STATE OF MINNESOTA
IN COURT OF APPEALS
A09-918

Folz, Freeman, Erickson, Inc.,
Respondent,

vs.

Lake Elmo Bank,
Appellant,

C3 Land Development, LLC, et al.,
Defendants.

Filed March 16, 2010
Reversed
Randall, Judge[*]

Washington County District Court
File No. 82-CV-08-1527

Chad D. Lemmons, Kelly & Lemmons, P.A., Oakdale, Minnesota (for respondent)

Allen E. Christy, Jr., Patrick C. Summers, Mackall, Crounse & Moore, PLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Minge, Presiding Judge; Bjorkman, Judge; and Randall, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving 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

RANDALL, Judge

In this lien-priority dispute, appellant-mortgagee bank argues that (a) the respondent's mechanic's lien was invalid because of lack of prelien notice and because the lien failed to satisfy Minn. Stat. § 514.09 (2008); (b) the district court erred by ruling that respondent's mechanic's lien was superior to the bank's mortgage where the bank, as a bona fide mortgagee, lacked actual notice of respondent's interest before the mortgage closed; (c) if the respondent's lien is superior to the mortgage, the district court erred when it failed to attribute at least part of the lien amount to another property; and (d) the award of attorney fees to the respondent was unsupported by adequate documentation. We reverse.

FACTS

This case involves a priority dispute between the respondent-lienholder Folz, Freeman, and Erickson, Inc. (FFE) and the appellant-mortgagee Lake Elmo Bank (the Bank) on two pieces of property in Stillwater, Minnesota.

Ricky L. Carlson, a defendant in the trial below, lives in Washington County and wholly or substantially owns the defendant corporations C3 Land Development, LLC (C3) and Carlson Construction Services, Inc. (CCS).[1] Carlson acquired the first parcel (Parcel 1) by warranty deed in July 2003. Carlson financed this purchase through a loan from the Bank secured by a mortgage on the property. Carlson wanted to develop this

[1] For simplicity, *Carlson* will refer both to Ricky Carlson and these two companies that he substantially owns.

parcel into a residential subdivision and hired FFE to provide surveying, engineering, and land-development planning services for this project. FFE determined that a wetland delineation needed to be done for Parcel 1, so it subcontracted with Graham Environmental Services (GES), who performed this work.

At some point before early 2005, Carlson and FFE decided that development would be more feasible if the project also included an adjoining parcel of land (Parcel 2) owned by Gregory and Peggy Roettger. To model a development incorporating both parcels, FFE prepared a document admitted as Exhibit 1, which was a sketch map of a proposed combined development (Sketch Plan). This Sketch Plan was created in early 2005, but in no event was it created later than February 14, 2005, because it was attached to a Feasibility Report that FFE prepared on that date. Carlson, Mr. Roettger, and FFE met to discuss the joint development of both parcels in April or May of 2005 and went over the Sketch Plan. At the request of Mr. Roettger, FFE prepared other sketches that arranged the single-family lots in the proposed development in different ways to try and net Mr. Roettger more lots on his property. Although FFE prepared sketches showing various layouts of a combined development of Parcels 1 and 2 at the request of Mr. Roettger, FFE never billed nor received payment from Mr. Roettger. All of FFE's bills went to and its payments came from Carlson. The Roettgers finally decided to sell the property to Carlson rather than engage in a joint development project.

To obtain financing to buy Parcel 2, Carlson met with officials at the Bank in May 2005. He informed the Bank that he planned to develop both parcels together, that he had hired an engineer and a surveyor to help him prepare plans, and he showed the Bank the

Sketch Plan. The Bank loaned him the money and on June 14, 2005, Carlson purchased Parcel 2 from the Roettgers. The Bank secured its loan through a mortgage on Parcel 2, which it recorded on June 23, 2005. After purchasing Parcel 2, Carlson had FFE continue to work on the joint development project.

Eventually, Carlson defaulted on both of his loans with the Bank and the mortgages were foreclosed. The Bank purchased Parcel 2 at the foreclosure sale on June 29, 2007.

FFE was not paid fully for its services so it filed a mechanic's lien statement on June 25, 2007 for $82,642.27. It filed an amended mechanic's lien statement on December 21, 2007 for $99,008.13. In March 2008, FFE began this action by filing a complaint against, among others, Carlson and the Bank. Among other things, FFE sought a mechanic's lien on both parcels that had priority over the Bank's mortgages and an order directing the parcels to be sold to satisfy the money owed FFE.

The district court granted the Bank's motion for summary judgment on Parcel 1 and dismissed FFE's mechanic's lien claim against that parcel in September 2008. A court trial was held in November 2008 on FFE's remaining claims. Among other things, the district court ruled that FFE's mechanic's lien on Parcel 2 was valid and had priority over the Bank's mortgage. The district court also ordered that Parcel 2 be sold to satisfy the debt owed FFE and awarded FFE $23,057.50 in attorney fees. Finally, the district court concluded that apportioning FFE's lien between Parcels 1 and 2 was not appropriate in this case. This appeal by the Bank followed.

D E C I S I O N

I.

The first issue on appeal is whether FFE's lien on Parcel 2 is valid. Mechanics' liens are creatures of statute, and the interpretation of the statutes governing liens presents a question of law which this court reviews de novo. *David-Thomas Co. v. Voss*, 517 N.W.2d 341, 342 (Minn. App. 1994). But the district court's factual determinations shall not be set aside on appeal unless those determinations are clearly erroneous. *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999).

Because a mechanic's lien is created by statute, the statutory requirements for a valid lien must be strictly followed. *Dolder v. Griffin*, 323 N.W.2d 773, 780 (Minn. 1982); *Wallboard, Inc. v. St. Cloud Mall, LLC*, 758 N.W.2d 356, 360 (Minn. App. 2008). For FFE to have a valid lien on Parcel 2, three requirements must be met. First, FFE's services must be lienable services under Minn. Stat. § 514.01 (2008). *Korsunsky Krank Erickson Architects, Inc. v. Walsh*, 370 N.W.2d 29, 31 (Minn. 1985).[2] Second, "the lien must be enforceable against the interest in the property held by the defendant." *Id.* Third, FFE must comply with the prelien-notice requirement if the conditions triggering prelien notice are met and no exception applies. Minn. Stat. § 514.011 (2008). Each requirement is considered in turn.

[2] Although Minn. Stat. § 514.01 was amended after *Korsunsky* in 1986, the language significant to this case is the same. *Compare* Minn. Stat. § 514.01 (1984) *with* Minn. Stat. § 514.01 (2008).

a. Is FFE's work a lienable service?

FFE's work—surveying, engineering, and land-development planning—constitutes lienable services: "Whoever performs engineering or land surveying services with respect to real estate . . . shall have a lien upon the improvement, and upon the land." Minn. Stat. § 514.01; *Kirkwold Constr. Co. v. M.G.A. Constr., Inc.*, 513 N.W.2d 241, 243-44 (Minn. 1994) (noting that after 1974 amendments to the mechanic's lien laws, engineers and surveyors have a lien on the land once they perform their services). This means that the Sketch Plan itself is a lienable service, not just a preliminary document that shows a potential plan to develop both parcels, as the Bank argues.[3] And because the Sketch Plan shows a subdivision layout on both parcels, it is lienable work on both parcels.

b. Is FFE's lien enforceable against the interest in the property?

For a lien to be valid, "it must be enforceable against the interest in the property held by the defendant." *Korsunsky*, 370 N.W.2d at 31. So here, FFE's lien must be enforceable against the interest in Parcel 2 held by the Bank, because the Bank purchased Parcel 2 in June 2007 after foreclosing on its mortgage. Since liens are granted "upon the land," they run with the property. Minn. Stat. § 514.01. So determining whether FFE's lien is enforceable against the Bank's interest requires tracing the lien through the prior

[3] In support of its argument that the Sketch Plan does not constitute lienable work, the Bank argues that the Sketch Plan "contains no distances, no dimensions, no easements or detail of any sort." The Bank cites no authority supporting the proposition that the lack of such features makes a document prepared by a surveyor/engineer in the course of their professional services not engineering or surveying work eligible for a lien under Minn. Stat. § 514.01. The professional engineer who prepared the Sketch Plan testified that he spent about 20 hours doing the research necessary to prepare the Sketch Plan.

property owners. Prior to the Bank acquiring ownership of Parcel 2, it was owned by Carlson, who had purchased it from the Roettgers on June 21, 2005. So if FFE had an enforceable lien on Parcel 2 when the Roettgers owned it, then FFE also has an enforceable lien against the Bank's interest.

A lien is enforceable against a person's interest in a property if that person consented to the lienable work to the property. *Korsunsky*, 370 N.W.2d at 31. "If the person against whose interest the lien is charged contracted for the [lienable work] with the lien claimant . . . consent is inferred from the contract . . . . If the person is not a contracting party . . . consent may arise by operation of law under Minn. Stat. § 514.06."[4] *Id.* Since the district court found that Carlson hired FFE and since FFE does not claim it had a contract with the Roettgers, the issue is whether FFE's lien attached to the Roettgers' interest in Parcel 2 through section 514.06.

Section 514.06 provides in pertinent part:

> When improvements are made by one person upon the land of another, all persons interested therein otherwise than as bona fide prior encumbrancers or lienors shall be deemed to have authorized such improvements, in so far as to subject their interest to liens therefor. Any person who has not authorized the same may protect that person's interest from such liens by serving upon the persons doing work or otherwise contributing to such improvement within five days after knowledge thereof, written notice that the improvement is not being made at that person's instance . . . .

[4] Although Minn. Stat. § 514.06 has been amended since *Korsunsky*, the language significant to this case is the same. *Compare Korsunsky*, 370 N.W.2d at 31 (quoting the relevant part of Minn. Stat. § 514.06 (1984)) *with* Minn. Stat. § 514.06 (2008).

Under this statute, a lien can attach against landowners' interests in their property even if the landowners did not contract for the lienable work, provided that they knew about the improvements to their property and either (1) actually authorized those improvements or (2) failed to file the disclaimer notice. Minn. Stat. § 514.06; *Master Asphalt Co. v. Voss Constr. Co.*, 535 N.W.2d 349, 352-54 (Minn. 1995); *Korsunsky*, 370 N.W.2d at 31.

The Minnesota Supreme Court interpreted the meaning of *authorized* in this statute in *Master Asphalt*. 535 N.W.2d at 352-53. In its reasoning, the supreme court approvingly quoted two prior cases that had interpreted the meaning of *authorize* in the precursor to Minn. Stat. § 514.06 thusly: (1) "'authorized' here means authorized by contract with, or by direction, or at the instance of the owner or person interested, and not merely by his permission or consent at the instance of a [third party]," and (2) "[t]o authorize [improvements] means something more than merely giving permission to them. It means an affirmative grant of the right to make them." *Id*. (quoting *Wallinder v. Weiss*, 119 Minn. 412, 416, 138. N.W. 417, 418 (1912) (emphasis removed) and *Berglund & Peterson v. Wright*, 148 Minn. 412, 417, 182 N.W. 624, 626 (1921) (modification in original)).

The supreme court has also concluded that *improvements* for purposes of section 514.06 do not need to physically or visibly improve the land to be lienable. *Korsunsky*, 370 N.W.2d at 32-33. In *Korsunsky*, the court held that an architect's services, which included work on a preliminary plat and site plans, qualified as *improvements* eligible for a lien through section 514.06 even though the architect's work did not constitute physical or visible work on the property. *Id.* at 30, 32-33. The court reasoned that sections 514.01

and 514.06 "are coordinate in scope and meaning" such that work entitled to a lien under section 514.01 is also entitled to a lien under section 514.06. *Id*. at 32. Because architectural services that did not physically or visibly improve the property had been repeatedly held to be lienable work under section 514.01, it followed that those same services also were *improvements*—lienable work—under section 514.06. *Id*.

Starting in early 2005, FFE worked on developing both Parcels 1 and 2 jointly. This work began while the Roettgers still owned Parcel 2 and continued after Carlson purchased this parcel. Under section 514.06, this work of FFE qualifies for a lien against the Roettgers' interest in Parcel 2 for two reasons. First, this work was *authorized* by the Roettgers within the meaning of section 514.06. The record shows that in May 2005, shortly after FFE presented Carlson and Roettger with the Sketch Plan, FFE prepared more sketches for Carlson and Roettger. Roettger personally contacted FFE's professional engineer and requested that he prepare these additional sketches because Roettger wanted to net more lots on his parcel. So these sketches and the work they represent were authorized by the Roettgers because FFE did them at the direction or instance of the then owners (the Roettgers). *Master Asphalt*, 535 N.W.2d at 352 (reasoning that *authorized* in section 514.06 "means authorized . . . by direction or at the instance of the owner . . . and not merely by his permission or consent at the instance of a [third party]" (emphasis removed) (citation omitted)).

Second, the work FFE has done on Parcel 2 is an *improvement*—lienable work—within the meaning of section 514.06. The engineering and land surveying services of FFE are lienable work under section 514.01, so, under the reasoning of *Korsunsky*, these

services are also lienable work under section 514.06. *Korsunsky*, 370 N.W.2d at 32 (reasoning that sections 514.01 and 514.06 "are coordinate in scope and meaning" such that work entitled to a lien under section 514.01 is also entitled to a lien under section 514.06). The Bank's argument that this work did not visibly or physically improve the property is irrelevant, because *Korsunsky* held that work on a property did not have to visibly or physically improve the property to be lienable work. *Id*. at 32-33. Moreover, the land-planning work that FFE did on Parcel 2 is similar to the architect's work on a preliminary plat and site plans in *Korsunsky*, and that court held that that was lienable work under section 514.06.

Because the statutory requirements of section 514.06 are met, the work of FFE on Parcel 2 qualifies for a lien against the Roettgers' interest in Parcel 2. The use of section 514.06 to attach a lien against the Roettgers' interest in Parcel 2 also disproves the Bank's argument that to get a lien against Parcel 2, FFE must perform its services on Parcel 2 under a contract with the owner (the Roettgers) or at the instance of any agent, trustee, contractor, or subcontractor of the Roettgers. Section 514.06 allows a lien to attach precisely where there is no contract between the lien claimant and either the owner or the owner's agent, trustee, contractor, or subcontractor. *See Korsunsky*, 370 N.W.2d at 31.

c. Did FFE comply with the prelien-notice requirements?

If it is possible that a subcontractor may file a mechanic's lien against a parcel of land, then subcontractors are required to provide the owner of that parcel written notice of this possibility. Minn. Stat. § 514.011. Subcontractors must meet two conditions to

trigger the prelien-notice obligation: (1) the subcontractor has no direct contract with the owner and (2) the subcontractor performs lienable work on the property. *Id*., subd. 2(a). Providing prelien notice when required is a necessary prerequisite to a valid lien. Minn. Stat. § 514.011, subds. 1, 2(a); *Polivka Logan Designers, Inc. v. Ende*, 312 Minn. 171, 172-73, 251 N.W.2d 851, 852 (1977). So for valid liens, prelien-notice obligations must be strictly complied with. *Wong v. Interspace-West, Inc.*, 701 N.W.2d 301, 302-03 (Minn. App. 2005), *review denied* (Minn. Oct. 18, 2005).

It is undisputed that FFE did not provide either Carlson or the Roettgers with prelien notice. So, if FFE was required to give either of them this notice to have a valid lien on Parcel 2, then FFE's lien is invalid unless one of the exceptions to the prelien-notice obligation applies, *see* Minn. Stat. § 514.011, subd. 4. Because we conclude that FFE had to provide the Roetggers with prelien notice, and because no exception applies, FFE does not have a valid lien on Parcel 2.

FFE had to provide prelien notice to the Roettgers because both conditions of Minn. Stat. § 514.011, subd. 2(a) are met. Those conditions are that (1) the lien claimant has no direct contract with the owner and (2) the lien claimant performs lienable work on the property. *Id*., subd. 2(a). The owner of Parcel 2 when FFE began to do work on it in early 2005 was the Roettgers. FFE had no direct contract with the Roettgers because FFE's contract was with Carlson. As demonstrated in the analysis of section 514.06, FFE did do lienable work on Parcel 2 when the Roettgers owned it. Thus, under section 514.011, subd. 2(a), FFE had to provide prelien notice to the Roettgers, which it failed to

do.[5] Unless an exception in subdivision 4 applies, FFE's lien is invalid because compliance with the prelien-notice requirement is "a necessary prerequisite to the validity of any claim or lien." Minn. Stat. § 514.011, subd. 2(a).

FFE argues that it is not required to give prelien notice because the exception in subdivision 4a applies. That exception provides that "[t]he notice required by this section shall not be required to be given where the contractor is managed or controlled by substantially the same persons who manage or control the owner of the improved real estate." Minn. Stat. § 514.011, subd. 4(a). FFE argues that Carlson acted as his own general contractor, and since Carlson eventually owned both lots, subdivision 4a applies and no prelien notice is required.

A determination that Carlson acted as his own general contractor would be a factual finding. The district court did not make this finding, nor does the record support such a finding.[6] But even if Carlson was his own general contractor, this does not prevent FFE from having to provide prelien notice on these particular facts. When FFE

[5] This conclusion undercuts the following argument by FFE: no prelien notice was required on Parcel 2 because no subcontractor was used for FFE's work involving Parcel 2. This conclusion does not depend on whether FFE hired a subcontractor with respect to Parcel 2; rather, it depends on the fact that FFE was a subcontractor as that term is defined in Minn. Stat. § 514.011, subd. 2(a), relative to the Roettgers' ownership interest.

[6] The district court did find that FFE subcontracted work with GES, and if Carlson was the general contractor, hiring the subcontractors would be something he would do. Moreover, FFE did more than provide engineering services: according to Erickson, it also "prepared construction documents, bid the project out, and obtained . . . a low bidder to actually do the work." In the services proposal outlining FFE's services to Carlson, FFE states that it will do the "contract administration" which includes "bid administration." The fact that FFE bid the project out and obtained the low bidder, and that Carlson hired it, in part, to do these services, undercuts the conclusion that Carlson acted as his own general contractor.

first began work on Parcel 2 and made the Sketch Plan, the Roettgers owned that parcel, not Carlson. So the person who controls the contractor (Carlson) is not the same person who controls the owner of the improved real estate (the Roettgers). The requirement of subdivision 4a that the ownership be the same does not exist, which means that this provision does not except FFE's requirement to provide prelien notice to the Roettgers for the work it did to their parcel.

FFE also invokes the exception to prelien-notice obligations in subdivision 4b, which states that "[t]he [prelien] notice required by this section shall not be required to be given in connection with an improvement to real property consisting of or providing more than four family units when the improvement is wholly residential in character." Minn. Stat. § 504.011, subd. 4b. FFE argues that this exception applies because the planned subdivision consists of more than four single-family lots. FFE invoked this exception for the first time on appeal. Appellate courts will generally not consider issues not raised to or ruled on by the district court. *Thiele v. Stitch*, 425 N.W.2d 580, 582 (Minn. 1988). Besides, FFE's precise argument was recently rejected by the supreme court. *S.M. Hentges & Sons, Inc. v. Mensing*, ___ N.W.2d ____, 2010 WL 184013, *2 (Minn. Jan. 21, 2010) (holding that subdivision 4b "creates an exception to the pre-lien notice requirement that applies only to multi-unit buildings, such as apartment buildings, condominiums, and townhouses, and not single-family lots within a residential development").

FFE also argues that prelien notice is not needed because Carlson was a sophisticated party—not an unsuspecting owner—who had contracted with FFE before

and therefore did not need prelien notice. But the supreme court specifically rejected the argument that the sophistication of the owners can serve as a basis to find that lien claimants need not comply with prelien-notice obligations. *Dolder*, 323 N.W.2d at 779-80.

FFE next argues that its lien is valid even if no exceptions in section 514.011 apply because the lien laws must be liberally construed to protect lien claimants who contribute to the improvement of the property. This argument also fails because the purpose of the lien laws that FFE relies on—protecting lien claimants who improve property—only takes effect once a lien exists.[7] *Id.* Would-be lien claimants must strictly follow the prelien-notice requirements to obtain a valid lien. *Id.* Because FFE did not strictly comply with these requirements, it does not have a valid lien.

d. A summary of the lien-validity analysis.

As discussed above, three requirements must be met for a valid lien. FFE meets the first two but fails the third. The services that FFE provided are lienable services under Minn. Stat. § 514.01. The lien would also be enforceable against the bank's

[7] The two cases FFE cites in support of this purpose-based argument—*N. Star Iron Works Co. v. Strong*, 33 Minn. 1, 21 N.W. 740 (1884) and *Premier Bank v. Becker Dev., LLC*, 767 N.W.2d 691 (Minn. App. 2009), *review granted* (Minn. Sept. 16, 2009)—do not help FFE. First, both cases are distinguishable because neither involves issues with prelien notice. *North Star*, 33 Minn. at 3-6, 21 N.W. at 740-42 (addressing a lien claimant who claimed a lien on more acres than the statute allowed); *Premier Bank*, 767 N.W.2d at 699 (addressing "whether a lienholder can assert its entire claim against less than all the properties for which labor and materials were provided under a blanket lien"). Second, *Premier Bank* deals with an admittedly valid lien: "The parties do not dispute that . . . Kuechle perfected its mechanic's lien." 767 N.W.2d at 695. The court acknowledged that liberally construing lien statutes to protect lien claimants who improve property applies to liens "once perfected." *Id.* at 698. The issue here is whether FFE has a valid lien at all given the prelien-notice obligations.

interest in Parcel 2 because the lien, if it was valid, would have attached when FFE first did work on Parcel 2 when the Roettgers owned this parcel. The lien would run with the land and thus apply through the land ownership transfers to the Bank's interest. But FFE did not comply with the prelien-notice obligations. Therefore, its lien is not valid.[8]

Though this conclusion disposes of the priority dispute, we address the issue of whether FFE's lien would have had priority over the Bank's mortgage below and find that FFE would lose on this basis as well.

II.

Assuming that FFE has a valid lien, the second issue is whether that lien has priority over the Bank's mortgage. Mechanics' liens are creatures of statute, and the interpretation of the statutes governing liens presents a question of law which this court reviews de novo. *David-Thomas Co.*, 517 N.W.2d at 342. But the district court's factual

[8] The Bank argues that FFE's lien is invalid because it violates Minn. Stat. § 514.09 (2008). Section 514.09 allows a lienholder to file one lien statement for its entire claim if the lienholder made improvements to one or more adjoining lots "pursuant to the purposes of one general contract with the owner." The Bank argues that while FFE filed one lien statement embracing its entire claim against both Parcels 1 and 2, FFE did not have one general contract with the owner. Because the Bank raises this argument for the first time on appeal, we decline to consider it. *See Thiele*, 425 N.W.2d at 582 (stating that appellate courts will generally not consider issues not raised to or ruled on by the district court).

The Bank attempts to evade the rule in *Thiele* by arguing that this issue did not arise until after the trial due to the district court's holding that GES only performed work for Parcel 1. The record undercuts this assertion. There was ample testimony that GES only did work for Parcel 1 and never did work for Parcel 2. Also, as a matter of logic, it does not follow that because GES only did work on one parcel that FFE must have one contract for the development of Parcel 1 and another for the development of both parcels together. FFE could have had one contract with Carlson that expanded in scope and FFE could have limited GES's work to Parcel 1 in its contract with GES at the same time.

determinations shall not be set aside on appeal unless those determinations are clearly erroneous. *Fletcher*, 589 N.W.2d at 101.

Deciding whether the lien has priority over the mortgage depends upon a determination of when the lien attached. As a general rule, liens "attach and take effect from the time the first item of material or labor is furnished upon the [property]"; in other words, they relate back in time to when the first lienable work was done and have priority based on that date. Minn. Stat. § 514.05; *Jadwin v. Kasal*, 318 N.W.2d 844, 848-49 (Minn. 1982); *Dolder*, 323 N.W.2d at 777. Under this general-priority rule, engineers and surveyors have a lien once they perform services. *Kirkwold*, 513 N.W.2d at 244. But in cases where a bona fide mortgagee does not have actual or record notice of the fact that lienable work has been done on the property, liens do not attach until there is actual and visible improvement on the ground. Minn. Stat. § 514.05, subd. 1.

FFE's lien, if valid, would have attached to Parcel 2 when FFE first did work on that property in early 2005 when the Roettgers owned Parcel 2. This also means that FFE's work was done before Carlson bought the property and the Bank obtained a mortgage on that property in June 2005. Thus, if the bank had actual notice[9] of FFE's lienable work on Parcel 2 before it recorded its mortgage, then FFE's lien would have priority over the Bank's mortgage. *See* Minn. Stat. § 514.05; *Kirkwold*, 513 N.W.2d at 244-45.

[9] The Bank could not have record notice of FFE's lien, because FFE did not record its lien until 2007.

The district court found that the Bank knew that FFE had done lienable work on both parcels before June 2005 when the bank closed on its loan to Carlson. This finding is clearly erroneous. The district court first found that the Sketch Plan was not made until early 2005. But then just a few paragraphs later in the order, the district court found that Carlson brought this Sketch Plan to a meeting with the Bank that occurred before April 2004. These findings are contradictory. The record clearly supports the conclusion that the Sketch Plan was not created until early 2005, and thus the Sketch Plan could not have been brought by Carlson into a meeting in 2004. Erickson himself, a principal with FFE, testified that he created the Sketch Plan in early 2005. Also, the district court's finding that FFE had done work on Parcel 2 in 2004 is clearly erroneous. Erickson again testified on behalf of FFE that FFE did not do work on Parcel 2 until early 2005. And there was no testimony disputing this evidence. Finally, the district court clearly erred when it found that Exhibit 18 was part of the loan presentation for Carlson to get financing to buy Parcel 2. Exhibit 18 itself shows that the date of the loan presentation was July 27, 2006, which is after June 2005, the time when Carlson purchased Parcel 2 and the Bank financed this transaction. Relying on these erroneous findings, the district court further found that the Bank knew FFE had done lienable work on Parcel 2.

Although the Bank admitted at oral argument that it had the Sketch Plan before Carlson purchased Parcel 2, the Sketch Plan is not sufficient to provide the Bank actual notice that lienable work had been done. The Sketch Plan is notable for what it does not contain: an indication of the wetland delineation, an indication that FFE had been out on the property, topographical features, the location of irons, and a surveyor's certification.

Because the Sketch Plan is so lacking in details, it is not sufficient to provide the Bank actual notice of lienable work. This reinforces our conclusion that the district court clearly erred in finding that the Bank had actual notice that FFE had done lienable work before June 2005. So even if FFE had a valid lien, it still would not have priority over the Bank's mortgage.

III.

Because we conclude that FFE's lien is invalid and that it would not have had priority over the Bank's mortgage anyway, there is no need to address the Bank's argument that the district court clearly erred in not apportioning FFE's lien claim between Parcels 1 and 2.

IV.

The final issue is whether the district court abused its discretion in awarding attorney fees to FFE. The district court has discretion to award reasonable attorney fees in actions to foreclose a mechanic's lien under Minn. Stat. § 514.14 (2008). *Obraske v. Woody*, 294 Minn. 105, 108, 199 N.W.2d 429, 431 (1972). But attorney fees are not awarded to nonprevailing parties because "considerations of public policy militate against awarding [them] attorney fees." *Jadwin*, 318 N.W.2d at 848-49. Because we conclude that FFE loses, we also reverse the district court's award of attorney fees.

Reversed.