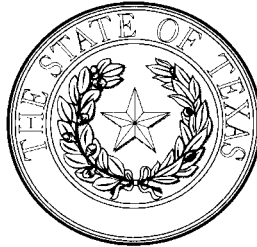


Opinion issued September 17, 2020



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-18-00204-CV

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**FARIBORZ SHOJAI, Appellant**

**V.**

**MORRELL MASONRY SUPPLY, INC., Appellee**

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**On Appeal from the 129th District Court  
Harris County, Texas  
Trial Court Case No. 2015-55588**

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**MEMORANDUM OPINION**

Morell Masonry Supply, Inc. sought to enforce a mechanic's and materialman's lien against property owned by Fariborz Shojai. The trial court granted summary judgment in favor of Morrell. In five issues, Shojai appeals the summary judgment enforcing a lien on his property. Shojai, who is proceeding

without an attorney, also seeks sanctions and a determination of fraud against Morrell, its counsel, and various individuals who submitted affidavits in the matter. We affirm.

### **Background**

Shojai bought a quarter-acre lot in Houston in 2006. The property was described in county filings as:

Lot 318, Block 12, of Westhaven Estates, Section Two, an Addition in Harris County, Texas, According to the Map or Plat Thereof Recorded in Volume 30, Page 46 of the Map Records of Harris County, Texas.

He filed a subdivided plat of the property three years later, dividing the single lot into four “lots” and one “reserve.” The replatted land was named Potomac Gardens Subdivision and described on documents filed with Harris County as:

*Potomac Gardens Subdivision, 1 Block, 4 Lots, & 1 Reserve, A Subdivision of .2735 Acres out of Lot 318, Block 12, of Westhaven Estates, Section Two, an Addition in Harris County, Texas, According to the Map or Plat Thereof Recorded in Volume 30, Page 46 of the Map Records of Harris County, Texas.*

(Emphasis added.) Each of the four lots was assigned a street address:

Lot 1	1628 Potomac
Lot 2	1626 Potomac <sup>1</sup>
Lot 3	1630 Potomac
Lot 4	1632 Potomac

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<sup>1</sup> Shojai states that his residence is located at 1626 Potomac.

Shojai is the President of a Texas entity, Contract Developers, Inc. In 2013, Shojai transferred ownership of the full property to Contract Developers. The Special Warranty Deed describes the property being transferred as:

Lot 1 thru 5 with following parcels, IDs # 1315630010001-5 being part of Potomac Garden Subdivision, 1 Block, 4 Lots & 1 Reserve, a Subdivision of 0.2735 acres out of Lot 318 Block 12, of Westhaven Estate Section Two, an addition in Harris County, Texas according to the map or plat thereof recorded in Volume 30, Page 46 of the Map Recorded of Harris County, Texas. . . .

The next day, Contract Developers transferred Lot 2 back to Shojai. An image of the platted lots, with addresses and owners noted, is attached as *Addendum I*.

Two years later, Contract Developers hired Los Alvarados Stucco & Stone to do stucco work on the two lots closest to Potomac Street: 1626 Potomac (which Shojai owned) and 1632 Potomac (which Contract Developers owned). *See Addendum I*.

Morrell was the subcontractor that supplied materials for the work. Morrell claimed to have never been paid for its materials, and it filed mechanic's and materialman's liens<sup>2</sup> on the property. The lien at issue in this appeal was for

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<sup>2</sup> “A statutory lien that secures payment for labor or materials supplied in improving, repairing, or maintaining real or personal property, such as a building, an automobile, or the like. – Also termed . . . *laborer’s lien* (for labor); *materialman’s lien* (for materials). *Lien—mechanic’s lien*, Black’s Law Dictionary (11th ed. 2019); *see* TEX. PROP. CODE ch. 53.

\$3,447.43. The corresponding Lien Affidavit reference a lien number of 20150405500, and described the property as:

Lot 1 with following parcels, IDS #1315630010001-5 being part of Potomac Garden Subdivision, 1 Block, 4 Lots & 1 Reserve, a subdivision of .2735 acres out of Lot 318 Block 12, of Westhaven Estate Section Two, an addition in Harris County, Texas according to the map or plat thereof recorded in Volume 30, Page 46 of the Map Recorded of Harris County, Texas . . . The subject property is located in Harris County. More commonly known as: 1632 Potomac St. Houston, TX 77057. . . .

Morrell then filed to perfect its lien and to foreclose on the property at 1632 Potomac because its lien amount was not paid.

Shojai argued the lien did not attach to the property at 1632 Potomac because the description of the property in the Lien Affidavit began as “Lot 1 with following . . . .” and, as designated by him when he platted the land, Lot 1 is 1628 Potomac. Shojai disputed that the remainder of the property description in the Lien Affidavit clarifies that the property subject to the lien is 1632 Potomac, including the matching parcel identification numbers, subdivision name, original land description, and map record reference numbers coupled with a designation of a street address of 1632 Potomac.

Morrell argued the lien attached to 1632 Potomac because the description of the property substantially complied with statutory requirements and specifically identified the property by the correct street address: 1632 Potomac.

After lengthy litigation, Shojai moved for summary judgment, seeking to have the lien invalidated and declared unenforceable because it designated “Lot 1,” which is 1628 Potomac, even though it described the property by a physical address of 1632 Potomac. The trial court denied his motion, concluding the lien substantially complied with Chapter 53 requirements.

Morrell moved for summary judgment as well. It sought to establish its right to foreclose of 1632 Potomac, arguing that its lien affidavit substantially complied with the statutory requirements and was properly perfected. The trial court granted Morrell’s motion and entered a final judgment that rendered judgment for Morrell, established a lien on 1632 Potomac in the amount of \$4,337.43, and entered additional rulings against Shojai’s entity, Contract Developers.

Shojai appealed. Contract Developers did not.

### **Issues Raised by Shojai on Appeal**

Shojai’s pro se brief is lengthy; his factual assertions are laborious and at times contradictory. After reviewing the briefing many times, we understand the brief to raise three issues and to request these resolutions of those issues: (1) reverse the summary judgment granted to Morrell because fact issues precluded summary judgment, (2) find that Morrell, its attorney, and various affiants committed fraud, and (3) impose sanctions against Morrell and its attorney.

## **Morrell's Summary Judgment on Its Mechanic's and Materialman's Lien**

The first issue we address is whether the trial court erred in granting summary judgment to Morrell and establishing a lien on 1632 Potomac.

### **A. Standard of review**

Our review of a summary judgment is de novo. *Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 215 (Tex. 2003). Under the traditional standard for summary judgment, the movant has the burden to show that no genuine issue of material fact exists and that judgment should be granted. TEX. R. CIV. P. 166a(c); *KPMG Peat Marwick v. Harrison County Hous. Fin. Corp.*, 988 S.W.2d 746, 748 (Tex. 1999). We view all evidence in a light favorable to the nonmovant and indulge every reasonable inference in the nonmovant's favor. *Provident Life*, 128 S.W.3d at 215.

### **B. The trial court did not err**

The two summary-judgment motions presented the same main issue: whether Morrell's lien affidavit adequately described the real property to which Morrell sought to assert a lien. Shojai argued it did not because Morrell's property description began with the term "Lot 1," and the lot Shojai had designated as "Lot 1" in the county records was 1628 Potomac.

Morrell, on the other hand, argued its description was adequate because, while the technical description of the property began with the term "Lot 1," it also provided

other descriptors to help identify the liened property, including the property’s correct physical address: 1632 Potomac. Its description included the sentence, “More commonly known as: 1632 Potomac St. Houston, TX 77057.”

The trial court held that the property description, which correctly identified the street address where Morrell had materials provided, met the requirement of substantial compliance with the lien-content requirements. We agree.

“It is the general policy in Texas that when someone has to lose money because of an impecunious contractor, it should be the owner and not the subcontractor.” *Stolz v. Honeycutt*, 42 S.W.3d 305, 314-15 (Tex. App.—Houston [14th Dist.] 2001, no pet.); see *Jorgenson v. Evans*, No. 12-16-00013-CV, 2016 WL 4538622, at \*4 (Tex. App.—Tyler Aug. 31, 2016, no pet.) (mem. op.) (quoting *Stolz*). Thus, mechanic’s and materialmen’s lien statutes of Texas are liberally construed to protect laborers and materialmen. *Hayek v. Western Steel Co.*, 478 S.W.2d 786, 795 (Tex.1972); *Lopez v. Bucholz*, No. 03-15-00034-CV, 2017 WL 1315377, at \*10 (Tex. App.—Austin Apr. 7, 2017, no pet.) (mem. op.).

Chapter 53 of the Property Code sets forth the procedures a subcontractor must follow to perfect a lien. TEX. PROP. CODE §§ 53.051–53.055. One requirement is that the subcontractor must timely file a lien affidavit. *Id.* § 53.052(a)–(b). The lien affidavit, among other requirements, “must contain substantially . . . a

description, legally sufficient for identification, of the property sought to be charged with the lien.” *Id.* § 53.054(a)(6).

Here, the legal description of the real property improved by Morrell with stucco materials, as stated in the affidavit, was:

Lot 1 with following parcels, IDS #13156300100001-5 being part of Potomac Garden Subdivision, 1 Block, 4 Lots & 1 Reserve . . . located in Harris County. More commonly known as: 1632 Potomac St. Houston, TX 77057. . . .

In his briefing, Shojai admits Morrell made improvements at 1632 Potomac, the same physical address listed on the lien affidavit. Yet, Shojai insists the first term of the description—“Lot 1”—invalidates the lien because, as he designated the property when platting it years ago, Lot 1 is 1628 Potomac, while Lot 4 is 1632 Potomac.

Other courts have held that an affidavit that describes land with the correct physical address substantially complies with Section 53.054(a)’s requirements, even when other descriptors of the land are incorrect. *See, e.g., AMS Const. Co., Inc. v. Warm Springs Rehab. Found., Inc.*, 94 S.W.3d 152, 162–63 (Tex. App.—Corpus Christi 2002, no pet.) (land description with correct physical address substantially complied even though it misstated the name of county in which property was located); *Rheem Acceptance Corp. v. Rowe*, 332 S.W.2d 353, 354 (Tex. Civ. App.—Amarillo 1959, writ ref’d n.r.e.) (land description with correct physical address was adequate even though it identified the incorrect lot number).



The rationale for finding substantial compliance when the physical address is correct but some other property descriptor is incorrect is that property descriptions are liberally construed and a correct physical address provides a “nucleus of description” sufficient to “identify the land claimed . . . with reasonable certainty.” *Warm Springs*, 94 S.W.3d at 163.

By correctly detailing the original land descriptor, the record location, the parcel identification range, the subdivision name, and, most importantly, the correct physical address of the property, Morrell substantially complied with the statute’s requirement to identify the property located at 1632 Potomac with reasonable certainty.<sup>3</sup> Thus, the trial court did not err in determining that the lien affidavit substantially complied with Section 53.054(a) or in granting summary judgment to Morrell.

### **Request for Fraud Findings and Sanctions**

In his pro se brief, Shojai asks this Court to determine that Morrell, its counsel, and related individuals committed fraud. This court is not a factfinder. *See Tex. Nat. Bank v. Karnes*, 717 S.W.2d 901, 903 (Tex. 1986); *Zeptner v. Zeptner*, 111 S.W.3d 727, 734 (Tex. App.—Fort Worth 2003, no pet.). Shojai’s requests are denied.

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<sup>3</sup> There is no dispute that Morrell delivered material to 1632 Potomac, that Shojai had notice of Morrell’s claim for payment, and that Shojai was aware of the lien.

Shojai also requests sanctions against Morrell, its counsel, and other individuals related to his assertion that the lien on 1632 Potomac was fraudulent. Morrell sued to establish a lien on Shojai's property at 1632 Potomac. Morrell prevailed at the trial court. We have concluded the trial court did not err in granting Morrell's summary-judgment motion that enforced the lien. We see no basis for sanctions. Shojai's remaining issues are overruled.

### **Conclusion**

We affirm.

Sarah Beth Landau  
Justice

Panel consists of Justices Lloyd, Goodman, and Landau.

### ***Addendum I***

