

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 CA 0250

WFK

STANDARD MATERIALS, L.L.C.

VERSUS

C & C BUILDERS, INC., PATRICK C. JUNIUS,
AND CHARLES A. JUNIUS, III

Judgment rendered: DEC 22 2010

On Appeal from the 22nd Judicial District Court
Parish of St. Tammany, State of Louisiana
2009-10849; Division G
The Honorable William J. Crain, Judge Presiding

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In Proper Person

*Justice J. Concur
Kuhn, J. CONCURS IN PART & DISSENTS
IN PART & ASSIGNS REASONS*

*Judge P. Pettigrew J. Concur
Whipple, J. Concur.*

BEFORE: WHIPPLE, KUHN, GUIDRY, PETTIGREW, and KLINE, JJ.,¹

¹ Judge William F. Kline, Jr., retired, is serving as judge *pro tempore* by special appointment of the Louisiana Supreme Court.

KLINE, J.

This matter arises from the grant of a motion for summary judgment filed by Standard Materials, LLC, (Standard) pursuant to the Louisiana Private Works Act (LPWA), La. R.S. 9:4802, *et seq.* Patrick C. Junius appeals the judgment rendered against him, which awarded Standard the debt incurred by a contractor for materials Standard delivered to Patrick Junius's immovable property. The judgment also awarded Standard a privilege on the property. For the following reasons, we affirm the portion of the judgment that decrees Patrick Junius's personal obligation to Standard for the unpaid debt. We reverse that portion of the judgment that awarded Standard a privilege on the immovable property.

FACTS AND PROCEDURAL HISTORY

Patrick Junius, a California resident, hired C & C Builders, Inc. (C&C) to undertake construction of a building on lot 29, Oak Harbor Moorings, Phase 2, 191 Islander Drive, Slidell, Louisiana. (rec. 83). The record does not indicate whether the building was intended for residential or commercial use. On April 9, 2008, Standard sold concrete and other related supplies totaling \$21,141.11 to C&C, which were used on Patrick Junius's property. (rec. 30). Charles A. Junius, III, a principal in C&C, personally guaranteed C&C's obligation to Standard. On July 1, 2008, when the debt remained unpaid, Standard filed an Affidavit of Lien against C&C as the contractor, and also against Patrick Junius as the record owner, in an attempt to preserve its rights under the LPWA. (rec. 10, 21). The record shows that Patrick Junius was not formally notified of this debt before the lien was filed.

On February 11, 2009, Standard filed a petition for damages, recognition of privilege, penalties, attorney fees, and costs against Patrick Junius, C&C, and Charles Junius. On March 23, 2009, Standard filed a motion for preliminary default against Charles Junius and C&C. Patrick Junius's answer, dated April 15, 2009, was filed into the record on April 20, 2009. On May 12, 2009, a default

judgment was rendered against Charles Junius and C&C, jointly, severally, and *in solido*. Standard then filed a motion for summary judgment against Patrick Junius on May 27, 2009. The motion was set for July 16, 2009. The record reflects that on June 22, 2009, Patrick Junius, pursuant to the long arm statute, was personally served with the Motion for Summary Judgment, Memorandum in Support of the Motion, Affidavit of Lien, and Statement of Uncontested Facts.

At the hearing on the motion for summary judgment on July 16, 2009, Patrick Junius was not present and no one appeared on his behalf. Judgment was rendered in favor of Standard. This judgment decreed that Standard was entitled to summary judgment as a matter of law, and that Patrick Junius was obligated to Standard in the amount of \$21,041.11. The judgment also proclaimed that this award was in solido with the award previously entered against Charles Junius and C&C. The judgment further recognized that Standard had perfected a privilege on the property in question under the LPWA.

Later that morning, after judgment had been rendered, Patrick Junius appeared in court to explain why he was not present at the hearing. The trial court gave Patrick Junius the opportunity to address the court in his own defense, which was transcribed. After Patrick Junius's testimony, the trial court stated that judgment against him had already been rendered and advised him to hire an attorney.

Patrick Junius apparently took the court's advice, because his attorney filed a motion to amend judgment and/or for new trial because the judgment against him and the privilege against the property was rendered without proof that Standard complied with the ten-day notice required in La. R.S. 9:4802(G)(2). The trial court denied the motion; Patrick Junius appealed, alleging that the trial court erred in granting the motion for summary judgment because Standard failed to meet its burden of proof. Specifically, Patrick Junius contends that Standard introduced

no evidence that he, as owner, had prior notice of the non-payment for the movables sold to C&C Builders as required by La. R.S. 9:4802(G)(2).

SUMMARY JUDGMENT

A motion for summary judgment is properly granted if the pleadings, depositions, answer to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(B).

In determining whether summary judgment is appropriate, appellate courts review evidence *de novo* under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. Because it is the applicable substantive law that determines materiality, whether a particular fact in dispute is material can be seen only in light of the substantive law applicable to this case. *Id.*

PERTINENT LAW

Louisiana Revised Statutes 9:4802, entitled "Improvement of immovable by contractor; **claims against the owner and contractor; privileges securing the improvement,**" reads as follows, in pertinent part: [Emphasis added.]

A. The following persons have a claim against the owner and a claim against the contractor to secure payment of the following obligations arising out of the performance of work under the contract: [Emphasis added.]

...

(3) Sellers, for the price of movables sold to the contractor or a subcontractor that become component parts of the immovable, or are consumed at the site of the immovable, or are consumed in machinery or equipment used at the site of the immovable. [Emphasis added.]

...

B. The claims against the owner shall be secured by a privilege on the immovable on which the work is performed.

...

G. (2) For the privilege under this Section or R.S. 9:4801(3) to arise, the seller of movables shall deliver a notice of nonpayment to the owner at least ten days before filing a statement of his claim and privilege. The notice shall be served by registered or certified mail, return receipt requested, and shall contain the name and address of the seller of movables, a general description of the materials

provided, a description sufficient to identify the immovable property against which a lien may be claimed, and a written statement of the seller's lien rights for the total amount owed, plus interest and recordation fees. The requirements of this Paragraph (G)(2) shall apply to a seller of movables sold for use or consumption in work on an immovable for residential purposes. [Emphasis and underlining added.]

DISCUSSION

Lien and Privilege

On appeal, Patrick Junius contends that Standard did not demonstrate that it was entitled as a matter of law to judgment because it presented no evidence showing that it complied with the ten-day notice requirements of 9:4802(G)(2) before filing its lien against the property. He argues, citing **Circle H Building Supply, Inc. v. Dickey**, 558 So.2d 680, 682 (La.App. 1 Cir. 1990), Standard's claims against him are based solely on his status as owner of the property under the LPWA. Accordingly, he argues that these claims must be strictly construed against the lienor and liberally interpreted in favor of parties whose common rights are thereby infringed upon. Thus, he argues, since the notice requirements of the statute were not followed, the motion for summary judgment should not have been granted.

Conversely, Standard argues that La. R.S. 9:4802(G)(2) does not apply to this situation, the statute states that the requirements of this Paragraph (G)(2) apply to "movables sold for use or consumption in work on an immovable for residential purposes." Standard contends that since Patrick Junius was contracting a building for resale purposes and not for his residential purpose, this statute does not apply.

Louisiana Revised Statutes 9:4802(B) provides authority for a seller to secure a privilege on the property for the unpaid debt. La.R.S. 9:4802(G)(2) specifically provides that for the La.R.S. 9:4802 privilege to arise, the seller of movables shall deliver a notice of nonpayment to the owner at least ten days before filing a statement of his claim and privilege. It further provides that notice to the

owner is to be delivered by registered or certified mail, return receipt requested. It also provides that other pertinent information, such as the amount due and a description of the material provided must be on the notice. The paragraph further states that its requirements apply to a seller of movables in work on an immovable for residential purposes.

There is no dispute that Patrick Junius was not notified in this manner. We therefore focus on whether any genuine issue of material fact exists as to whether such notice is required under La.R.S. 9:4802(G)(2).

There are two contending interpretations of La.R.S. 9:4802(G)(2).

The first contention, by virtue of the last sentence, is that the language is a “limiting one,” so that the notice requirements are restricted to immovables for residential purposes and thus, do not apply to immovables for other purposes.

The second contention is that the last sentence is simply an affirmative inclusion that the notice requirement shall apply to immovables for residential purposes and, importantly, does not exclude the notice requirement for immovables for other purposes. This contention notes that there is no limiting language, such as “only” immovables for residential purposes. The rationale for this contention is within the first sentence of La.R.S. 9:4802(G)(2), *to wit*:

For the privilege under this Section or R.S. 9:4801(3) to arise, the seller of movables shall deliver a notice of nonpayment to the owner at least ten days before filing a statement of his claim and privilege. [Emphasis added.]

This second contention is that there is a general requirement of notice to the “owner,” without limiting the requirements of notice to immovables for residential purposes. To reiterate, this contention urges that for the privilege to arise notice to the owner is necessary whether the use of the immovables is commercial, residential, or otherwise.

Those who enact statutory provisions are presumed to act deliberately and with full knowledge of existing laws on the same subject, with awareness of court cases and well-established principles of statutory construction, and with knowledge of the effect of their acts and a purpose in view. **Circle H Building Supply, Inc.** 558 So.2d at 682.

In view of the contentions, we looked into the legislative history. The paragraph at issue was added by Act 1024 of the 1991 legislative session.² What a legislature says in the text of a statute, however, is considered the best evidence of the legislative intent or will. **State v. Williams**, 00-1725, p. 13 (La. 11/28/01), 800 So.2d 790, 800.

We are mindful as well, that liens and privileges are to be strictly construed against claimants and liberally construed in favor of owners as they are in derogation of the common rights of owners. **Norman H. Voelkel Const., Inc. v. Recorder of Mortgages for East Baton Rouge Parish and Heck Industries, Inc.**, 02-1153, p. 5 (La.App. 1 Cir. 6/27/03), 859 So.2d 9, 12.

The first sentence in 9:4802(G)(2) states in the declaratory expression that a requirement for the privilege to arise is the ten-day notice to the owner. The last sentence in this section states that the “requirements of this Paragraph (G)(2) shall apply to a seller of movables sold for use or consumption in work on an immovable for residential purposes.” [Emphasis and underlining added.]

In an affirmative and declaratory last sentence, the legislature referred to “the requirements” of Paragraph (G)(2) and designated its application.

² Representative Salter introduced this legislation in 1991 as House Bill 382. The legislative minutes report that there was much discussion as to whether this legislation should be limited to residential buildings or not. We realize that there are certain instances where this court must look to legislative intent. La.R.S. 24:177 states the following: “(A) When the meaning of a law cannot be ascertained by the application of the provisions of Chapter 2 of the Preliminary Title of the Louisiana Civil Code and Chapter 1 of Title 1 of the Louisiana Revised Statutes of 1950, the court shall consider the intent of the legislature.” However, La.R.S. 24:177(E)(1) limits this pursuit by stating that “... summary and adjoining information, ... and other words and phrases contained outside the sections of a bill following the enacting clause are solely to provide the members of the legislature with general indicia of the content of the bill and ... shall not constitute proof or indicia of legislative intent.” La.R.S. 24:177(E)(4) specifically provides that recommendations of conference reports and other documents that are not subject to amendment by the legislature, “shall not constitute proof or indicia of legislative intent.”

If the first sentence requires notice to owners of all uses of immovable property, then “residential purposes” in the last sentence would obviously not be necessary or would be redundant.

Therefore, we conclude that the last sentence of paragraph (G)(2) is deemed to qualify the whole paragraph, including the first sentence, and notice is required only for properties used for residential purposes.

Accordingly, to prevail on a motion for summary judgment, the party claiming the privilege has the burden of showing that notice was not required on the basis that the property is being used for non-residential purposes. Standard has failed to show whether the materials it provided were being used for non-residential purposes. Therefore, a genuine issue of material fact exists that precludes entry of summary judgment on the issue of privilege.

In view of our interpretation of the statute, i.e. it requires notice to the owner of immovable property for residential purposes, and because the record does not undisputedly establish the nature of the use of the immovable, we are compelled to reverse this portion of the judgment.

Personal Liability of the Property Owner

Resolution of the privilege, however, does not resolve the issue of Patrick Junius’s personal liability. We next address whether Standard proved, as a matter of law, that Patrick Junius was personally liable for the debt incurred by his contractor.

Louisiana Revised Statutes 9:4802(A)(3) provides, in pertinent part,

A. The following persons have a claim against the owner and a claim against the contractor to secure payment of the following obligations arising out of the performance of work under the contract:

...
(3) Sellers, for the price of movables sold to the contractor or a subcontractor that become component parts of the immovable, or are consumed at the site of the immovable....”

Whether a privilege exists is discussed hereinabove and will be dependent upon a determination of the "use of the immovable" and thus whether the ten day notice was required.

These notice requirements as contended by Patrick Junius, however, are only found in the section of the statute pertaining to the privilege. Thus, in order to prove its claim, as opposed to a privilege, against an owner for the unpaid debt under La.R.S. 9:4802(A), Standard must present proof through pleadings, depositions, answer to interrogatories, and admissions on file, together with affidavits, that there is no genuine issue of material fact that it is entitled to judgment as a matter of law. LSA-C.C.P. art. 966(B). Thereafter, if Patrick Junius fails to produce factual support sufficient to establish that he will be able to satisfy his burden at trial, there is no genuine issue of material fact. LSA-C.C.P. art. 966(C)(2).

Here, to meet its burden, Standard introduced the bills for the supplies, and an affidavit attesting to the principal price of the items and the amount remaining due. To defeat the motion for summary judgment, Patrick Junius, the adverse non-moving party, had to produce facts to establish that he could satisfy his evidentiary burden of proof at trial, which he did not do. The trial court allowed Patrick Junius to testify, albeit after the fact. A reading of his testimony, however, indicates that he did not refute any of the evidence that Standard had filed into the record and of which he was personally served. Specifically, Standard proved that Patrick Junius owed money, and Patrick Junius did not dispute this fact. Therefore, no genuine issues of material fact remains regarding the existence of Standard's claim, and judgment was correctly rendered against Patrick Junius as the owner of the property. Accordingly, the trial court did not err in granting summary judgment establishing Patrick Junius's personal obligation. We affirm the portion of the judgment establishing that Patrick Junius has a personal obligation to pay Standard

for the materials that became component parts of his immovable property, or were consumed at the site of the immovable property.

DECREE

For the above reasons, we affirm the portion of the judgment establishing that Patrick Junius has personal liability to Standard Materials LLC, in the principal amount of \$21,041.11, plus interest at the judicial rate from the date of judicial demand until paid, subject to a credit in the amount of \$2,000.00. We reverse the portion of the judgment insofar as it recognized Standard's privilege on the subject property. The costs associated with this appeal are to be divided equally between the appellant, Patrick C. Junius, and the appellee, Standard Materials, LLC.

AFFIRMED IN PART, REVERSED IN PART