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Summary of Simmons Self-Storage v. Rib Roof, Inc., 130 Nev. Adv. Op. 57

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PROPERTY LAW: MECHANIC'S LIEN

Summary

The Court determined two issues: (1) whether a mechanic or materialman must prove either that the materials were only delivered for use or whether the materials were actually used for the property in order to establish a lien on the property; (2) whether a property subject to a lien may still be sold where a surety bond has been posted, or whether the lien judgment should be satisfied from the surety bond.

Disposition

A materialman may establish a lien against a property or any improvements made for which he supplied materials in the amount of the unpaid balance due on those materials; he does not have to prove that the delivered materials were actually used for the property. Additionally, because a surety bond replaces property as security for an established lien, the property cannot be sold when a surety bond is posted.

Factual and Procedural History

Respondent Rib Roof, Inc. ("Rib Roof") is a manufacturer and supplier of steel products. Appellant Simmons Self-Storage ("Simmons") is a general contractor for six major projects throughout Nevada, and subcontracted with respondent to furnish and install steel products for the projects. Rib Roof delivered the steel to the particular job sites using bills of lading to confirm proper delivery. However, 19 of the 80 bills of lading lacked consignee signatures. Simmons made no payment for the steel furnished for one property, and partially paid respondent for the steel delivered for the other five properties.

Despite the partial payment, Simmons sent an email to Rib Roof requesting lien release forms, which were drawn up by Rib Roof's bookkeeper Trish Cartwright. Cartwright knew she lacked authority to actually sign the lien releases, yet nevertheless signed the lien waiver and release forms for two of the six projects.

As a result of the Simmons' partial payment, Rib Roof properly enacted mechanic's liens on all six properties in compliance with required statutory notice and recording. Rib Roof then filed a complaint for foreclosure against each property. Simmons answered by posting surety bonds totaling 1.5 times the value of the mechanic's liens on four of the six properties, relying on the waiver forms signed by Ms. Cartwright for the other two projects.

The district court concluded that providing materials to a job site created a presumption that those materials were used for the property or improvements thereto, and thus the liens established on all six properties were valid. District court also ruled that Ms. Cartwright did not have the proper authority to sign the lien waiver forms, and therefore the waivers were unenforceable. Finally, the district court ordered all six properties be sold to satisfy the remaining lien on the two projects for which a bond was not posted.

¹ By Kelsey Bernstein.

Discussion

Lien rights

The parties dispute the meaning of the terms “furnish” in NRS 108.222, which authorizes mechanic’s liens generally.² Simmons contends that “furnish” means a lien right exists only when the materials were actually “used” for the property, while Rib Roof contends that “furnish” only requires delivery of the materials. The Court agrees with Rib Roof and holds that to furnish “encapsulates a variety of situations, including one where a materialman delivers materials for a property or improvement thereon...” Therefore, under NRS 108.222, a materialman does not need to prove that the materials he supplied were actually used or incorporated into the property in order to enact a lien on the property; rather, he must only prove that they were supplied for use on the property.

Supplied materials

Although 19 of the 80 bills of lading lacked consignee signatures, the district court’s finding that Rib Roof properly delivered the required materials is supported by substantial evidence. Specifically, the bills of lading that lacked consignee signatures nevertheless contained two other signatures from the shipping manager and truck driver.

Waiver

Simmons asserts that Rib Roof waived its liens on two properties as a result of the unconditional waiver and lien release forms signed by Ms. Cartwright, an employee of Rib Roof. Rib Roof, however, asserts that the release forms are unenforceable because Ms. Cartwright did not have the proper authority to sign the forms.

The Court now officially adopts the Restatement’s definition of “actual authority.”³ When examining whether actual authority exists, the focus should be on an agent’s reasonable belief. Ms. Cartwright admitted that she lacked authority to execute the lien release forms, and nothing suggests Rib Roof granted her such authority. Therefore, Cartwright lacked actual authority because she had no reasonable basis for believing that Rib Roof authorized her to sign the forms. Simmons offered no evidence or argument that Rib Roof knew or acquiesced to Ms. Cartwright’s acts, and so Ms. Cartwright also lacked apparent authority.

Surety bonds

Surety bonds are authorized by NRS 108.2413.⁴ Rib Roof did not challenge the validity of the surety bonds posted by Simmons for the 4 properties, and therefore each surety bond replaced its corresponding property as security for the lien. However, the district court erred in ordering the sale of all six properties to satisfy the lien remaining on the two properties upon a

² NEV. REV. STAT. 108.222 (2013).

³ “An agent acts with actual authority when, at the time of taking action that has legal consequences for the principal, the agent reasonably believes, in accordance with the principal’s manifestation to the agent, that the principal wishes the agent so to act.” Restatement (Third) of Agency § 2.01 (2006).

⁴ NEV. REV. STAT. 108.2413 (2013).

finding that the lien waiver on those two properties was unenforceable. A court cannot order the sale of a property to satisfy a lien on a separate property or charges associated with that lien. The district court also erred by failing to determine the total appropriate charge attributable to each property to determine if the surety bond satisfied the lien amount. A court can only take action against a property to satisfy a judgment upon showing that an individual surety bond is insufficient in relation to its respective charge, and this case was remanded to determine that issue.

Conclusion

Because a materialman need only prove that the materials were delivered to enact a valid mechanic's lien, Rib Roof's liens against the six properties were valid. Although not all of the delivery confirmation forms were signed by the appropriate assignee, delivery is sufficiently proven because the unsigned forms were still signed by other receiving employees. Because Ms. Cartwright, as bookkeeper, had neither actual nor apparent authority to execute lien release forms on behalf of Rib Roof, those release forms are unenforceable. Finally, the district court erred in ordering the sale of all six properties to satisfy the lien remaining on the two properties not replaced with a surety bond; this case was remanded to determine whether the posted surety bond for each property was sufficient to cover the properties' respective lien amount.