

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0775**

Crown Equipment Rental Co., Inc., judgment creditor,
Respondent,

vs.

J. B. Builders, LLC,
Judgment Debtor,

and

Primesite Investments, LLC, garnishee,
Appellant.

**Filed March 4, 2008
Reversed
Schellhas, Judge**

Dakota County District Court
File No. C7-05-006622

Phillip R. Krass, Krass & Monroe, P.A., 8000 Norman Center Dr., Suite 1000,
Minneapolis, MN 55437-1178 (for appellant)

Robert J. Bruno, Suite 107, 1601 East Highway 13, Burnsville, MN 55337 (for
respondent)

Considered and decided by Klaphake, Presiding Judge; Halbrooks, Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

This is an appeal in a garnishment proceeding involving real property against which the debtor had a mechanic's lien. The district court granted the judgment-creditor garnishor's motion for summary judgment and awarded the garnishor a personal judgment against the garnishee-landowner for the amount of the mechanic's lien. The garnishee-landowner appeals. Because the relevant authority does not allow a personal judgment against the garnishee-landowner under the facts in this case, we reverse the judgment against the garnishee-landowner.

FACTS

The record in this case is sparse, and this court was not provided with a transcript of the hearing on the summary judgment motion brought by respondent judgment-creditor garnishor, Crown Equipment Rental Co., Inc. (Crown Equipment), which resulted in the summary judgment at issue in this appeal.

By order filed in April 2005, pursuant to a court trial held in Scott County, J. B. Builders, LLC (JB), the debtor in the subject garnishment proceeding, was granted a money judgment in the amount of \$6,337.02 against Westra Construction, Inc. (Westra). JB was also granted a mechanic's lien in the amount of \$6,337.02, plus attorney fees and costs for a total lien amount of \$12,447.30, against real property located in Scott County and owned by appellant Primesite Investments, LLC (Primesite), the garnishee-landowner in the subject garnishment proceeding. No money judgment against Primesite was awarded to JB. Also, pursuant to the Scott County trial, money judgments were

awarded to Westra, against JB in the amounts of \$46,413.69 and \$29,845, plus attorney fees and costs in the amount of \$22,726.03. The Scott County District Court did not offset the amount owed by Westra to JB against the amount owed by JB to Westra for which JB was granted the mechanic's lien in either the district court's findings of fact, conclusions of law and order for judgment and judgment, filed April 25, 2005, or the posttrial order and judgment, filed September 15, 2005. The order granting judgment was filed April 25, 2005. Thus, although JB owed Westra substantially more money than Westra owed JB, the Scott County District Court granted JB the right to foreclose its mechanic's lien against Primesite's real property.

In January 2005, in Dakota County District Court, in litigation unrelated to the Scott County proceedings, Crown Equipment sued JB on an equipment lease, seeking damages and attorney fees.¹ In February 2005, Crown Equipment was awarded a money judgment against JB in the amount of \$12,772.66. The Dakota County District Court found that this judgment was partially satisfied on March 7, 2006, leaving an unsatisfied money judgment against JB and in favor of Crown Equipment in the amount of \$11,149.29.

On March 11, 2006, when its money judgment against JB remained unsatisfied, Crown Equipment served a garnishment summons on Primesite in Dakota County. Primesite's garnishment disclosure denied having property belonging to JB. On March 24, 2006, on the basis of the existence of JB's mechanic's lien against Primesite's land, Crown Equipment moved the Dakota County District Court for permission to serve

¹ Primesite had no involvement at all in the litigation between Crown Equipment and JB.

a supplemental complaint on Primesite. On April 25, the Dakota County District Court granted Crown Equipment's motion. Primesite did not respond to Crown Equipment's supplemental complaint and in June 2006, Crown Equipment filed an affidavit of no answer in its garnishment proceeding, then withdrew its motion for a default judgment, and then moved the Dakota County District Court to require Primesite to complete the disclosure form. What happened to that motion is unclear on this record. In December 2006, Crown Equipment filed a motion for summary judgment against Primesite, seeking to recover an amount equal to its unsatisfied judgment against JB (\$11,149.29). A hearing on the motion was set for January 23, 2007.

On either January 22 or 23, 2007, the record is unclear, Primesite attempted to submit to the Dakota County District Court its attorney's affidavit, along with supporting exhibits opposing Crown Equipment's motion for summary judgment. Primesite's documents are included in the appendix to Crown Equipment's appellate brief, but are not contained in the district court file nor are they mentioned in the district court's February 8, 2007 order in which the court granted Crown Equipment's motion for summary judgment and granted Crown Equipment a personal judgment against Primesite in the amount of \$11,149.29. In its attempted submissions to the Dakota County District Court, Primesite states that on March 23, 2006, JB released its mechanic's lien against Primesite's land and on March 28, 2006, discharged its notice of lis pendens. In a February 20, 2007 letter, Primesite asked the Dakota County District Court to reconsider its order granting judgment in favor of Crown Equipment against Primesite. On

March 19, 2007, the district court denied Primesite's request for reconsideration, and Primesite appeals.

D E C I S I O N

On appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact, and (2) whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). There is no genuine issue of material fact when the evidence does not “permit reasonable persons to draw different conclusions.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). We review the evidence in the light most favorable to the party against whom judgment was granted. *Fabio*, 504 N.W.2d at 761.

On appeal, Primesite argues that the rights of Crown Equipment, as garnishor, were limited to the rights of its debtor, JB, whose rights against Primesite were solely those of a mechanic's lienholder not a personal-judgment creditor. Therefore, Primesite argues that the Dakota County District Court erred by awarding Crown Equipment a personal judgment against Primesite because JB had no right to a personal judgment against Primesite. Crown Equipment argues that the issues Primesite seeks to raise on appeal were not argued to the district court and are not properly before this court. *See, e.g., Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that, generally, appellate

courts do not address questions not presented to and considered by the district court). But “it is the responsibility of appellate courts to decide cases in accordance with law, and that responsibility is not to be ‘diluted by counsel’s oversights, lack of research, failure to specify issues or to cite relevant authorities.’” *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990) (citations omitted); *see Greenbush State Bank v. Stephens*, 463 N.W.2d 303, 306 n.1 (Minn. App. 1990) (applying *Hannuksela* in a civil case), *review denied* (Minn. Feb. 4, 1991)). Here, our decision is required by the applicable law.

In a garnishment proceeding, a garnishor (Crown Equipment), “stands in the shoes of the [debtor]” (JB), when proceeding against the garnishee (Primesite). *Midland Loan Fin. Co. v. Kisor*, 206 Minn. 134, 136, 287 N.W. 869, 870 (1939); *see Polzin v Merila*, 258 Minn. 93, 97, 103 N.W.2d 198, 202 (1960) (stating that “the only rights against garnishee acquired by [the garnishor] upon the service of the garnishee summons were those then held by [the debtors] against such garnishee”). Here, Primesite had no contract with JB, no personal liability to JB, and JB had no right to a personal judgment against Primesite. *See Lundstrom Constr. Co. v. Dygert*, 254 Minn. 224, 232, 94 N.W.2d 527, 533 (1959) (reciting the general recognition that, other than the statutory right to a mechanic’s lien or other special statutory remedies, subcontractors and materialmen have no right to a personal judgment against the owner where there is no contractual relation between them); *see also Johnson & Peterson, Inc. v. Toohey*, 285 Minn. 181, 183-84, 172 N.W.2d 326, 328 (1969) (stating that if a landowner is not a party to a contract between a contractor and a subcontractor, the landowner is not liable for work or materials provided to a contractor). Moreover, even if JB did have a basis to assert personal liability against

Primesite, a mechanic's lienholder must exhaust his rights against the land by foreclosure of the lien and sale of the land before any deficiency judgment may be entered personally against a party personally liable. *Krahl Excavating Co. v. Goldman*, 296 Minn. 324, 327-28, 208 N.W.2d 719, 721 (1973). Thus, even if JB had a basis to assert personal liability against Primesite, because JB took no action to exhaust its rights against Primesite's land by foreclosure, the award of a personal judgment to Crown Equipment was improper. Cf. *Empro Corp. v. Scotland Hotels, Inc.*, 449 N.W.2d 734, 737-38 (Minn. App. 1990) (affirming district court's refusal to grant attorneys a personal judgment against property owner where attorneys had an attorney's lien against their former client's mechanic's-lien foreclosure action, stating that the attorney's lien did not give the attorneys "the right to claim against any and all parties involved in that litigation").

Crown Equipment argues that a personal judgment against Primesite is authorized by Minn. Stat. § 571.84 (2006), which allows the district court to issue orders relative to the property of a debtor that is in the possession of the garnishee. Under that statute:

On motion of a person in interest the court may: (1) determine the value of property of the debtor in the hands of the garnishee; (2) make an order relative to the keeping, delivery, or sale of the property *that is necessary to protect the rights of those interested*; or (3) require the property to be delivered to a receiver or other person appointed by the court. If the garnishee refuses or neglects to comply with an order of the court, the garnishee may be held in contempt of court, and is also liable to the creditor for the value of the property, less the amount of a lien.

Minn. Stat. § 571.84 (emphasis added). Thus, to protect Crown Equipment's interest in JB's mechanic's lien, if any, the district court could have ordered Primesite not to take

any action regarding the land that would be adverse to JB's mechanic's lien rights. However, authority for awarding Crown Equipment a personal judgment against Primesite is not found in Minn. Stat. § 571.84.

Crown Equipment also argues that the personal judgment against Primesite is authorized by Minn. Stat. § 571.82 (2006), which states that a judgment “may” be entered against a garnishee if the garnishee fails to make a disclosure. *See* Minn. Stat. § 571.75, subd. 4 (2006) (stating that if parties fail to answer or respond after service of a supplemental complaint, judgment by default may be rendered against them under Minn. Stat. § 571.82); *cf.* Minn. Stat. § 645.44, subd. 15 (2006) (stating “[m]ay” is permissive”); *Lyon Dev. Corp. v. Ricke's Inc.*, 296 Minn. 75, 85, 207 N.W.2d 273, 279 (1973) (stating that “[a] garnishee should not become indebted to the [garnishor] unless every proper procedural step is taken to protect its interests, and the entry of judgment against it must be strictly construed.”). In this case, nowhere in the district court's order awarding Crown Equipment a personal judgment against Primesite does the district court even suggest that the judgment is awarded on the basis of Primesite's default nor does the district court reference Minn. Stat. § 571.82. Because the record does not show that the district court considered Minn. Stat. § 571.82 or the procedural background of the case as is required by that statute, and because the record does not otherwise show that the district court exercised its discretion in granting Crown Equipment a personal judgment against Primesite, we will not affirm the district court under Minn. Stat. § 571.82.

Because we conclude that the personal judgment granted to Crown Equipment against Primesite is not authorized under the law and must be vacated, we do not reach Primesite's additional arguments.

Reversed.