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STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2005

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

vs.

J. B. Builders, LLC,
Judgment Debtor,

and

Primesite Investments, LLC, garnishee,
Appellant.

Filed August 11, 2009
Reversed
Collins, Judge[*]

Dakota County District Court
File No. 19-C7-05-006622

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Considered and decided by Minge, Presiding Judge; Worke, Judge; and Collins, Judge.

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[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

COLLINS, Judge

Appellant-garnishee challenges the garnishment of a mechanic's lien on its property, arguing that the mechanic's lien is not garnishable property because it is not in appellant's possession or control. We reverse.

FACTS

The facts of this case are described in greater detail in *Crown Equip. Rental Co. v. J. B. Builders, LLC*, No. A07-0775, 2008 WL 570819 (Minn. App. March 4, 2008). For purposes of this appeal a brief summary will suffice.

Respondent Crown Equipment Rental Company (Crown Equipment) is attempting to collect the unpaid portion of a judgment from J. B. Builders (J. B.). To this end, Crown Equipment served appellant Primesite Investments (Primesite) with a garnishment summons, seeking to garnish a mechanic's lien on Primesite's property. J. B. had acquired this lien in the course of unrelated litigation.[1] The district court entered a personal garnishment judgment against Primesite and in favor of Crown Equipment on summary judgment. Primesite appealed, arguing that such result would afford Crown Equipment greater rights as a garnishor than J. B. had as the lienholder. We reversed and remanded for further proceedings.

[1] The unrelated litigation arose out of a dispute between J. B. and Westra Construction, Inc. (Westra), involving three construction projects in which J. B. acted as a subcontractor for Westra. J. B. was awarded a monetary judgment against Westra for the project on Primesite's land, but Westra was awarded a substantially larger monetary judgment against J. B. for the other two projects. The district courts did not order these awards to be offset.

On remand, Crown Equipment again moved for summary judgment, seeking a declaratory judgment that it had a valid garnishment lien on J. B.'s mechanic's lien. The district court granted Crown Equipment's motion, and this appeal followed.

D E C I S I O N

I.

As a threshold matter, Crown Equipment argues that Primesite is judicially estopped from challenging the validity of the garnishment.[2] Whether the doctrine of judicial estoppel applies presents a question of law, which we review de novo. *Modrow v. JP Foodservice, Inc.*, 656 N.W.2d 389, 393 (Minn. 2003).

"Judicial estoppel is an equitable doctrine that prevents a party from assuming inconsistent positions in the course of litigation." *Ill. Farmers Ins. Co. v. Glass Serv. Co.*, 683 N.W.2d 792, 800 (Minn. 2004). It is not reducible to a specific formula. *State v. Pendleton*, 706 N.W.2d 500, 507 (Minn. 2005). Rather, it is a tool used "to protect the courts from being manipulated by chameleonic litigants who seek to prevail, twice, on opposite theories." *Id.* (quotation omitted). That said, there are three general conditions that must be satisfied for the doctrine to apply: (1) the party presenting the allegedly inconsistent theories must have prevailed on the position originally asserted; (2) there must be a "clear inconsistency" between the party's original position and the one it

[2] In its reply brief, Primesite argues that Crown Equipment waived this argument by failing to raise it before the district court. Generally, we do not consider issues that are raised for the first time on appeal. *Putz v. Putz*, 645 N.W.2d 343, 350 (Minn. 2002). Inasmuch as neither party has provided us with any transcripts, we are unable to determine what was argued on remand. But because Crown Equipment's judicial-estoppel argument has no substantive merit, whether or not this argument was raised before the district court is inconsequential.

subsequently asserts; and (3) the issues of fact in the proceedings must be identical. *Id.* Minnesota courts have yet to definitively adopt or reject the doctrine of judicial estoppel. *Id.* And because the first two conditions are not met here, we need not decide whether to adopt or reject the doctrine. *See id*. (declining to adopt doctrine, which did not apply to facts of case).

The "inconsistency" cited by Crown Equipment derives from Primesite's brief in the previous appeal. Essentially, Crown Equipment claims that Primesite acknowledged that the mechanic's lien was garnishable property because it had argued that Crown Equipment "stepped into J. B.'s shoes" with respect to the lien. The issue in the previous appeal, however, was whether the garnishment statutes authorized a personal judgment against Primesite when J. B. had not exhausted its remedies under the mechanic's lien statutes. *Crown Equip. Rental*, 2008 WL 570819, at *3-*4. Thus, Primesite's assertions that Crown Equipment had "stepped into J. B.'s shoes" was not a statement about whether J. B.'s lien was garnishable property but rather an argument regarding the extent of Crown Equipment's potential rights as a judgment creditor—if J. B. did not have the right to a personal judgment against Primesite based on the mechanic's lien, then neither would Crown Equipment when stepping into J. B.'s shoes, regardless of whether the lien was garnishable. Thus, Primesite neither prevailed on the position that the mechanic's lien was garnishable property nor is there a "clear inconsistency" between its original position and its current challenge on appeal.

II.

As another threshold matter, Crown Equipment argues that the law-of-the-case doctrine bars Primesite from relitigating the garnishability of J. B.'s mechanic's lien.[3] Under the doctrine of law of the case, issues decided by an appellate court in a previous appeal may not be relitigated in a subsequent appeal after remand. *Sigurdson v. Isanti County*, 448 N.W.2d 62, 66 (Minn. 1989). Although it is based on public-policy concerns similar to doctrines such as res judicata, law of the case applies only to issues that were actually litigated and decided. *Id.*; *Fraser v. Fraser*, 702 N.W.2d 283, 292 (Minn. App. 2005), *review denied* (Minn. Oct. 18, 2005). It does not apply to issues that could have been raised in the first appeal but were not. *Sigurdson*, 448 N.W.2d at 66.

In the previous appeal, we decided that Crown Equipment, as a judgment creditor, could not obtain a personal judgment against Primesite by garnishing J. B.'s mechanic's lien because J. B. could not have obtained a personal judgment against Primesite under the circumstances. *Crown Equip. Rental*, 2008 WL 570819, at *3-*4. We did not reach the issue of whether the underlying mechanic's lien itself was garnishable. *Id.* Consequently, the law-of-the-case doctrine does not apply to that issue.

III.

Primesite challenges the district court's grant of summary judgment on the merits. Summary judgment is appropriate when "there is no genuine issue as to any material fact

[3] In its reply brief, Primesite argues that Crown Equipment waived this argument by failing to raise it before the district court. Again, without access to transcripts we are unable to determine what was actually argued on remand. But because Crown Equipment's law-of-the-case argument has no substantive merit, whether or not this argument was raised before the district court is also of no real consequence.

and . . . either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. 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 applying the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). Because the facts are undisputed, the only issue presented is whether the district court erred by holding that serving Primesite with a garnishment summons attached the mechanic's lien held by J. B. This presents a question of law, which we review de novo. *Lefto v. Hoggsbreath Enters.*, 581 N.W.2d 855, 856 (Minn. 1998) (application to undisputed facts); *In re Kleven*, 736 N.W.2d 707, 709 (Minn. App. 2007) (interpretation).

The garnishment statutes are designed to assist a judgment creditor in collecting a judgment by providing a means to reach the judgment debtor's assets that are in the hands of a third party, known as the garnishee. *Peterson v. Wilson Twp.*, 672 N.W.2d 556, 559 (Minn. 2003). Garnishment proceedings are initiated when the judgment creditor serves the garnishee with a garnishment summons. Minn. Stat. § 571.72, subd. 2 (2008). Service of the garnishment summons attaches all nonexempt indebtedness, money, or other property that, when the summons is served, is either "due or belonging to the debtor and owing by the garnishee" or is "in the possession or under the control of the garnishee." Minn. Stat. § 571.73, subd. 3(2) (2008). Primesite argues that the mechanic's lien was neither "due or belonging to [J. B.] and owing by [Primesite]" nor "in the possession or under the control of [Primesite]" as required by Minn. Stat. § 571.73, subd. 3(2). We agree.

By its very nature, a mechanic's lien cannot be "in the possession or under the control of" the owner of the real estate which it attaches. A mechanic's lien is neither an estate nor an interest in the land which it attaches. *Burns v. Carlson*, 53 Minn. 70, 71-72, 54 N.W. 1055, 1055 (Minn. 1893). And it may be held only by the party who improved the real estate, not the owner of the real estate improved. *See* Minn. Stat. § 514.01 (2008) (providing that "[w]hoever . . . contributes to the improvement of real estate by performing labor, or furnishing skill, material or machinery . . . shall have a lien upon the improvement, and upon the land on which it is situated or to which it may be removed"); *Nelson v. Nelson*, 415 N.W.2d 694, 697 (Minn. App. 1987) (holding that "the only reasonable interpretation of section 514.01 is that it precludes the filing of a mechanics' lien by an owner upon his own property"). Here, J. B. was the lienholder; Primesite merely owned the real estate which J. B.'s mechanic's lien attached. By definition, therefore, the lien could not be "in the possession or under the control of" Primesite. And garnishment is designed to reach a judgment debtor's assets that are "in the possession or under the control of" a third-party garnishee, not assets already in the hands of the judgment creditor. Minn. Stat. § 571.73, subd. 3(2); *Peterson*, 672 N.W.2d at 559-60 (describing nature of garnishment).

Moreover, while the mechanic's lien obviously belonged to J. B., it was not "owing by" Primesite.[4] A mechanic's lien is necessarily predicated on a debt owed by

[4] In its brief, Primesite argues that a mechanic's lien is "property," not "indebtedness." And throughout its brief, Crown Equipment concedes this point, arguing that the lien was garnishable "property." Property, however, may also be due and owing, such as goods to be delivered by the garnishee under a contract for sale with the judgment creditor. But

the property owner—the payment due in exchange for an improvement to the property. *See* Minn. Stat. § 514.03 (2008) (providing that the amount of the lien is either the amount due under a contract or the reasonable value of the improvement). But the lien itself is something distinct from the underlying debt—security for the payment owed. *See Guillaume & Assocs. v. Don-John Co.*, 371 N.W.2d 15, 19 (Minn. App. 1985) ("The mechanic's lien statute is structured to guarantee payment for work performed on property by assigning the property as security."). If the property owner fails to pay the underlying debt, the lienholder may foreclose on the lien and have proceeds from a judicial sale of the property applied against the debt. Minn. Stat. § 514.15 (2008). And if the proceeds from the sale are insufficient to satisfy the underlying debt, the lienholder also may be entitled to a personal judgment against the property owner to make up for the deficiency. *See Smude v. Amidon*, 214 Minn. 266, 269, 7 N.W.2d 776, 778 (1943) (requiring foreclosure and sale before deficiency judgment may be entered against property owner personally). But it is the underlying debt for the lienholder's unpaid-for contribution to the liened property that is "owing by" the property owner, not the lien itself; the lien is merely a means to ensure payment of the debt. Thus, while any debt secured by the mechanic's lien that was due to J. B. and owed by Primesite would be garnishable indebtedness, the lien itself could not be attached by serving Primesite with a garnishment summons.

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regardless of whether J. B.'s mechanic's lien is considered property or indebtedness, the same result obtains.

Crown Equipment further argues that it could properly garnish the judgment recognizing J. B.'s mechanic's lien because it was "a judgment against Primesite for the foreclosure of the lien by the sale of Primesite's real property." (Emphasis omitted.) But the judgment in the unrelated litigation neither included a monetary judgment against Primesite nor directed a sale of its property. Thus, we cannot conclude that there is anything at all for Crown Equipment to garnish.

At its core, garnishment is simply a device for substituting one creditor for another. Essentially, it allows the garnishee to satisfy a preexisting debt by paying its creditor's creditor. *Knudson v. Anderson*, 199 Minn. 479, 484, 272 N.W. 376, 379 (1937) (describing the purpose of garnishment proceedings as "to require the debtor of A to pay A's debt to B, and thereby be relieved from further liability to A"). Garnishees are supposed to be "indifferent" as to this substitution because garnishment does not affect the underlying debt, only to whom that debt must be repaid. *See Wood v. Bangs*, 199 Minn. 208, 209, 271 N.W. 447, 448 (1937) ("A garnishee should be an innocent person owing money to or having in his possession property of the defendant, and is supposed to be indifferent as to who should have the money or property."). Metaphorically speaking, garnishment is not supposed to change whether the garnishee must write a check for a certain amount; it merely changes the designated payee on the check. And because garnishment is fundamentally a substitution mechanism, the equities between a judgment debtor and a garnishee carry over when a judgment creditor steps into the judgment debtor's shoes. *See Wunderlich v. Merchs. Nat'l Bank.*, 109 Minn. 468, 471, 124 N.W.

223, 224 (1910) (explaining why garnishee may assert any defenses or equities against the judgment creditor that it could against the judgment debtor).

The flaw in Crown Equipment's argument is that it assumes that garnishing the prior judgment would simply direct Primesite to apply the proceeds from a judicial sale of its property to Crown Equipment rather than to J. B. And indeed, in an action to foreclose a mechanic's lien, the judgment is supposed to "direct a sale of the real estate or other property for the satisfaction of all liens charged thereon, and the manner of such sale, subject to the rights of all persons which are paramount to such liens or any of them." Minn. Stat. § 514.15. In the prior judgment, however, no judicial sale was ordered. And while the record before us is exceptionally sparse, the reason for this omission likely stems from the nature of the unrelated litigation out of which it arose.

In that case, the district court found that J. B. was entitled to a mechanic's lien for unpaid labor and materials it had provided as a subcontractor for a construction project on Primesite's land. But the district court also found that it was Westra, the general contractor, who was contractually required to pay J. B. for the labor and materials, not Primesite. Thus, while J. B. was legally entitled to a mechanic's lien on Primesite's property, *see Karl Krahl Excavating Co. v. Goldman*, 296 Minn. 324, 327, 208 N.W.2d 719, 721 (1973) (stating that mechanic's lien does not necessarily require a direct contractual relation with the property's owner), its lien essentially secured Westra's contractual obligation to pay J. B. for its work, *cf. Guillaume & Assocs.*, 371 N.W.2d at 19 (describing mechanic's lien as security to guarantee payment for lienor's work). The amount J. B. was awarded for Westra's failure to pay J. B. for the labor and materials it

contributed to the Primesite project, however, was dwarfed by the amount Westra was awarded against J. B. in connection with two other projects. On the sparse record here, it is unclear why the district court did not simply offset J. B.'s award against Westra's substantially larger award.[5] In any event, we must read the judgment as a whole in determining its operation and effect. *Coons v. Lemieu*, 58 Minn. 99, 104, 59 N.W. 977, 978 (1894). And the only reasonable explanation for not ordering a sale of Primesite's property as required by statute appears to be that that judgment, as a whole, was not intended to predicate a sale.

Although recognizing that J. B. had a valid mechanic's lien against Primesite's property, that part of the judgment, viewed as a whole, was effectively entered against Westra. *Cf. City Nat'l Bank of Denver v. Hager*, 52 Minn. 18, 22-23, 53 N.W. 867, 867 (1892) (stating that when judgment is entered against "defendants" in multiparty litigation, reviewing court may consider whether, in light of the entire record, district court intended it to have been entered against only a single defendant). And J. B.'s initial attempt to voluntarily discharge the lien because it lacked a legal basis for enforcement strongly suggests that this was the practical construction placed upon it by the parties to the other litigation. *Cf. Parten v. First Nat'l Bank & Trust Co.*, 204 Minn. 200, 206-07, 283 N.W. 408, 412 (1938) ("The rule of practical construction may be resorted to in construing a judgment. . . . The construction which the parties have placed upon a

[5] It may be that there was still an open question as to the lien's priority vis-à-vis a mortgage on Primesite's property, and the district court was waiting until after a subsequent hearing on priority to determine whether J. B.'s lien even could be foreclosed. *See* Minn. Stat. § 514.15 (requiring judgment to direct sale of liened property "subject to the rights of all persons which are paramount to such liens or any of them").

judgment or decree ordinarily will not be changed except for strong reasons."). J. B.'s mechanic's lien was worthless because it secured a debt owed to J. B. by Westra that was subsumed many times over by the amount awarded to Westra against J. B. in the same judgment.

Under these circumstances, we conclude that it makes little sense for Crown Equipment, who merely steps into J. B.'s shoes, to garnish the portion of the prior judgment, recognizing J. B.'s mechanic's lien. As that judgment does not appear to have been intended to actually result in a judicial sale of Primesite's property, Primesite was not "indifferent" to the lienholder's identity because garnishment would allow Crown Equipment to obtain a judicial sale of its property that otherwise would not have occurred. *See Wood*, 199 Minn. at 209, 271 N.W. at 448 (describing nature of garnishor's relationship to garnished property).

We take no position on whether Crown Equipment can effectively reach J. B.'s mechanic's lien by some other, more direct procedural mechanism. But it cannot do so by serving Primesite with a garnishment summons when Primesite does not possess control, or owe that lien to J. B.

Reversed.