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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-408**

In re Parish Marketing and Development Corporation
Mechanic's Lien Foreclosure Litigation.

**Filed December 22, 2009
Reversed
Schellhas, Judge**

Scott County District Court
File No. 70-CV-08-5027

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Considered and decided by Minge, Presiding Judge; Schellhas, Judge; and Harten, Judge.*

UNPUBLISHED OPINION

SCHELLHAS, Judge

After entry of judgment and post-judgment order, appellant argues that the district court erred by extinguishing its potential judgment lien arising out of a default judgment it obtained against Parish Marketing and Development Corporation (Parish) in a separate account-stated action. We agree and reverse.

FACTS

This appeal arises out of a settlement of numerous mechanic's-lien-foreclosure cases commenced against Parish for labor and material contributed to land located in Le Sueur and Scott Counties. The supreme court assigned all of the mechanic's-lien-foreclosure cases (Parish litigation) to a single district court judge (single assigned judge).¹ Appellant Minnesota Concrete Structures LLC (Minnesota Concrete) initiated at

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

¹ The supreme court assigned all of the mechanic's-lien-foreclosure cases to the single assigned judge "to eliminate duplicative litigation in different districts, prevent inconsistent rulings, conserve the resources of the parties, their counsel and the judiciary, and facilitate resolution of the cases." *In re Parish Mktg. & Dev. Corp. Mech.'s Lien Foreclosure Litig.*, No. A08-120 (Minn. Feb. 8, 2008) (order). The supreme court left to the discretion of the single assigned judge the decision of whether to consolidate the cases for disposition. "To facilitate the identification and management of these cases," the supreme court ordered that "all documents served and filed . . . shall, in addition to the individual case title and file number, bear the general case caption 'In re Parish Marketing and Development Corporation Mechanic's Lien Foreclosure Litigation.'" The district court did not consolidate the cases, although it did assign a single "Master File

least one of these cases and was a named defendant-mechanic's-lienholder in several other cases that were included in the Parish litigation.

The single assigned judge also presided over two declaratory-judgment/mechanic's-lien-foreclosure actions commenced by Jennifer Lake, Jason Bentson, Lake's Erosion Services, Inc., and Jason Bentson d/b/a Creative Solutions Construction (Lake and Bentson), one in Scott County and one in Le Sueur County. These cases also were included under the Parish-litigation caption and master court-file number.

In the Lake and Bentson actions, in addition to the foreclosure of their mechanic's liens, Lake and Bentson sought declaratory judgments that certain warranty deeds and mortgages were void. Lake and Bentson claimed that title was transferred into their names without their knowledge or consent and that mortgage funding was fraudulently obtained to purchase seven properties in Le Sueur County and five properties in Scott County through the use of their forged signatures; they sought orders removing their names from the property titles. Lake and Bentson named respondents² as defendant-mortgage-lenders (the lenders) in their declaratory-judgment actions in both Le Sueur and Scott Counties. Lake and Bentson named Minnesota Concrete as a defendant-

Number" to the group of cases and maintained the master file and the individual files in parallel.

² Respondents Washington Mutual Bank, Countrywide Home Loans Inc., Bear Stearns Residential Mortgage Corp., UBS AG Tampa Bank, Aurora Loan Services Inc., and Homecomings Financial LLC submitted a joint brief, and no other respondents' briefs were submitted.

mechanic's-lienholder only in their Scott County action. Lake and Bentson identified Minnesota Concrete as a mechanic's lienholder for three of the Scott County properties.

On July 24, 2007, prior to the issuance of the supreme court's single-judge assignment order, but while the Parish litigation was pending, Minnesota Concrete commenced a separate account-stated action against Parish in Dakota County (account-stated action). Minnesota Concrete's account-stated action against Parish was not covered by the supreme court's single-judge assignment order, but the account-stated action was assigned to the single assigned judge. The account-stated action is not included in the Parish-litigation caption and master case number.

On May 22, 2008, in the account-stated action, the district court granted default judgment to Minnesota Concrete against Parish in the amount of \$693,000.15. The court noted that "[Minnesota Concrete] has begun several mechanic's lien actions in Scott County. The basis for recovery in these mechanic's lien actions arise[s] out of the same facts and circumstances giving rise to this action." In its conclusions of law, the court stated in part:

2. A party may maintain separate mechanic's lien actions and contract actions for performance of the same work and supply of the same materials. However, this does not permit a party to obtain a double recovery.
3. To prevent a double recovery, it is appropriate to stay entry of judgment in this matter until the mechanic's lien actions arising out of the same facts and circumstances are resolved.

(Citations omitted.) Further, the district court provided that "[e]ntry of this judgment shall be stayed pending resolution of the related mechanic's lien claims, but no longer

than six months after the signing of this Order.” Judgment against Parish was entered on August 18, 2008, and was docketed in Dakota County on August 25, 2008, in Le Sueur County on September 5, 2008, and in Scott County on September 8, 2008. Parish did not appeal from the judgment.

As a result of three days of mediation in the Parish litigation, in late July 2008, numerous settlements were reached between mechanic’s-lienholders and the lenders. Minnesota Concrete and the lenders negotiated a settlement of Minnesota Concrete’s mechanic’s liens that totaled approximately \$179,000. The settlement agreement contains the following relevant language:

1. Payments. The Lenders . . . shall pay to [Minnesota Concrete] the total sum of \$160,000

2. Releases. Upon the making and receipt of the payments under Paragraph 1 of this Agreement, [Minnesota Concrete], . . . does hereby fully and finally release each and all of the Lenders . . . *from all mechanics lien claims* that arise out of or relate to any of the properties on which [Minnesota Concrete] provided labor, materials, or improvements to any person, firm, or entity, including, but not limited to, Parish Marketing and Development Corporation, on any and all projects that are the subject of the multiple consolidated lawsuits³ presently pending in Scott County (MN) District Court captioned In Re Parish Marketing and Development Corporation Mechanic’s Lien Foreclosure Litigation, Master Court File No. 70-CV-08-5027 (“Parish Projects”) and that are also the subject of all lawsuits, including the Lawsuit identified in Paragraph 4 of this agreement. Except as specifically noted in Paragraph 3 of this Agreement, [Minnesota Concrete’s] releases under this Agreement are intended to be global, full, and final *of any and all mechanics’ lien claims* relating to the Parish Projects, including, but not limited to those asserted in the Lawsuit.

³ As previously noted, the district court did not actually consolidate the lawsuits.

3. No Reservation of Lien Claims. This Agreement shall be construed as a release of any and all of [Minnesota Concrete's] *mechanic's lien claims* against any and all of the Parish Projects, whether specifically asserted in the Lawsuit or not. [Minnesota Concrete] acknowledges and agrees that all of its *mechanics' lien* interests in the Lawsuit, and against any and all Parish Projects, are satisfied and extinguished upon payment of the amount in Paragraph 1.

4. Dismissal of Lawsuit. Upon the making and receipt of the payments identified in Paragraph 1 above, [Minnesota Concrete's] *mechanic's lien and all other claims as asserted against the Lenders in the Lawsuit*, as presently pending in the Scott County District Court captioned In Re Parish Marketing and Development Corporation Mechanic's Lien Foreclosure Litigation, Master Court File No. 70-CV-08-5027 ("Lawsuit") shall be dismissed, with prejudice.

Counsel for the Lenders shall prepare a proposed stipulation for dismissal of [Minnesota Concrete's] settled claims asserted in the Lawsuit. The dismissal stipulation shall be executed by counsel for both the Lenders and [Minnesota Concrete], and shall be submitted to [the single assigned judge], judge of Scott County District Court, for review and approval. The dismissal shall include a provision that no further payment of costs, disbursements, interest, or attorneys' fees shall be made by the Lenders to [Minnesota Concrete]. *The term "Lawsuit" shall include all court files, regardless of county, joined to the Lawsuit under Master File No. 70-CV-08-5027.*

6. Reservation and Assignment of Judgment. [Minnesota Concrete] hereby assigns to the Lenders . . . \$160,000 of its judgment obtained against the Parish Defendants.⁴ [Minnesota Concrete] reserves the entire balance of its judgment against the Parish Defendants to the extent not assigned herein.

⁴ Minnesota Concrete represented to the district court that the assignment was for "\$160,000 of the Dakota County Judgment" and that "[t]here will be no double recovery; the Lenders will be paid back the money they paid to settle the Mechanics' Liens. . . . The parties in their Settlement Agreement clearly provided for reimbursement of the Lenders in the event of eventual recovery."

(Emphasis added.) The lenders and Minnesota Concrete signed the settlement agreement on July 25, 2008, and Minnesota Concrete represents in its reply brief that it was paid in full on August 11, 2008.

On September 29, 2008, the district court held a pretrial conference to address the unresolved Lake and Bentson claims in the Parish litigation. Minnesota Concrete did not appear at the pretrial conference by counsel or a company representative. At the pretrial conference, the lenders refused to settle the Lake and Bentson mechanic's-lien claims unless the "fraud cases," i.e., the Lake and Bentson declaratory-judgment claims, were also settled. The lenders' counsel stated:

[T]he settlement that we do have contemplates a process whereby we have to obtain good title to these properties. So we have agreements in principle. We have them on paper. We have them signed. But it will require mechanics to actually make sure that title gets to the right party. In other words, if [there are] judgments that have hit, we may have to foreclose the mortgage. If the title's clean, we can do a deed. . . . [A]s soon as everybody's on board, I can take a look at title and we can work through the mechanics to get title in the right spot.

The district court then noted that it had not "missed that issue about making sure that good title comes out of all this," and the lenders' counsel later suggested that the court use a "final order" to "clear the title," suggesting that such an order would obviate the need to record individual lien satisfactions.

By the end of the pretrial conference, the lenders settled with Lake and Bentson, who agreed to give the lenders quitclaim deeds to the properties titled in their names as a result of fraud. The settlement agreement includes anti-merger language to prevent the

merger of the lenders' alleged mortgage interests into their grantees' interests in the quitclaim deeds. When the district court asked if there would be a "broad-based mutual release *of everybody*," the lenders' counsel stated: "mutual releases . . . are built into every mediated settlement agreement[.] . . . There will be as we discussed a broad-based *order* discharging all of the liens, both the litigated liens and the unlitigated liens, that I'll be preparing for the court." (Emphasis added.) The court concluded the pretrial conference with the following statement:

I'm going to make whatever effort I can make to try and get the process moving on getting clear title to all these properties. So . . . the Court's going to be ultimately signing orders that indicate that mechanic's liens have been satisfied on a group basis rather than an individual satisfaction of mechanic's liens. . . . [I]f anybody's going to have an objection to anything . . . being done further by the Court in order to effectuate terms of this settlement agreement, if I don't hear from you in 20 days, I'm going to say that . . . you've lost your opportunity to respond. And at that point I'll be in a position . . . to start going ahead and signing the orders that indicate that the mechanic's liens that have been settled have been satisfied. . . . So . . . if you've got any comment or anything on the form of any of these documents or you think you're going to object to these liens being satisfied . . . in bulk orders, you've got to let us know right away. If you've got any problem with anything else, you got to let us know right away. My goal is to really and truly get this stuff behind.

. . . .

If there is a problem with any of this, bring it to my attention right away and I'm happy to apply any further effort that we need to all this.

. . . .

The trial date in October is now officially off.

On October 20, 2008, the district court issued findings of fact, conclusions of law, and an order for judgment, referred to by the district court as “Order 13.” In Order 13, the district court, among other things, states that: the settlements resolving outstanding mechanic’s liens were “entered into by lenders with mortgages against the affected properties in order to obtain good and marketable title”; the mechanic’s liens were released from all parcels subject to the suit; and:

Consistent with this Court’s declared intent of delivering good and marketable title to the lending institutions who took mortgages on these properties, no party to this litigation (save and except for said same mortgage companies) shall have *any claim or lien* against any of the real estate which is within the scope of this litigation whether such lien arose from work or material supplied to such properties *or as a result of judgments* taken against any of the parties . . . including, without limitation, [Parish]

(Emphasis added.) Based on Order 13, judgment was entered on October 21, 2008.

Minnesota Concrete moved to modify Order 13, arguing that it possessed a judgment lien on certain properties and that: (1) Minnesota Concrete agreed to release only its mechanic’s lien claims against Parish, and that by affecting all lien claims, Order 13 went beyond the terms of Minnesota Concrete’s settlement agreement; (2) the deeds filed by Parish purporting to transfer title to Lake and Bentson were “fraudulent transfers and are void and of no legal effect and that the properties are owned by Parish,” and therefore, “the judgment lien of [Minnesota Concrete], would attach to these properties and would have priority over the claims of the lenders since the same are based upon fraudulent and/or forged documents”; and (3) “[n]either [Minnesota Concrete] nor

its counsel were given notice of the language to be contained in Order 13. As a consequence, they were unable to object to this language.”

The lenders argued that: (1) the language of Order 13 accurately reflects the terms of the lenders’ settlement agreement with Minnesota Concrete; (2) “[e]ven if the signatures on the mortgages were found to be forgeries, the mortgages are valid under long-recognized rules of equity”; (3) the lenders “obtained and perfected purchase money mortgages on the twelve properties to secure the funds advanced” and their “purchase money mortgages take priority over any judgment lien alleged by [Minnesota Concrete] against the Lake and Bentson Properties”; (4) the lenders are bona fide mortgagees and therefore their interests cannot be collaterally attacked by Minnesota Concrete; (5) the lenders are entitled to equitable subrogation; (6) Minnesota Concrete cannot recover on its judgment lien because Minn. Stat. § 514.11 (2008) required Minnesota Concrete in its answer to set up any lien it claimed and demand enforcement of its lien; and (7) alternatively, if the district court determined that the lenders and Minnesota Concrete did not have a meeting of the minds, the district court should vacate Order 13.

In an order referred to as “Order 14,” the district court denied Minnesota Concrete’s motion to modify the language of Order 13. This appeal follows.

DECISION

The district court concluded that, under the terms of its settlement agreement with the lenders, Minnesota Concrete agreed to release all liens, including its judgment lien obtained through the account-stated action. The court also concluded that Minnesota Concrete’s claim is “no longer legally cognizable,” apparently based on its finding that

Minnesota Concrete did not assert a fraud claim against Lake, Bentson, or Parish in the Parish litigation, prior to the court's April 15, 2008 deadline for amendment of pleadings in the Parish litigation.

I

We first address the district court's conclusion that under the terms of the settlement agreement between Minnesota Concrete and the lenders, Minnesota Concrete agreed to a release of all liens, including its potential judgment lien arising out of its account-stated action. In Order 14, the court explained that there was "a complete understanding" by all parties that the settlement agreement was intended to eliminate any competing priority interests in the subject properties, leaving the lenders with marketable title. The court reasoned that the language of the mediated settlement agreement was "broad enough to include in its scope the work done which was subject to a mechanic's lien claim *as well as any work that was done which could have been the subject of a mechanic's lien claim.*" (Emphasis added.)

We review legal questions de novo. *Voicestream Mpls., Inc. v. RPC Props., Inc.*, 743 N.W.2d 267, 270 (Minn. 2008). Settlement agreements are contractual in nature. *Id.* at 271. Contract construction is a question of law unless the contract is ambiguous, and whether a contract is ambiguous is also a question of law. *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346 (Minn. 2003). "A contract is ambiguous if, based upon its language alone, it is reasonably susceptible of more than one interpretation." *Id.* Where a contract is unambiguous, the court "should not rewrite, modify, or limit its effect by a strained construction." *Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 271

(Minn. 2004). Where the language of the contract is clear, we will not go beyond the written wording of the document in construing it. *Telex Corp. v. Data Prods. Corp.*, 271 Minn. 288, 294, 135 N.W.2d 681, 686 (1965).

The settlement agreement between Minnesota Concrete and the lenders was unambiguously limited to a release of mechanic's lien claims. Paragraph 2 of the agreement releases the lenders "from all *mechanics lien* claims" arising out of or relating to the properties that were the subject of the Parish litigation, and notes that the release is intended to be a "global, full, and final" release of "any and all *mechanics' lien* claims relating to the Parish Projects, including, but not limited to those asserted in the Lawsuit." (Emphasis added.) Paragraph 3 likewise states that the agreement shall be construed as a "release of any and all of [Minnesota Concrete's] *mechanic's lien* claims against any and all of the Parish Projects," and that all of Minnesota Concrete's "*mechanics' lien* interests in the Lawsuit" are satisfied. (Emphasis added.) While Paragraph 4 provides for dismissal of Minnesota Concrete's "mechanic's lien *and all other claims as asserted against the Lenders in the Lawsuit*," the agreement defines "Lawsuit" as including only those cases "joined to the Lawsuit under Master File No. 70-CV-08-5027." (Emphasis added.) And Minnesota Concrete did not assert a claim in the Parish litigation based on its judgment arising out of the account-stated action. Because none of the language in the settlement agreement relating to the release of claims is reasonably susceptible to more than one interpretation, the agreement is not ambiguous. The district court therefore erred in its determination that under the terms of the settlement agreement, Minnesota Concrete agreed to release its potential judgment lien along with its mechanic's liens.

The lenders argue that the terms of all the settlement agreements between the lenders and various mechanic's-lienholders, read collectively, unambiguously provide that the lenders will be granted clear title to the properties. We note first that only two of the settlement agreements, that between the lenders and Minnesota Concrete and that between the lenders and Lake and Bentson, are in the record. But even if the other settlement agreements were before this court, the lenders have not demonstrated that they would be binding on Minnesota Concrete, which was a party only to the single mediated settlement agreement it signed. *See State ex rel. Hatch v. Cross Country Bank, Inc.*, 703 N.W.2d 562, 569 (Minn. App. 2005) ("Under long-standing contract-law principles, a nonparty to a contract generally will not be bound by that contract.").

Nothing in the record suggests that Minnesota Concrete should have anticipated that its potential judgment lien arising out of its account-stated judgment would be the subject of discussion or disposition at the pretrial conference held by the district court on September 29, 2008. In fact, in paragraph 6 of the settlement agreement, Minnesota Concrete expressly "reserves the entire balance of its judgment against the Parish Defendants to the extent not assigned herein." We emphasize that Minnesota Concrete's account-stated case and resulting judgment were not included in the Parish litigation, and Minnesota Concrete's involvement in the Parish litigation, which includes the Lake and Benton declaratory-judgment actions, related only to the enforcement of its mechanic's liens. No party raised the issue of the validity of Minnesota Concrete's judgment lien in its pleadings. And we note that Minnesota Concrete's judgment lien was the subject of negotiation during the July 2008 mediation that resulted in the settlement agreement

between Minnesota Concrete and the lenders. Part of the record before us includes the initial draft of the settlement agreement that was presented to Minnesota Concrete for its review and comment. The initial draft contained broad language releasing all claims of Minnesota Concrete against the lenders and broadly defined “Lawsuit” in paragraph 4 of the agreement. Before execution, the agreement was revised to restrict its release of claims to mechanic’s liens claims only and to modify the definition of “Lawsuit” in paragraph 4 so that it applied only to actions that were joined under the master file number.

A court “is required to base relief on issues either raised by the pleadings or litigated by consent.” *Folk v. Home Mut. Ins. Co.*, 336 N.W.2d 265, 267 (Minn. 1983). Nothing in the record before us supports a conclusion that Minnesota Concrete consented to litigating its right to assert or enforce its potential judgment lien; on the contrary, Minnesota Concrete vigorously opposed the language that the district court included in Order 13. Because the validity and enforceability of Minnesota Concrete’s judgment lien was neither raised in the pleadings nor litigated by consent, the district court erred in extinguishing the potential lien.

II

We next discuss the district court’s conclusion that Minnesota Concrete’s claim is “no longer legally cognizable,” apparently based on its finding that Minnesota Concrete did not assert a fraud claim against Lake, Bentson, or Parish in the Parish litigation, prior to the court’s April 15, 2008 deadline for amendment of pleadings in the Parish litigation. The lenders argue that the district court’s decision should be affirmed because Minnesota

Concrete's judgment-lien claim is a compulsory counterclaim, which Minnesota Concrete waived because it did not assert the claim in the Parish litigation. *See Olson v. Buskey*, 220 Minn. 155, 163, 19 N.W.2d 57, 61 (1945) (“[O]n appeal, respondent . . . may urge in support of an order or judgment under review any sound reason for affirmance, even though it is one not assigned by the trial court.”). We conclude that the lenders' argument is without merit and that the district court erred.

Even if Minnesota Concrete's claim could be characterized as a counterclaim against Lake and Bentson in the Scott County declaratory-judgment action, it was not a compulsory counterclaim. Rule 13.01 of the Minnesota Rules of Civil Procedure makes compulsory any counterclaim that “at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction that is the subject matter of the opposing party's claim.” But “a counterclaim is compulsory only if the claim is ripe, i.e., if the claim is mature in the sense that a cause of action exists for which a lawsuit may properly be commenced and pursued.” *Leiendecker v. Asian Women United of Minn.*, 731 N.W.2d 836, 841 (Minn. App. 2007), *review denied* (Minn. Aug. 7, 2007). And a claim based on a judgment lien does not accrue until the underlying judgment is docketed. *C & M Real Estate Servs., Inc. v. Thondikulam*, 739 N.W.2d 725, 728 (Minn. App. 2007) (citing Minn. Stat. § 548.09, subd. 1 (2006)), *review denied* (Minn. Dec. 19, 2007).

Here, Minnesota Concrete filed its answer, counterclaim, and cross-claim asserting mechanic's-lien priority in the Lake and Bentson Scott County declaratory-judgment action on June 3, 2008. But the district court did not allow the entry of the account-stated

judgment against Parish until August 18, 2008, and the judgment was not docketed in Scott County until September 8, 2008. Thus, at the time of interposing its answer on June 3, 2008, Minnesota Concrete's judgment-lien claim in connection with the Scott County properties had not ripened and it therefore could not have been required to assert the judgment-lien claim. Similarly, Minnesota Concrete's judgment-lien claim had not yet accrued by the district court's April 15, 2008 pleadings-amendment deadline in its scheduling order in the Parish litigation. Accordingly, any judgment-lien claim that Minnesota Concrete has was not a compulsory counterclaim in the Parish litigation. And Minnesota Concrete's judgment-lien claim was not a compulsory counterclaim in the Lake and Bentson declaratory-judgment action in Le Sueur County, involving seven properties, because Minnesota Concrete was not a party to the action.

III

We conclude by emphasizing that the only issue before us is the district court's extinguishment of Minnesota Concrete's potential judgment-lien claim in Order 13 and its affirmance of that decision in Order 14. Nothing in this opinion should be construed as altering the releases and satisfaction of mechanic's liens ordered by the district court in Order 13. We make no decision about the competing property interests of Minnesota Concrete and the lenders. These issues turn on substantial questions of fact that were not litigated in the district court and are inappropriate for resolution by this court at this time.

Reversed.