

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

PACIFIC REALTY ASSOCIATES, L.P., a Delaware limited partnership, and M&T PARTNERS, INC., a Delaware corporation,)	
)	DIVISION ONE
)	No. 65732-1-I
Plaintiffs,)	
v.)	
)	
PACIFIC VENTURES REDMOND RIDGE LLC, a Washington limited liability company,)	UNPUBLISHED OPINION
)	
Defendant.)	
)	
MADI GROUP, INC., a California corporation,)	
)	
Respondent,)	
)	
COASTAL COMMUNITY BANK, a Washington corporation,)	
)	
Appellant.)	FILED: July 5, 2011
_____)	

Dwyer, C.J. — A professional service provider cannot impose a lien upon real property where the party requesting the services is not the owner of that real property. Because the client requesting Madi Group Inc.’s architectural services

was not the owner of the real property at issue herein on the date to which Madi asserted that its lien related back, the trial court erred by ruling that Madi's lien had priority over that of Coastal Community Bank's deed of trust. Accordingly, we reverse the trial court's grant of summary judgment.

I

In early January 2007, Pacific Ventures Redmond Ridge LLC entered into a purchase and sale agreement with Pacific Realty Associates LP (PRA) to purchase a 3.12-acre parcel of real property in the Redmond Ridge neighborhood. Pacific Ventures hired Madi, an architectural firm licensed in California, to develop architectural designs and engineering plans for commercial development of the property. Madi began work for Pacific Ventures on January 23, 2007.

Pacific Ventures then sought financing to purchase the Redmond Ridge property. Coastal Community Bank authorized a loan to Pacific Ventures to purchase the real property. This loan was approved on April 23, 2007. To secure Coastal's loan, Pacific Ventures granted Coastal a deed of trust to the property, which is dated April 23, 2007. Coastal recorded this deed of trust on May 7, 2007. There is no evidence in the record establishing the specific date on which the land purchase transaction closed.

Madi later recorded a notice of professional services, indicating that its work had started on January 23, 2007 and had ended on December 11, 2008.

Shortly thereafter, Madi recorded a claim of lien on the Redmond Ridge property, pursuant to the mechanics' and materialmen's lien statute, chapter 60.04 RCW.¹

Subsequently, PRA, and other creditors of Pacific Ventures, sued Pacific Ventures and Madi. Madi answered and filed a third party complaint against Coastal, therein requesting an order foreclosing Madi's lien on Pacific Ventures' property.

Madi and Coastal then filed cross motions for summary judgment, each contending that their encumbrance was entitled to priority. At a hearing on the motions, the trial court determined that Madi's lien had first priority over Coastal's deed of trust. The trial court thus granted summary judgment in favor of Madi and denied Coastal's motion for summary judgment.

Coastal appeals.

II

We review summary judgment de novo, performing the same inquiry as the trial court. Lybbert v. Grant County, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000). The facts, and all reasonable inferences to be drawn therefrom, are viewed in the light most favorable to the nonmoving party. Lybbert, 141 Wn.2d at 34. "A court may grant summary judgment if the pleadings, affidavits, and depositions establish that there is no genuine issue as to any material fact and the moving

¹ "[A] lien is an encumbrance upon the property as security for the payment of a debt." Sullins v. Sullins, 65 Wn.2d 283, 285, 396 P.2d 886 (1964).

No. 65732-1-I / 4

party is entitled to judgment as a matter of law.” Lybbert, 141 Wn.2d at 34.

III

Coastal contends that the trial court erred by determining that Madi's lien is superior to Coastal's deed of trust based on a priority date of January 23, 2007. This is so, Coastal asserts, because Pacific Ventures did not own the land at issue on that date.² We agree.

"Mechanics' and materialmen's liens are creatures of statute." Estate of Haselwood v. Bremerton Ice Arena, Inc., 166 Wn.2d 489, 498, 210 P.3d 308 (2009). Chapter 60.04 RCW sets forth the requirements for such a lien:

Except as provided in RCW 60.04.031, any person furnishing labor, professional services, materials, or equipment for the improvement of real property shall have a lien upon the improvement for the contract price of labor, professional services, materials, or equipment furnished *at the instance of the owner, or the agent or construction agent of the owner.*

RCW 60.04.021 (emphasis added). Professional service providers, including architects, are covered by this section. RCW 60.04.011(13).

² Madi contends that this issue is being raised for the first time on appeal and, thus, cannot be considered. We disagree. The trial court was asked to determine whether Madi's claimed lien had priority over Coastal's deed of trust. To make that determination, the trial court was asked to decide whether Coastal had actual notice that work had been performed for which a statutory lien could be imposed upon the property, as such actual notice would defeat Coastal's claim that its deed of trust had first priority. See RCW 60.04.031(5). However, by determining only whether Coastal had actual notice of Madi's work performed at the behest of Pacific Ventures, the trial court answered the wrong question. It was instead necessary for the trial court to determine whether Coastal had actual notice of professional services performed at the behest of *the property owner*. This issue, as expressed on appeal, is simply another perspective on the issue that was argued to the trial court.

Even if this were not so, "RAP 2.5(a) is permissive in nature and does not automatically preclude this court from reviewing an issue not raised below." In re Marriage of Wendy M., 92 Wn. App. 430, 434, 962 P.2d 130 (1998) (citing Jones v. Stebbins, 122 Wn.2d 471, 479, 860 P.2d 1009 (1993)). Because the issue of ownership of the property is essential to the determination of the priority between Madi's lien and Coastal's deed of trust, this issue must be considered to properly decide the case. Here, Madi urged that its lien related back to a date when the party requesting Madi's services did not own the property. This cannot be. We have an obligation to see that the law is correctly applied.

“Statutory liens are in derogation of common law and must be strictly construed to determine whether the lien attaches.” TPST Soil Recyclers of Wash., Inc. v. W.F. Anderson Constr., Inc., 91 Wn. App. 297, 299-300, 957 P.2d 265, 967 P.2d 1266 (1998). The benefit of such liens will be “extended only to those who clearly come within the statute’s terms.” TPST, 91 Wn. App. at 300. “The burden of establishing the right to a lien rests upon the person claiming it.” Northlake Concrete Prods., Inc. v. Wylie, 34 Wn. App. 810, 813, 663 P.2d 1380 (1983).

It has been the law since territorial days that only a property owner or the owner’s agent can requisition materials or services for which a lien can be imposed upon real property.³ See Code of 1881, ch. CXXXVIII, § 1957. Without the authority of the property owner, as where one who was not the property owner or the agent of the property owner requests labor, services, materials, or equipment, no lien attaches to the property that can be foreclosed upon. Hewson Constr., Inc. v. Reintree Corp., 101 Wn.2d 819, 823-25, 685 P.2d 1062 (1984); Fergusson v. Guy, 151 Wash. 550, 555, 276 P. 855 (1929); Iliff v. Forssell, 7 Wash. 225, 226, 34 P. 928 (1893); Colo. Structures, Inc. v. Blue Mountain Plaza, LLC, 159 Wn. App. 654, 664-65, 246 P.3d 835 (2011); Irwin

³ While urged by Madi to do so, we do not construe the term “owner” broadly to include potential or future owners, as statutory liens must be strictly construed. TPST, 91 Wn. App. at 299-300. Furthermore, “[s]tatutes that are clear and unambiguous do not need interpretation.” Colo. Structures, 159 Wn. App. at 664. “Clouding the title with liens from those working at the behest of others who hoped to acquire the property would simply lead to confusion and an understandable reluctance of financiers to become involved in developments.” Colo. Structures, 159 Wn. App. at 665.

Concrete, Inc. v. Sun Coast Props., Inc., 33 Wn. App. 190, 195-96, 653 P.2d 1331 (1982); McCombs Constr. v. Barnes, 32 Wn. App. 70, 73, 645 P.2d 1131 (1982).

Likewise, a lien can be imposed only to the extent of the interest held by the requesting party. RCW 60.04.051.⁴ Thus, where the person causing the labor, services, materials, or equipment to be provided does not own full legal title to the real property, the potential lien claimant cannot impose a lien upon the real property itself but, rather, can claim a lien only upon the interest held by the requesting party. Estate of Hazelwood, 166 Wn.2d at 499-500; W.T. Watts, Inc. v. Sherrer, 89 Wn.2d 245, 247-48, 571 P.2d 203 (1977); Columbia Lumber Co. v. Bothell Dairy Farm, 174 Wash. 662, 664-65, 25 P.2d 1037 (1933).

Here, Madi's claim to a lien attaching to the Redmond Ridge property on January 23, 2007 fails. PRA owned the property on that date but was not the party requesting Madi's services. Rather, the professional services provided by Madi were performed at the request of Pacific Ventures, which did not own the property until several months later. While the record does not disclose the date that closing occurred, it is clear that Pacific Ventures did not own the land until,

⁴ Chapter 60.04 RCW contemplates that the person requesting the labor, services, materials, or equipment may not hold full legal title to the real property. The statute provides: The lot, tract, or parcel of land which is improved is subject to a lien *to the extent of the interest of the owner* at whose instance, directly or through a common law or construction agent the labor, professional services, equipment, or materials were furnished, as the court deems appropriate for satisfaction of the lien. If, for any reason, the title or interest in the land upon which the improvement is situated cannot be subjected to the lien, the court in order to satisfy the lien may order the sale and removal of the improvement from the land which is subject to the lien.

RCW 60.04.051 (emphasis added).

at the earliest, April 23, 2007. Furthermore, there is no evidence indicating that Pacific Ventures was serving as the agent or contractor of PRA. Rather, Pacific Ventures was simply a potential purchaser of PRA's Redmond Ridge property on the date that Madi claims its lien attached.

Nevertheless, Madi contends that RCW 60.04.061, the "relation back statute," gives life to Madi's claimed lien. This statute provides:

The claim of lien *created by this chapter* upon any lot or parcel of land shall be prior to any lien, mortgage, deed of trust, or other encumbrance which attached to the land after or was unrecorded at the time of commencement of labor or professional services or first delivery of materials or equipment by the lien claimant.

RCW 60.04.061 (emphasis added). Pursuant to this statute, mechanics' liens, as defined by RCW 60.04.061, "relate back to the commencement of the services." Zervas Group Architects PS v. Bay View Tower LLC, No. 64498-0-I, 2011 WL 1486029, at *2 (Wash. Ct. App. April 18, 2011). However, contrary to Madi's contention, nothing in RCW 60.04.061 nor any other provision contained within chapter 60.04 RCW provides that *ownership* of the property can "relate back" to the time of commencement of labor or professional services or delivery of materials or equipment. Instead, RCW 60.04.061 explicitly provides that "[t]he claim of lien created by this chapter," that is, the lien created when a *property owner* requisitions materials or services, "shall be prior" to other later-attached or later-recorded encumbrances.

In other words, a debt that is lienable can relate back to the date of the

commencement of the work that gave rise to the lienable debt. However, it cannot relate back to a time prior to when it was lienable—as defined “by this chapter.” RCW 60.04.061. To be lienable, the work resulting in debt must have been performed at the behest of the owner. The claim of lien cannot relate back to a date prior to the inception of such ownership.

Pacific Ventures purchased the property on or after April 23, 2007. Coastal recorded its deed of trust on May 7, 2007. Madi may be able to demonstrate that it performed services between the date that Pacific Ventures became the owner of the Redmond Ridge property and the date that Coastal recorded its deed of trust; Madi, thus, may be able to relate its work back to such a date.⁵ However, Madi cannot relate its lien back to January 23, 2007, as the trial court incorrectly found, because Pacific Ventures did not own the property on that date. Madi’s claimed lien does not satisfy the requirement that the professional services must be furnished at the request of the owner or the owner’s agent. RCW 60.04.021.

Accordingly, the trial court erred by granting summary judgment in favor of Madi.

IV

Both parties request an award of attorney fees on appeal pursuant to RCW 60.04.181(3).⁶ Neither party has yet been adjudicated to be “the

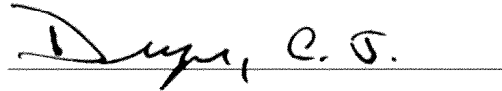
⁵ This uncertainty precludes us from concluding that the trial court erred by denying Coastal’s motion for summary judgment.

⁶ The statute provides:

The court may allow the prevailing party in the action, whether plaintiff or

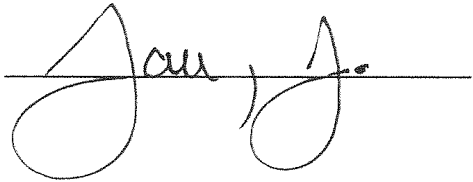
prevailing party in the action.” RCW 60.04.181(3). Because this determination must abide further proceedings on remand, we decline to award attorney fees at this juncture.⁷

Reversed and remanded.⁸

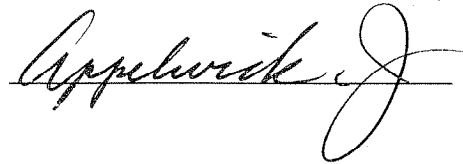


A handwritten signature in cursive script, appearing to read "Dyer, C. S.", written over a horizontal line.

We concur:



A handwritten signature in cursive script, appearing to read "Sawyer, J.", written over a horizontal line.



A handwritten signature in cursive script, appearing to read "Appelwick, J.", written over a horizontal line.

defendant, as part of the costs of the action, the moneys paid for recording the claim of lien, costs of title report, bond costs, and attorneys' fees and necessary expenses incurred by the attorney in the superior court, court of appeals, supreme court, or arbitration, as the court or arbitrator deems reasonable. RCW 60.04.181(3).

⁷ Madi also requests an award of attorney fees on appeal on an additional basis: “[T]he Promissory Note executed by Pacific Ventures provides for award of attorney fees and costs.” Resp’ts Br. at 45. This promissory note was not a contract between Madi and Coastal, the parties litigating this appeal. Madi provides no authority that would allow an award of attorney fees against *Coastal* pursuant to the promissory note.

⁸ The parties raise several additional issues on appeal. Those issues are not pertinent to the disposition of this case.