pretrial hearing in February 2012, but did participate in pretrial settlement negotiations and in one phone conference with the court. At the telephone conference before the district court, the parties discussed the Minnesota Supreme Court's recent decision in *Premier Bank* and its implications for calculating their proportionate shares. *See Premier Bank*, 785 N.W.2d at 755-56 (directing blanket liens to be enforced on a pro-rata, per-lot basis).

Respondent Northdale subsequently moved for default judgment and to foreclose the mechanic's lien. The district court awarded default judgment against appellant. The district court found that respondent was originally owed \$193,789.74 for improvements to the 17 lots, and that after respondent completed its work, but before it filed the mechanic's-lien statement, Copperhead paid respondent \$166,495.59. After receiving Copperhead's payment, respondent filed a blanket mechanic's-lien statement against all

¹ Minn. Stat. § 514.09 (2012) provides that:

A lienholder who has contributed to the erection, alteration, removal, or repair of two or more buildings or other improvements situated upon or removed to one lot, or upon or to adjoining lots, under or pursuant to the purposes of one general contract with the owner, may file one statement for the entire claim, embracing the whole area so improved; or, if so electing, the lienholder may apportion the demand between the several improvements, and assert a lien for a proportionate part upon each, and upon the ground appurtenant to each, respectively.

17 lots for the remaining balance of \$27,294.15. The district court apparently applied an equitable theory and credited Copperhead for its significant earlier payment, finding that appellant's proportionate share of the mechanic's-lien claim was \$22,789.80, which is two-seventeenths of \$193,789.74, and determining that appellant's proportionate share of the interest, costs, and attorney fees was \$19,011.59, for a total of \$41,810.39; and that Copperhead was responsible for the remaining \$8,243.96. This appeal follows.

D E C I S I O N

I. Direct appeal of default judgment

Respondent argues that this direct appeal is not properly before this court because appellant was required to first move the district court to vacate the judgment. But, a default judgment is directly appealable and reviewable by this court. *See Thorp Loan and Thrift Co. v. Morse*, 451 N.W.2d 361, 362-63 (Minn. App. 1990), *review denied* (Minn. Apr. 13, 1990) (taking an appeal from a default judgment, but noting that the scope of review is limited). “An appeal may be taken to the Court of Appeals . . . from a final judgment.” Minn. R. Civ. App. 103.03(a). A final judgment “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.” *T.A. Schiffsky & Sons, Inc. v. Bahr Constr., LLC*, 773 N.W.2d 783, 788 (Minn. 2009) (quotation omitted). “The word ‘final’ when used to designate the effect of a trial court's judgment or order means that the matter is conclusively terminated so far as the court issuing the order is concerned.” *City of Chaska v. Chaska Twp.*, 271 Minn. 139, 142, 135 N.W.2d 195, 197 (1965).

Because the default judgment entered against appellant conclusively determined all issues in this case, it is a final judgment. This matter is therefore properly before this court on appeal.

II. District court's apportionment

Appellant NTC argues that the district court erred by ordering judgment against it in the amount of \$41,810.39 when it only owned two of the 17 lots that respondent improved. Appellant contends that the *Premier Bank* decision requires the apportionment of the amount owed on a mechanic's lien on a pro-rata, per-lot basis, and that the district court failed to do this. We agree.

“[O]n appeal from a default judgment, a party in default may not deny facts alleged in the complaint when such facts were not put into issue below” nor may a party assert facts on appeal that were not asserted below. *Thorp Loan and Thrift Co.*, 451 N.W.2d at 363. “In a default judgment the relief awarded to the plaintiff must be limited in kind and degree to what is specifically demanded in the complaint even if the proof would justify greater relief.” *Id.* Our scope of review is strictly limited to the facts as set forth in the complaint and the district court's order for default judgment, and to the issues raised by those facts. *Id.*

Appellant relies on *Premier Bank*, which involved a lawsuit to foreclose a blanket mechanic's lien against only three of 59 lien-encumbered lots, all of which were part of the same project. 785 N.W.2d at 756. The supreme court held that a lien claimant cannot “foreclose a blanket lien against less than all of the property subject to the lien.” *Id.* The supreme court reasoned that to allow a blanket lien-holder the option of foreclosing the

lien as though there were separate liens with various amounts against different lot owners would subvert the plain meaning of Minn. Stat. § 514.09, which provides the option of instituting either a blanket lien or an apportioned lien. *Id.* at 761. Therefore, the supreme court concluded that, where a lienholder elects a blanket lien, enforcement of that lien must be spread pro rata against the whole area improved for the entire amount of the lien. *Id.* at 761-63.

Here, pursuant to Minn. Stat. § 514.09 (2008), respondent Northdale filed and perfected a blanket mechanic's lien against all 17 lots even though it had received payment from Copperhead for essentially most, if not all, of Copperhead's equitable share of the amount owed at the time of payment.² The blanket lien is one of two options available to lien claimants. *See Premier Bank*, 785 N.W.2d at 760. A blanket lien is "for the entire claim" and "embrac[es] the whole area so improved." *Id.* (quoting Minn. Stat. § 514.09 (2008)). The second option for lien claimants is to file separate liens to "apportion the demand between the several improvements, and assert a lien for a proportionate part upon each [lot]." *Id.* (quoting Minn. Stat. § 514.09)). The blanket-lien option relieves lien claimants of having to keep separate accounts, of the costs of preparing and filing separate liens for each lot, and of proving the specific amount attributable to each improvement. *Id.* This is the option appellant selected.

The district court concluded that it would be equitable to afford Copperhead the benefit of its \$166,495.59 payment to respondent and to apply this payment in making its

² The record does not indicate that Copperhead was provided a lien waiver in return for its payment.

calculations. But here, as with *Premier Bank*, we are dealing with statutory interpretation, not equity.

In *Premier Bank*, the supreme court held that equitable considerations are not to be made in enforcing blanket mechanic's- lien claims.

[W]e cannot under the guise of equity allow a lien claimant who has elected to file a blanket lien for an improvement that benefits an entire development and who rejected the option of filing separate, proportionate liens for each lot in the development, to enforce a blanket lien in a manner that results in a disproportionate burden on a small fraction of the lots subject to the lien and benefited by the improvement. Therefore, we conclude that when a blanket lien is filed, the value of the lien is spread pro rata against the whole area improved.

Id. at 761-62. Therefore, we conclude that the district court erred when it apportioned the lien on the basis of equity, rather than apportioning the lien on a pro rata, per-lot basis as required by Minn. Stat. § 514.09. Accordingly, we reverse and remand the case to the district court to determine, consistent with this opinion and *Premier Bank*, the appropriate apportionment of this blanket mechanic's lien.

Reversed and remanded.