

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-000194-MR

PEOPLES BANK & TRUST COMPANY OF HAZARD

APPELLANT

v. APPEAL FROM PERRY CIRCUIT COURT
HONORABLE DOUGLAS C. COMBS JR., JUDGE
CIVIL ACTION NOS. 95-CI-00568 AND 99-CI-00348

GLYNN YOUNG'S LANDSCAPING AND
NURSERY CENTER

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: HUDDLESTON, PAISLEY and TACKETT, Judges.

HUDDLESTON, Judge: Peoples Bank & Trust Company of Hazard appeals from a Perry Circuit Court judgment which upheld the validity of a mechanic's lien asserted by Glynn Young's Landscaping and Nursery Center. The circuit court held that the lien's priority over the bank's mortgage on the property of John and Darlene Barger in Nicholasville also encompassed interest

and attorney's fees awarded to the lien holder. Peoples Bank argues first that the description of the property in the lien was inadequate, thereby making the lien invalid. In the alternative, the bank contends that the lien's priority should encompass only the principal contract amount, without accrued interest or attorney's fees.

The facts surrounding the underlying debt are essentially undisputed and have been reviewed by this Court twice.¹ Glynn Young's Landscaping filed suit in 1995 to enforce its materialman's lien filed against the Bargers' property to secure payment of a sum due for landscaping work. The parties reached an agreed settlement regarding the principal amount of the lien, but submitted to the circuit court questions regarding interest and attorney's fees. Glynn Young's Landscaping appealed the 1997 judgment of the circuit court which found no written contract existed between the parties, that Glynn Young's Landscaping was not entitled to interest and attorney's fees, and that struck factual stipulations contained in the earlier agreed order. This Court reversed upon determining that a written contract which provided for interest and attorney's fees existed between the parties, and we remanded for determination of the amounts due.

¹ See Glynn Young Landscaping and Nursery Center v. Barger, No. 1998-CA-000066-MR (Opinion Rendered March 19, 1999) and Barger v. Glynn Young's Nursery Center, No. 2000-CA-000829-MR (Opinion Rendered February 9, 2001).

On remand, the circuit court awarded Glynn Young's Landscaping \$7,890.00 in attorney's fees and \$5,835.65 in prejudgment interest. Following an appeal by the Bargers, this Court affirmed the award of attorney's fees, but vacated the award of interest and remanded for recalculation.

Following the second remand, the circuit court consolidated the above case with a foreclosure action filed by Peoples Bank & Trust against the same property. The bank's mortgage dated from 1996, prompting the circuit court to grant the 1995 mechanic's lien priority over the bank's mortgage. Included in that priority are interest and attorney's fees. In the instant appeal, the bank challenges both the validity of the mechanic's lien based on an alleged inadequacy in the lien statement's description of the property, as well as the priority afforded the interest and attorney's fees. The bank argues that those amounts should be subordinate to its mortgage.

We will first address the bank's challenge to the sufficiency of the description of the property affected by Glynn Young's Landscaping's mechanic's lien. The Bargers' former home is located at 400 Grand Oak Lane, and is situated on lots 8 and 9 of Grand Oak Point Subdivision, reflected on a plat of record in the Perry County Clerk's office. The mechanic's lien filed by Glynn Young's Landscaping identifies the property as located at 400 Grand Oak Lane, but provides a description in metes and

bounds only for lot 9. The bank contends that such a description is insufficient for the mechanic's lien to properly attach to the property, arguing that a proper description would necessarily have included both lots 8 and 9 in order for the lien to attach to the entire property.

Kentucky Revised Statutes (KRS) 376.080 requires that a mechanic's lien statement contain "a description of the property intended to be covered by the lien sufficiently accurate to identify it" The question before us, then, is whether under the statute the lien statement, which provided the accurate address of the home but a description in metes and bounds of only half the property, is sufficiently accurate to identify it.

The bank relies on the case of Headrick v. Waterbury² for the proposition that a defective property description renders a lien invalid. However, Headrick is easily distinguished on its facts. In Headrick, the mechanic's lien in issue described the subject property as being "lot No. 66 on a tract of land in Jefferson County, Kentucky, known as Belmar Subdivision,"³ while the correct description of the property included "[l]ots 195 and 196, Belmar Subdivision."⁴ Very simply,

² 277 Ky. 288, 126 S.W.2d 411 (1939).

³ Id., 126 S.W.2d at 412.

⁴ Id.

the party attempting to place a lien against the property in Headrick identified the wrong parcel entirely, making it impossible for an outsider to accurately identify the subject property from the description in the lien.

The other case relied on by the bank, Hellman Lumber Company, Inc. v. Landrum,⁵ is also easily distinguished from the present case. At issue in Hellman Lumber was the failure by two subcontractors to enforce their lien claims "within one year of the date of filing their statements of lien required under KRS 376.090."⁶ While the opinion did mention the need for a mechanic's lien statement to include a description of the property sufficiently accurate to identify it as part of the elements mandated by KRS 376.080,⁷ nowhere in the opinion did the Court interpret what would or would not make a description sufficiently accurate. Thus, the case is not helpful in deciding the question before us.

Most useful for our analysis is Tackett v. Pikeville Supply & Planing Mill Co.,⁸ specifically the lien description at issue therein and the Court's analysis regarding whether or not

⁵ Ky.App., 639 S.W.2d 379 (1982).

⁶ Id. at 380.

⁷ Id. at 381.

⁸ 249 Ky. 835, 61 S.W.2d 881 (1933).

that description was sufficient. That passage, beginning with the description, reads:

"Building material & lumber used in garage & the Cheeks dwelling. Of the following described real estate, to-wit: Near end of State highway bridge at Shelby, Ky. garage in use by Jno [sic] Tackett & Cheek dwelling is that used by Cheeks on opposite side of State Highway from garage and the same land deeded to Mrs. Tackett & Mr. Tackett by Francis Sowards & Hen Sowards." The argument is that the description does not describe the ground on which the house was located, or give the county in which it is located, and no one can tell whether it is near the state highway bridge at Shelby, Pike [C]ounty, Ky., or near the state highway bridge at the mouth of Shelby, Fulton [County], Ky. The rule is that the description in the statement of a mechanic's lien must itself furnish needed information to identify the property to the exclusion of other property.[⁹] We think any one of common understanding could take the description and locate the property. . . . It is true that this description does not describe the ground by metes and

⁹ Powers v. Brewer, 238 Ky. 579, 38 S.W.2d 466 (1931).

bounds, but it does describe it as the same land deeded to Mrs. Tackett and Mr. Tackett by Francis Sowards and Hen Sowards. While it is true that the land was conveyed to Mrs. Tackett alone, we do not regard the inclusion of Mr. Tackett in the description as fatal. Any one examining the record would ascertain that the particular property in question was conveyed to Mrs. Tackett, and this furnished the necessary description of the land.^[10]

Like the Tackett court, we think anyone of common understanding could use the description in Glynn Young's Landscaping's lien statement and locate the property mortgaged to Peoples Bank. While it is true that the description in metes and bounds was incomplete, we do not consider that a fatal deficiency. The address listed was that of the Bargers' home and no other, i.e., there is only one house at that address. Anyone searching the records of the Perry County Clerk would have been sufficiently on notice of a lien claim against the Bargers' property. This notice is all the statute requires.¹¹ Because Glynn Young's Landscaping's lien statement provided a sufficient description of the property against which a lien was sought, its lien is valid against the bank.

¹⁰ Tackett, supra, n. 8, at 882.

¹¹ Powers, supra, n. 9.

Having determined that Glynn Young's Landscaping's lien is valid, we must now decide whether the interest and attorney's fees due under the contract giving rise to the lien are entitled to priority over the bank's mortgage. KRS 376.010(1) expressly provides for a lien to secure "the amount [of labor furnished or materials provided] with interest as provided in KRS 360.040 and costs." Accordingly, we need not indulge in a complex analysis regarding the interest awarded Glynn Young's Landscaping following our second remand; the statute specifically includes it in the lien amount. Consequently, Glynn Young's Landscaping is clearly entitled to interest on its lien amount.

A more difficult question arises with respect to attorney's fees. The statute is silent with respect to such fee awards, and the parties have failed to direct us, as our research has failed to uncover, any Kentucky decisions directly on point.

The bank begins by arguing that KRS 376.010(1) limits the total amount of a lien to the principal contract price, which does not include attorney's fees. The specific language relied on is:

The lien shall not be for a greater amount in the aggregate than the contract price of the original contractor, and should the aggregate amount of the

liens exceed the price agreed upon between the original contractor and the owner there shall be a pro rata distribution of the original contract price among the lienholders.

However, the above language is inapplicable in the present case. The statutory provision quoted above applies when multiple subcontractors have filed liens against the improved property and such liens in the aggregate exceed the contract price agreed upon between the property owner and the general contractor. In the present case, there are no such multiple subcontractor liens because Glynn Young's Landscaping was the prime, and only, contractor involved in the improvement. As a result, the statutory language dealing with aggregated liens of subcontractors is irrelevant.

Likewise, the bonding provisions of KRS 376.100 lend no support to the bank's position. While the bank is correct that the statute does allow a party to remove a lien from a property by filing a bond, with surety, for twice the amount claimed in the lien, its argument ignores the provision in the statute for conditioning such release "upon the obligors satisfying any judgment that may be rendered in favor of the person asserting the lien." We infer that the General Assembly, in adding that language, considered the possibility that a lien

judgment may be for a greater amount than the parties originally stated.

Here, the lien document and underlying contract clearly provide that the Bargers would be liable to Glynn Young's Landscaping for attorney's fees as part of the contract price. Therefore, the attorney's fees became part of the bargained-for contract.¹² As part of the contract price, they are entitled to the priority the lien enjoyed over the mortgage. We are not persuaded that a lender would not be on notice as to what the amount of attorney's fees would be because an award of attorney's fees must be reasonable, and while there is no rule requiring strict proportionality between an amount due under a contract and a resulting attorney's fee award, it is nonetheless improper for a court to award excessive attorney's fees.¹³ The reasonableness of the fee award is not before us, so we need not address that issue.

Therefore, we affirm the judgment of Perry Circuit Court which found Glynn Young's Landscaping and Nursery Center's mechanic's lien had priority over Peoples Bank & Trust Company's subsequent mortgage on the home of John and Darlene Barger, and

¹² See, e.g., Dempsey v. McGowan, 291 Ark. 147, 152; 722 S.W.2d 848, 851 (1987), citing House, Trustee v. Scott, 244 Ark. 1075, 429 S.W.2d 108 (1968).

¹³ See, e.g., A & A Mechanical, Inc. v. Thermal Equipment Sales, Inc., Ky.App., 998 S.W.2d 505 (1999).

that such priority includes amounts representing interest and attorney's fees.

ALL CONCUR.

BRIEF FOR APPELLANT:

Frank C. Medaris, Jr.
Hazard, Kentucky

BRIEF FOR APPELLEE:

M. Austin Mehr
AUSTIN MEHR LAW OFFICES, P.S.C.
Lexington, Kentucky