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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-885**

Clements Lumber, Inc.,
Respondent,

vs.

Rick DeMartini, a/k/a Rick D. Martini, Jr.,
d/b/a Entirely Seamless Gutters,
Appellant,

Rachel Fonss, et al.,
Defendants.

**Filed February 22, 2011
Affirmed
Lansing, Judge**

Redwood County District Court
File No. 64-CV-06-155

John D. Moritz, O'Leary & Moritz Chartered, Springfield, Minnesota (for respondent)

Rick DeMartini, Lamberton, Minnesota (pro se appellant)

Considered and decided by Lansing, Presiding Judge; Kalitowski, Judge; and
Hudson, Judge.

UNPUBLISHED OPINION

LANSING, Judge

This appeal from the district court's order denying Rick DeMartini's motion to vacate a stipulated judgment and granting Clements Lumber Inc.'s motion directing the sale of commercial real estate is the culmination of five years of litigation over a mechanics' lien. Because the district court complied with the remand instructions, properly applied the law, reasonably exercised its discretion, and relied on facts supported by the record, we affirm.

FACTS

Between June 2004 and August 2005, Clements Lumber, Inc., furnished building materials to Rick DeMartini and Rachel Fonss, who were then husband and wife, for the renovation of a homestead and construction of a commercial building. The buildings are on two separate parcels of property owned by DeMartini and Fonss. The commercial building was constructed to house DeMartini and Fonss's incorporated business, Entirely Seamless Gutters. DeMartini was president of the corporation and Fonss was vice-president.

Clements Lumber timely recorded mechanics' liens against the parcels for the value of the materials and supplies that it provided for the construction and also for the interest that accrued after Clements Lumber provided the materials and supplies. DeMartini and Fonss did not fully compensate Clements Lumber, and in March 2006, Clements Lumber brought an action to foreclose the lien.

DeMartini and Fonss retained attorney Kevin Stroup to represent them in the litigation. On the day trial was scheduled to begin, Stroup and John Moritz, the attorney for Clements Lumber, negotiated a settlement. Under the settlement, DeMartini and Fonss were required to pay Clements Lumber \$115,000 to discharge the mechanics' lien on the commercial property. This amount was payable in monthly installments with a balloon payment on the remaining balance by the end of 2008. The settlement provided that failure to make timely payments would result in a default and foreclosure.

Fonss was present at the settlement hearing and stated on the record that she agreed to the settlement terms. DeMartini did not attend the hearing because he was incarcerated. Following the hearing, Moritz drafted a proposed order memorializing the terms of the settlement and sent it to Stroup. Stroup sent a letter to Moritz indicating that the proposed order was acceptable and mailed courtesy copies of the letter to Fonss and DeMartini. Both attorneys signed the proposed order before submitting it to the court. On February 2, 2007, the district court signed the stipulated order for settlement, and judgment was entered.

In September 2008 Clements Lumber moved for an order directing the sale of the property, alleging that Fonss and DeMartini had failed to make their July 2008 installment payment. At the same time, DeMartini moved to vacate the stipulated judgment under Minn. R. Civ. P. 60.02, alleging fraud by an adverse party. In support of his motion, DeMartini alleged that Fonss, Stroup, and Moritz had conspired to prevent him from participating in the settlement negotiations and settled the claim without his consent; that the business records Clements Lumber submitted to establish the amount of

the lien were falsified; and that Stroup committed misconduct by failing to assert statutory defenses to the lien claim.

Following a hearing, the district court denied DeMartini's 60.02 motion to set aside the stipulated judgment and granted Clements Lumber's motion for an order directing sale of the commercial property. The district court denied the 60.02 motion on four grounds: first, a 60.02 motion affords relief for fraud by an adverse party but not by one's own counsel or co-defendant; second, the record contained no evidence that Moritz, who was adverse to DeMartini, committed fraud in negotiating the stipulated order; third, DeMartini forfeited his statutory defenses to the lien claim when the stipulated order was signed by the district court; and fourth, DeMartini's motion for relief was untimely, because it was brought more than six months after the one-year limitations period applicable to 60.02 motions. The district granted Clements Lumber's motion for an order directing sale of the commercial property based on testimony and affidavits of nonpayment.

DeMartini appealed to this court, and we affirmed the denial of DeMartini's motion to vacate the stipulated judgment under rule 60.02, noting, as the district court had, a complete absence of record evidence that any party or counsel committed fraud in obtaining the order. *Clements Lumber, Inc. v. DeMartini*, No. A08-2077, 2009 WL 2366176, at *2 (Minn. App. Aug. 4, 2009). The opinion further noted that DeMartini had "not allege[d] fraud on the court at the district court level." *Id.* at *2 n.1. But we reversed the district court's order directing sale of the commercial property and remanded for further findings on the defaulted payments. *Id.* at *3.

Almost immediately, DeMartini again moved, in the same action, to vacate the stipulated judgment based on fraud, but this time citing Minn. Stat. § 548.14 (2008). The district court denied the motion as frivolous on several grounds. These grounds included the fact that the court of appeals opinion had affirmed the district court's previous finding that no party or counsel had committed fraud in obtaining the stipulated judgment and that, even if that determination had not already been made, a claim under Minn. Stat. § 548.14 requires a new action; it cannot be initiated by motion in an on-going lawsuit. In response to the court of appeals remand, the district court directed the parties to submit evidence that would permit a clear finding of fact on whether a default in payments had triggered the foreclosure sale provision in the stipulated judgment. DeMartini appealed, and this court dismissed the appeal after DeMartini failed to pay the filing fees.

About two weeks later, DeMartini brought another motion in the district court, again requesting that the stipulated judgment be vacated based on Minn. Stat. § 548.14. The district court denied this replicated motion on the same grounds that it had denied the earlier motion. Relying on supplemental evidence of payment defaults that breached the requirements of the stipulated judgment, the district court also directed the sale of the commercial real estate. This appeal followed.

D E C I S I O N

The central argument that DeMartini makes in this appeal is that the district court improperly denied his motion, framed under the provisions of Minn. Stat. § 548.14, to set aside the stipulated judgment that concluded the Clements Lumber mechanics' lien action. In denying the motion, the district court relied on three separate grounds, each of

which provides an independent basis for denying the motion to dismiss: (1) a claim to set aside a judgment under section 548.14 cannot be brought by motion in an ongoing mechanics' lien foreclosure action, but must be brought in a separate action; (2) the fraud that DeMartini alleges as the grounds for his motion does not constitute a basis to set aside the judgment under section 548.14; and (3) the district court's finding that Fonss, Stroup, and Moritz did not commit any fraud in obtaining the stipulated settlement was affirmed in the initial appeal to this court, is law of the case, and is not subject to reconsideration. We analyze each of these bases separately.

I

Under Minn. Stat. § 548.14 a judgment obtained by “any fraudulent act, practice, or representation of the prevailing party, may be set aside in an action brought for that purpose by the aggrieved party.” Whether the judgment should be set aside is “largely within the [district] court’s discretion and will not be reversed on appeal absent a clear abuse of discretion.” *Howard v. Frondell*, 387 N.W.2d 205, 207-08 (Minn. App. 1986), *review denied* (Minn. July 31, 1986).

Section 548.14 authorizes an individual to challenge a judgment allegedly procured by fraud “in an action brought for that purpose.” The statute does not authorize or contemplate challenging the judgment by motion. Our decisions have reflected the statute’s plain meaning: “[A] challenge to a judgment under Minn. Stat. § 548.14 requires the commencement of an independent action. Simply referring to § 548.14 in a motion brought in the original . . . action does not constitute the initiation of an independent

action, as is required by the statute.” *Hennepin Cnty. Welfare Bd. v. Kolkind*, 391 N.W.2d 539, 541 (Minn. App. 1986).

In his earlier motion under Minn. R. Civ. P. 60.02, which was based on the same allegations of fraud, DeMartini pursued the procedural remedy available to set aside the judgment in the action in which it was entered. His motion was denied, and that determination was affirmed on appeal. *DeMartini*, 2009 WL 2366176 at *2. We address in section III the preclusive effect of the law-of-the-case doctrine. But the district court correctly determined that DeMartini’s failure to bring his section 548.14 challenge in a separate action was a procedural defect that was fatal to his motion.

II

The second basis on which the district court denied DeMartini’s motion to dismiss is that the motion raises legal defenses that should have been asserted at the time the complaint and lien were filed and are not properly brought in a motion to set aside the judgment for fraud under Minn. Stat. § 548.14. These alleged legal defenses include a claim that Clements Lumber and its attorney perpetrated fraud on the court by providing false information in the complaint and the bill of particulars about the value of the materials furnished and falsified or forged documents substantiating the amount, service, and filing of the lien.

The district court did not err by denying the motion on this ground. In his March 2006 answer, DeMartini raised affirmative defenses and also raised every substantive and procedural objection that he later raised in his motion framed under section 548.14. To the extent that these legal defenses and challenges may have had merit when timely

raised, DeMartini waived them when the case was settled and the court signed and entered judgment on the stipulated order in February 2007. Having waived these legal defenses, DeMartini is precluded from now raising them in the context of a claim under section 548.14.

An action to vacate a judgment for fraud is equitable in its nature and governed by equitable principles. *See Berkman v. Weckerling*, 247 Minn. 277, 287, 77 N.W.2d 291, 298 (1956). Minnesota courts have long held that a failure to timely raise a legal defense may not be cured by later characterizing the defense as an equitable attack on a judgment. *See Clark v. Lee*, 58 Minn. 410, 412, 59 N.W. 970, 971 (1894) (holding that statute authorizing action to set aside judgment obtained by fraud or perjury cannot be invoked for purpose of interposing defense that was inexcusably deleted from original action); *see also Miller v. First Nat'l Bank of Ada*, 133 Minn. 463, 464, 157 N.W. 1069, 1069 (1916) (holding that judgment may not be vacated on basis of fraud after failing to raise these defenses in original action).

DeMartini fails to distinguish the fraud he now alleges from the legal objections he raised earlier to the form and substance of Clements Lumber's filings. DeMartini is alleging fraud as a means to attack the authenticity of the complaint and the amount of the lien. These challenges were waived when judgment was entered on the stipulated order. Furthermore, as the district court observed, DeMartini's challenges to the authenticity and amount of Clements Lumber's filings consist entirely of unsubstantiated assertions.

III

The third basis for the district court's dismissal of DeMartini's section 548.14 motion is that the integrity of the settlement process has been established as the law of this case and any challenge to the stipulated judgment grounded on claims of fraud is barred and frivolous.

The law-of-the-case doctrine applies if an appellate court has ruled on a legal issue and remanded the case for further proceedings, in which case "[t]he issue decided becomes the law of the case and may not be relitigated in the trial court or re-examined in a second appeal." *Sylvester Bros. Dev. Co. v. Great Cent. Ins. Co.*, 503 N.W.2d 793, 795 (Minn. App. 1993) (quotation omitted), *review denied* (Minn. Sept. 30, 1993).

In this court's opinion affirming the district court's October 2008 denial of DeMartini's motion to vacate the stipulated judgment for fraud, we upheld the district court's finding that the record contained no evidence that any party or counsel in this matter, including DeMartini's attorney, committed fraud in negotiating the stipulated order that settled the mechanics' lien action. *DeMartini*, 2009 WL 2366176 at *2. And in our order dismissing DeMartini's challenge to the district court's October 2009 order denying another motion to vacate for fraud as frivolous, we observed:

[T]he only issue identified in [DeMartini's] statement of the case relates to alleged fraud by respondent and its counsel. This court's opinion filed in August 2009 affirmed the district court's earlier determination that [DeMartini] is not entitled to relief from the judgment on the basis of fraud. And the issue in [DeMartini's] statement of the case does not address the district court's recent determination that another motion raising substantially similar grounds as the previous appeal and proceedings is frivolous.

Clements Lumber, Inc. v. DeMartini, No. A08-2077 (Minn. App. Jan. 5, 2010) (order).

Based on these previous determinations in this ongoing mechanics' lien action, the integrity of the stipulated judgment is the law of this case, and DeMartini may not challenge that judgment by again alleging fraud.

DeMartini has not argued that Clements Lumber has failed to demonstrate a breach in the payment requirements incorporated into the stipulated judgment or that the failure to make those payments triggered the provisions directing the sale of the commercial real estate. His arguments for reversal of the district court's determination have focused on his claim that the stipulated order was obtained by fraud, and, therefore, the judgment based on that order must be vacated. Because the district court has repeatedly determined that no fraud was committed in any stage of the mechanics' lien litigation or in the stipulated order, and that determination has been affirmed in two opinions and a special-term order of this court, we reject DeMartini's claim that the district court erred by directing the sale of the commercial property for failure to comply with the terms of the stipulated judgment.

Finally, we note that this case is captioned as DeMartini "d/b/a Entirely Seamless Gutters." Although persons who are not licensed attorneys "may represent themselves in court, they may not represent others." *In re Conservatorship of Riebel*, 625 N.W.2d 480, 481 (Minn. 2001). "It is well settled under Minnesota common law that a corporation must be represented by an attorney in legal proceedings." *Save Our Creeks v. City of*

Brooklyn Park, 699 N.W.2d 307, 309 (Minn. 2005). DeMartini's arguments in this appeal have therefore been limited to his personal claims.

Affirmed.