

RENDERED: FEBRUARY 8, 2008; 10:00 A.M.
NOT TO BE PUBLISHED

**SUPREME COURT ORDERED OPINION NOT PUBLISHED:
SEPTEMBER 10, 2008
(FILE NO. 2008-SC-0170-D)**

**Commonwealth Of Kentucky
Court of Appeals**

NO. 2006-CA-002146-MR

STEEPLECHASE SUBDIVISION HOMEOWNERS
ASSOCIATION, INC.

APPELLANT

v. APPEAL FROM BOONE CIRCUIT COURT
HONORABLE PAUL W. ROSENBLUM, JUDGE
ACTION NO. 03-CI-00751

DARREN THOMAS, D/B/A THOMAS & LAWSON
CONTRACTING; STEEPLECHASE BUILDERS, LLC;
AND COUNTY OF BOONE, KENTUCKY

APPELLEES

OPINION
REVERSING

** ** * * * * *

BEFORE: THOMPSON, JUDGE; BUCKINGHAM AND HENRY, SENIOR JUDGES.¹

THOMPSON, JUDGE: Steeplechase Subdivision Homeowners

Association, Inc. (Steeplechase) appeals from an order and

judgment awarding judgment on a mechanic's lien asserted against

¹ Senior Judges David C. Buckingham and Michael L. Henry sitting as Special Judges by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

a common area in the Steeplechase Subdivision on which the neighborhood clubhouse and swimming pool are located.

Steeplechase asserts that the lien is not enforceable under KRS 376.010. Because the lien was for maintenance, street cleaning services, and mowing services, we hold that it was unenforceable and reverse.

In 1999, Darren Thomas, d/b/a/ Thomas & Lawson Contracting (Thomas), orally contracted with the Erpenbeck Company to perform mowing, street cleaning, and snow removal at the Steeplechase subdivision which was being developed by Steeplechase Builders, LLC, an affiliate of Erpenbeck. A portion of the subdivision was dedicated for the use of the Steeplechase homeowners, including a pool and clubhouse area.

Thomas was instructed to send the invoices for his services to Erpenbeck. As part of his contractual duties, Thomas maintained the subdivision's common areas, including the pool and clubhouse areas, volleyball and tennis courts, the walking trail, and main entrance. After Erpenbeck failed to pay Thomas for his work, Thomas ceased work and filed a mechanic's lien for \$5,917.50 on the real property of the subdivision which included the pool and clubhouse areas. Thomas' unpaid invoices were for mowing, trimming, edging, and street cleaning.

The matter was heard by a deputy master commissioner who recommended that judgment be entered against Steeplechase in

the amount of \$5,917.50 plus pre-judgment interest. In doing so, the commissioner rejected Steeplechase's contention that the maintenance services provided by Thomas were not services for which a mechanic's lien was permitted because the services did not permanently improve the value of the property. After Steeplechase's exceptions were denied, the circuit court adopted the deputy master commissioner's recommendation and report.

Our standard of review on issues of law, including statutory interpretation, is *de novo*. *Cinelli v. Ward*, 997 S.W.2d 474 (Ky.App. 1998). "The interpretation of a statute is a matter of law for the court to decide and should be interpreted to effectuate legislative intent." *Barren River State Boat Dock, Inc. v. K & R Mfg. Co.*, 167 S.W.3d 676, 678 (Ky.App. 2005). We conclude that the circuit court erroneously construed the statute and reverse.

Because a mechanic's lien is purely a result of statutory law unless the facts bring the claimant within the statutory provisions, no lien exists. *Id.* at 679, n.3. KRS 376.010(1) provides in pertinent part:

Any person who performs labor or furnishes materials, for the erection, altering, or repairing of a house or other structure or for any fixture or machinery therein, for the excavation of cellars, cisterns, vaults, wells, or for the improvement in any manner of real property including the furnishing of agricultural lime, fertilizer, concrete pipe or drainage tile, crushed rock, gravel for roads or driveways, and materials used in the construction or maintenance of fences, by contract with, or by the written consent of, the owner, contractor, subcontractor,

architect, or authorized agent, shall have a lien thereon, and upon the land upon which the improvements were made or on any interest the owner has therein, to secure the amount thereof with interest as provided in KRS 360.040 and costs.

A lien is permissible under the statute only for labor or material furnished for the "erection, altering or repairing of a house or other structure . . . or for the improvement in any manner of real property" Although the term "improvement" is not defined by statute, we believe our case law and the intent of the legislature when enacting KRS 376.010, requires that the improvement confer a permanent benefit upon the real estate.

In re: Louisville Daily News v. Enquirer, 20 F.Supp. 465 (W.D.Ky. 1937), the federal court, interpreting Kentucky law, held that the installation of a printing press was not permanently incorporated into the building and, therefore, was not covered by the lien statutes. More recently, this court had the opportunity to address the scope of KRS 376.010.

In *Barren River State Boat Dock, Inc.*, the supplier of floats for the expansion of a marina filed a mechanic's lien against the marina. This court held that a marina was not an "other structure" as used in KRS 376.010 because it was not within the same general kind or class as a house. *Id.* at 679. Our Court further stated that the alleged improvements did not become a part of the realty and, therefore, a valid lien on the property was not created. *Id.* at 679, n.3.

The services provided by Thomas did not permanently enhance the value of the real property. Although planting, landscaping, or building a road or pool would permanently enhance the value of the property, maintenance activities are temporary in nature and are not within the meaning of KRS 376.010.

The judgment is reversed and the case remanded for entry of a judgment consistent with this opinion.

ALL CONCUR.

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