IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

COLUMBIA STATE BANK, a Washington State banking corporation, Appellant, v. NORMANDY PARK INVESTORS, LLC, a Washington limited liability company; and DIVERSIFIED PROPERTY INVESTORS, LLC, a Washington limited liability company, Defendants, ANTINORI DEVELOPMENT, LLC, a Washington limited liability company, Respondent, SUPERIOR ASPHALT MAINTENANCE, INC., a Washington corporation; and ELITE ELECTRICAL, INC., a Washington corporation, Defendants.	)	No. 65959-6-I DIVISION ONE UNPUBLISHED OPINION FILED: January 17, 2012

Grosse, J. — A party who provides labor and services to a property owner has a statutory right to file a lien on that property to ensure payment for those services. Here, adjoining property owners agreed to have certain work performed on their property pursuant to a reciprocal easement agreement. The fact that the general contractor was one of the co-owners of the property subject to the easement does not estop him from attaching a lien to the other property for his fair share of the improvements made thereto. Accordingly, we affirm.

FACTS

On March 30, 2005, Normandy Park Towne Center, LLC (NPTC) and Normandy Park Investors, LLC (NPI) entered into a Reciprocal Easement Agreement (REA). The REA established a perpetual, reciprocal non-exclusive easement for both parties' benefit to establish a common driveway to provide ingress and egress to and from the parties' respective properties. The REA was recorded on April 19, 2005.[1] In August of the following year, Antinori Development, LLC (Antinori) acquired the property from NPTC and proceeded to construct the driveway between its property and NPI's property.

The REA set forth the procedure for sharing the cost of the common driveway:

> The party who is first to re-develop its property ("First Party") will develop a conceptual design for the Common Driveway and deliver it to the other party ("Second Party") for review and approval. The parties will act reasonably in developing a mutually agreeable design for the Common Driveway. The parties will equally share the cost of designing and constructing the Common Driveway, including unanticipated costs and cost overruns. The parties intend to equally bear the risks of constructing the Common Driveway.
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> The First Party shall construct the common driveway during the re-development work. The First Party will, from time to time, request reimbursement from the other party ("Second Party") for half the cost of completed work on the common driveway. The Second Party will pay the First Party within 20 days of receiving a request for reimbursement. The Second Party may request reasonable documentation of costs incurred, completion of work, and release of liens by contractors and subcontractors.

Antinori and NPI agreed that the construction of the common driveway would include construction of an onsite storm drain, a shared water main, a storm water vault, roadway paving, as well as electrical, telephone, and television utilities. Antinori hired Pivetta Brothers Construction (Pivetta). Pivetta began excavation and storm water

[1] King County Recording No. 20050419001552.

work on October 11, 2006. Throughout the project, Antinori sought and received approval from NPI and its agents for the work undertaken and the costs of construction providing NPI with work orders, invoices and documentation, and costs associated with the construction. The driveway was completed without NPI having made any payments. NPI's share of the cost for construction amounted to $164,923.44. The final punch list was completed on January 5, 2009. When NPI failed to pay, Antinori recorded its lien claim with King County on January 16, 2009.[2]

On February 3, 2009, Antinori filed a complaint naming NPI as the owner. On that same day, Columbia State Bank (Columbia) filed a lawsuit against NPI alleging various causes of action arising from NPI's and Diversified Property Investors, LLC's (DPI) defaults on its loan to NPI for construction of a shopping mall. On December 4, 2009, Columbia amended its complaint and added Antinori as a defendant. On February 19, 2010, Antinori's suit was consolidated with Columbia's foreclosure action.

On July 9, 2010, the trial court granted partial summary judgment to Antinori, finding that NPI was liable and that Antinori's lien had priority over Columbia's lien. On August 20, 2010, after a bench trial, the trial court entered a judgment and decree of foreclosure for Columbia as to its claims against NPI and DPI. Columbia appeals.

ANALYSIS

Columbia argues that the trial court erred in finding that Antinori's lien was valid and had priority over its lien. Columbia first argues that Antinori was not entitled to a lien because the REA did not create a specific right to do so. However, RCW 60.04.021 specifies who may claim a lien:

[2] King County Recording No. 200901160000388.

> 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.

As noted in the REA, the common driveway is situated on both properties. Pursuant to both the REA and agreements between Antinori and NPI, Antinori, acting as the general contractor, made improvements to both the Antinori property and the NPI property via its construction of the common driveway and associated utilities. The fact that the work was performed as the result of the REA does not remove Antinori's right to pursue a mechanics' lien. "A lien is an encumbrance on property to secure payment of a debt."[3] RCW 60.04.141 requires that a mechanics' lien be filed within 90 days of the work performed on or materials furnished to the subjected property. Here, Antinori recorded its lien on January 16, 2009, eleven days after the subcontractor, Superior Asphalt Maintenance, Inc., completed construction. Thus, the lien was timely.

Antinori's lien was first in line because excavation and mobilization of equipment for the construction began on October 11, 2006. Columbia recorded its deed of trust on November 1, 2006.[4] RCW 60.04.061 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.[5]

Pursuant to this statute, mechanics' liens "relate back to the commencement of the

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[3] S.D. Deacon Corp. of Wash. v. Gaston Bros. Excavating, 150 Wn. App. 87, 89 206 P.3d 689 (2009).
[4] King County Recording No. 20061101001227.
[5] (Emphasis added.)

services."[6] The statute 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 subject to the lien relates back to the date work first commenced, here, October 11, 2006, almost a month prior to Columbia filing its lien. Thus, Antinori's lien is first in priority.

Columbia next claims that the work performed by Pivetta was outside the scope of the REA and therefore not properly subject to the lien. Columbia argues that the REA provided that the parties pay the costs of "constructing, installing, maintaining, repairing, altering and replacing the paving, roadways, driving lanes, striping and other surface improvements." That language, Columbia contends, did not include the work performed by Pivetta, to wit: excavation and construction of onsite storm drain, shared water main, and storm water vault. But declarations submitted by Antinori showed that the parties agreed to do this additional work as part of the construction under the REA. Columbia does not dispute that the parties so agreed.

Columbia then argues that if the work is subject to a lien, the lien here was untimely and cannot relate back because the work done in October by Pivetta was in reality done under a separate and distinct contract. To support this theory, Columbia relies on Anderson v. Taylor.[7] In Anderson, a subcontractor entered into a contract with the general contractor who was paid by the homeowner. The subcontractor stopped worked and the general contractor went out of business. The subcontractor

[6] Zervas Group Architects, PS v. Bay View Tower, LLC, 161 Wn. App. 322, 254 P.3d 895 (2011).
[7] 55 Wn.2d 215, 347 P.2d 576 (1959).

then contracted with the homeowner to complete the tile work on the residence. The subcontractor then filed a lien on the residence that included amounts owed him by the general contractor for the previous work. The court found that the subcontractor provided labor on a new contract separate and distinct from the contract with the general contractor. Unlike in Anderson, where there was a separate, distinct and severable contract with different parties, the contract here was performed under one contract with and for the same parties. The parties' oral agreements enhanced the REA, they were not separate and distinct therefrom.

Finally, Columbia argues that the lien is invalid because it fails to comply with the "strict requirements of the lien foreclosure statute" by failing to name NPI as both the person indebted to Antinori and the owner of the liened property. The statute provides that the notice of claim "[s]hall state in substance and effect" the "name of the person indebted to the claimant."[8] In support of its position of strict construction, Columbia cites this court's decision in Williams v. Athletic Field, Inc.[9] But that case was overruled by the Supreme Court,[10] which held that the mechanics' lien statute's mandate of liberal construction has not been supplanted by a common law rule of strict construction.[11] Here, as in Williams, there is no dispute that the claimants provided services subject to a lien and claimed a lien against the appropriate property. Rather, the dispute is about whether the form of the lien is proper. Because NPI is both the owner and the indebted party, and is named by Antinori, Antinori has substantially

[8] RCW 60.04.091.
[9] 155 Wn. App. 435, 228 P.3d 1297 (2010).
[10] Williams v. Athletic Field, 172 Wn.2d 683, 261 P.3d 109 (2011).
[11] Williams, 172 Wn.2d at 697.

complied with the requirements of the statute. As our Supreme Court stated, "To the extent Lumberman's or other cases suggest that the statute's mandate of liberal construction has been supplanted by a common law rule of strict construction, we disapprove them."[12] Moreover, Washington courts have repeatedly stated that in order to establish a valid claim of lien, a claimant need only substantially comply with the requirements of RCW 60.04.091.[13]

Columbia also seems to argue that even though the lien statute provides that a claimant need only serve the owner of the property and not mortgagees, such as the bank, it is "nonsensical" and thus should not be permitted to foreclose upon the property without any notice to a mortgagee.[14] Columbia cites no valid authority for this proposition. The statute does not require the mortgagee to be served, it provides for service on the owner. We presume the legislature meant exactly what it said. Plain words do not require further construction.

Attorney Fees

The trial court correctly awarded Antinori its attorney fees and costs as provided under RCW 60.04.181. Since Antinori also prevails on appeal, it is entitled to fees and costs.

Grosse, J

WE CONCUR:

[12] Williams, 172 Wn.2d at 697.
[13] Williams, 172 Wn.2d at 701.
[14] Van Wolvelaere v. Weathervane Window Co., 143 Wn. App. 400, 405, 177 P.3d 750 (2008).

Ellington, J. Cox, J.