



PROFESSIONAL PLUMBING, INC., an	)	
Illinois Corporation,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	
	)	
CARPENTER CONTRACTORS OF	)	
AMERICA, INC., et al.,	)	Honorable
	)	Barbara Petrunaro,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.  
Justice Lytton concurred in the judgment.  
Justice Schmidt dissented.

**ORDER**

¶ 1 *Held:* The trial court did not err when it ruled that Professional Plumbing, Inc., was a subcontractor under the Mechanics Lien Act.

¶ 2 The plaintiff, Professional Plumbing, Inc. (PPI), appeals the trial court's ruling that it was a subcontractor under the Mechanics Lien Act (Act) (770 ILCS 60 (West 2008)) and its liens were invalid. On appeal, PPI argues that it proved it was a contractor under the Act and, even if it was classified as a subcontractor, its liens were valid as to the homeowner defendants. We affirm in part and reverse in part.

¶ 3 **FACTS**

¶ 4 On July 6, 2009, Carpenter Contractors of America, Inc., initiated the instant case with a

complaint to foreclose its mechanics lien for work done in Herrington Estates. On September 22, 2009, PPI filed a third-party complaint and counterclaim to foreclose its mechanics liens on four lots in Herrington Estates: (1) lot 15, owned by Apurva K. Yagnik and Rubha A. Yagnik; (2) lot 23, owned by Xianjie Yu; (3) lot 35 owned by Jaime B. Cerdenia and Jennifer F. Cerdenia; and (4) lot 36, owned by Joann L. Christmas, individually and as trustee under the Joann L. Christmas 2008 Trust dated June 20, 2008 (collectively "homeowners").

¶ 5 On June 29, 2012, a bench trial commenced between the third-party plaintiff, PPI, and the third-party defendants, the homeowners and their lender, JP Morgan Chase Bank NA (bank).

¶ 6 Donald Walsh testified that he was the vice president of finance and administration at PPI. In that position, Walsh maintained relationships with PPI's customers, which included the Kirk Corporation (Kirk), a developer of residential homes in the Chicagoland area. Kirk was the managing entity of Bloomfield Estates, LLC (Bloomfield), and Bloomfield owned the lots in Herrington Estates at the time PPI performed its work. After PPI completed its work, the lots were sold to the homeowners.

¶ 7 Walsh testified that the Herrington Estates development consisted of 78 homes. PPI was responsible for installing the rough and finish plumbing in each of these homes. PPI was not paid for some of its work and introduced four mechanics liens it had filed against the homeowners' properties between January 23 and February 13, 2009. The liens were entitled "Subcontractor's Notice and Claim for Lien," and named Kirk as contractor and Bloomfield and the homeowners as property owners. Each lien was signed by Walsh and notarized. The mechanics liens stated "on June 6, 2005, [Kirk] made a subcontract with the claimant to provide labor and plumbing material" and it was owed between \$1,892 and \$13,463 per lot for work

performed. PPI introduced the June 6, 2005, agreement into evidence, and Walsh explained that the agreement was a breakdown of the plumbing specifications and pricing for the house types available at Herrington Estates. The document included pricing for the basic plumbing installation, plumbing fixtures, and additional options. Under this agreement, from 2005 to 2007, PPI was paid by Bloomfield for its work on 57 homes.

¶ 8 During Walsh's testimony, PPI also introduced an agreement dated August 1, 2007. The agreement was titled "SUBCONTRACT AGREEMENT between BLOOMFIELD ESTATES, LLC THE KIRK CORPORATION, IT'S MANAGER and PROFESSIONAL PLUMBING, INC. for HERRINGTON ESTATES BOLINGBROOK, IL." Walsh stated that Kirk wanted PPI to enter this agreement to solidify their legal relationship. Larry Noor, PPI estimator, signed the 2007 agreement, and Sean Burke signed on behalf of "BLOOMFIELD ESTATES, LLC THE KIRK CORPORATION & IT'S MANAGER."

¶ 9 In regards to the Herrington Estates project, Walsh understood that Kirk was the "owner, developer, contractor" and Bloomfield was an LLC that had been set up to facilitate "the constructions of jobs that they own and manage." Walsh did not know why Kirk created separate LLCs for its developments, but noted that they were part of Kirk's normal business practices.

¶ 10 On cross-examination, Walsh stated that Rebecca Chalberg had prepared the mechanics liens on behalf of PPI. Chalberg prepared the liens based on a title search that was conducted by a separate entity. Walsh acknowledged that the mechanics liens were entitled "subcontractor's notice for claim for lien."

¶ 11 PPI also introduced a copy of Bloomfield's articles of organization. The articles of organization stated that Bloomfield was a manager-controlled entity, and Kirk was named as its

manager.

¶ 12 At the conclusion of PPI's evidence, the parties agreed to submit their closing statements by brief. On September 19, 2012, the trial court entered a written order resolving the case. The court ruled that no evidence was presented that: (1) Kirk was the same entity as Bloomfield; and (2) Kirk, as Bloomfield's manager, was authorized to enter into a contract with PPI. The court also found that PPI was a subcontractor and, because PPI did not send notice to the lender, its liens were invalid. PPI filed a notice of appeal.

¶ 13

## ANALYSIS

¶ 14

### I. Mechanics Lien Status

¶ 15 PPI argues that the trial court erroneously categorized it as a subcontractor under the Act. Specifically, PPI argues that it entered a contract with the property owner, Bloomfield, or with "one whom the owner has authorized or knowingly permitted to contract," Kirk, to improve the property. See 770 ILCS 60/1(a) (West 2008). As such, PPI was entitled to contractor status, and therefore it was not required to send notice to the bank to perfect its lien. 770 ILCS 60/7 (West 2008).

¶ 16 We review the trial court's application of the Act to the undisputed facts *de novo*. *Wills v. Foster*, 229 Ill. 2d 393 (2008).

¶ 17 The Act attempts to balance the interests of the various parties to a construction project and those having an interest in the real estate subject to the improvements. *Bricks, Inc. v. C and F Developers, Inc.*, 361 Ill. App. 3d 157 (2005). The overall purpose of the Act is "to require a person with an interest in real property to pay for improvements or benefits which have been induced or encouraged by his or her own conduct." *Leveyfilm, Inc. v. Cosmopolitan Bank and*

*Trust*, 274 Ill. App. 3d 348, 352 (1995). In recognition of this purpose, courts apply a stricter construction of the Act where, as here, the interests of third parties are affected. *Candice Co., Inc. v. Ricketts*, 281 Ill. App. 3d 359 (1996). The stricter construction is intended to give third parties dealing with the property notice of the lien. See *Norman A. Koglin Associates v. Valenz Oro, Inc.*, 176 Ill. 2d 385 (1997).

¶ 18 An individual seeking to assert a mechanics lien under the Act may do so by establishing that he or she was a contractor or a subcontractor. 770 ILCS 60/1, 21 (West 2008). The statutory definition of contractor states:

"[a]ny person who shall by any contract or contracts, express or implied, or partly expressed or implied, with the owner of a lot or tract of land, or with one whom the owner has authorized or knowingly permitted to contract, to improve the lot or tract of land or for the purpose of improving the tract of land, or to manage a structure under construction thereon, is known under this Act as a contractor." 770 ILCS 60/1(a) (West 2008).

A subcontractor seeking to assert a mechanics lien must likewise establish that he or she meets the statutory definition of a subcontractor:

"every mechanic, worker or other person who shall furnish any labor, services, material, fixtures, apparatus or machinery, forms or form work for the contractor, or shall furnish any material to be employed in the process of construction as a means for assisting in the erection of the building or improvement in what is commonly termed form or form work where concrete, cement or like material is used in whole or in part, shall be known under this Act as a sub-contractor." 770 ILCS 60/21(a) (West 2008).

A party's status as a contractor or subcontractor is determinative of the actions he or she must take in order to perfect his or her mechanics lien. See *Tefco Construction Co., Inc. v. Continental Community Bank and Trust Co.*, 357 Ill. App. 3d 714 (satisfying the prerequisites for bringing a claim for a lien merely provides an individual with an inchoate right to a lien which must then be perfected in accordance with the requirements prescribed in the Act). Under section 7 of the Act, a contractor's claim for a lien must: "(1) be filed [with the county recorder] within four months after the completion of work; (2) be verified by affidavit of the claimant or an agent or employee; (3) contain a brief statement of the contract; (4) set forth the balance due; and (5) provide a sufficiently correct description of the lot, lots or tracts of land to identify the same." *Tefco Construction*, 357 Ill. App. 3d at 719; 770 ILCS 60/7 (West 2008). A subcontractor, in addition to meeting similar recording requirements, must also send notice of his or her claim and the amount due, within 90 days after the completion of the work, to the owner of record and to the lending agency, if known. 770 ILCS 60/24(a) (West 2008).

¶ 19 In determining whether an individual is a contractor or subcontractor, the individual's service of a subcontractor's lien notice does "not constitute an admission by the lien claimant that its status is that of subcontractor if it is later determined that the party with whom the lien claimant contracted was the owner or an agent of the owner." 770 ILCS 60/24(b) (West 2008).

The purpose of the notice requirement is "to prevent owners from being forced to pay subcontractors for labor or materials for which they have already paid the contractor." *Petroline Co. v. Advanced Environmental Contractors, Inc.*, 305 Ill. App. 3d 234, 239 (1999).

¶ 20 In the instant case, the evidence established a clear intent by PPI, Kirk, and Bloomfield that PPI was a subcontractor. The August 1, 2007, agreement was entitled, in relevant part,

"SUBCONTRACT AGREEMENT," and it named PPI as the subcontractor and Kirk/Bloomfield as the contractor. PPI filed subcontractor mechanics liens, which named Kirk as the contractor and Bloomfield as one of the owners. Lastly, Walsh testified that Kirk's role was that of owner, developer, and contractor.

¶ 21 PPI argues that it was a contractor because it contracted with the property owner, Bloomfield, or Kirk, who was Bloomfield's authorized agent. However, the August 1, 2007, agreement did not indicate that PPI contracted directly with Bloomfield because the agreement jointly named Bloomfield and Kirk as the "contractor." The agreement made no mention of the owner. In spite of this, PPI argues that Bloomfield's articles of organization established that Kirk was Bloomfield's manager, and, as manager, Kirk had the authority to enter into agreements with contractors to improve the property. However, PPI did not support this contention with an operating agreement or employee testimony that established and defined the scope of Kirk's authority. Rather, Walsh testified that PPI was paid by Bloomfield, indicating that Bloomfield had retained authority to act on its own behalf. Therefore, PPI did not prove that Bloomfield specifically authorized Kirk to enter into contracts on its behalf.

¶ 22 Strictly construing section 7(c) of the Act, we find no evidence to support a later determination that PPI was actually a contractor in spite of documentation and evidence defining it as a subcontractor. Consequently, we hold that the trial court's ruling that PPI was a subcontractor was not in error.

¶ 23 **II. Validity of Lien**

¶ 24 PPI argues that the trial court's invalidation of its mechanics liens against the homeowners was error because its failure to send the 90-day notice to the lender only affected its

lien in regards to the bank.

¶ 25 In the present case, PPI sent its mechanics lien notice to the homeowners, but not to the bank. Failure to send notice of a lien claim to a property's mortgage lender renders the lien unenforceable against the lender. *Hill Behan Lumber Co. v. Irving Federal Savings and Loan Ass'n*, 121 Ill. App. 3d 511 (1984). However, PPI's failure to send its 90-day notice to the bank did not make its lien unenforceable against the homeowners. See *Petroline Co.*, 305 Ill. App. 3d 234. Therefore, we reverse the trial court's ruling that PPI's lien was invalid as to the property owners.

¶ 26 CONCLUSION

¶ 27 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed in part and reversed in part.

¶ 28 Affirmed in part and reversed in part.

¶ 29 JUSTICE SCHMIDT, dissenting.

¶ 30 The ultimate issue before us is whether PPI, for purposes of the Mechanics Lien Act (the Act) was a contractor or subcontractor. The majority correctly points out that in determining whether one is a contractor or subcontractor under the Act, the service of a subcontractor's lien notice does "not constitute an admission by the lien claimant that its status is that of subcontractor if it is later determined that the party with whom the lien claimant contracted was the owner or an agent of the owner." *Supra* ¶ 19.

¶ 31 The Act also provides that "[a]ny person who shall by any contract or contracts, express or implied, or partly expressed or implied, with the owner of a lot or tract of land, or with one whom the owner has authorized or knowingly permitted to contract, to improve the lot or tract of land or for the purpose of improving the tract of land \*\*\* is known under this Act as a

contractor." 770 ILCS 60/1(a) (West 2008). The majority apparently puts much weight on the fact that the contracts and the lien notice referred to PPI as a subcontractor. *Supra* ¶¶ 20-22.

However, the Act specifically provides that "[a] statement that a party is a subcontractor shall not constitute an admission by the lien claimant that its status is that of subcontractor if it is later determined that the party with whom the lien claimant contracted was the owner or an agent of the owner." 770 ILCS 60/7 (West 2008).

¶ 32 No one disputes that at all pertinent times, the lots were owned by Bloomfield. Kirk, the manager, and Bloomfield shared the same address. It seems clear that even though the contract agreement was labeled a "subcontractor agreement," it was a contract between PPI and "Bloomfield Estates, LLC, the Kirk Corporation, its manager." It seems clear to me that PPI contracted "with the owner of a lot or tract of land, or with one whom the owner has authorized or knowingly permitted to contract," and is therefore a contractor under the Act. See 770 ILCS 60/1(a) (West 2008).

¶ 33 In finding PPI a subcontractor, the trial court recognized that Bloomfield was the owner and Kirk was Bloomfield's "contractor." The court determined that PPI presented "*no evidence*" that Bloomfield authorized the 2005 contract. The trial court emphasized that the 2007 contract identifies PPI as a subcontractor.

¶ 34 As mentioned above, labeling PPI as a subcontractor (which a plumbing contractor would normally be in the real world), both the trial court and the majority ignore the clear language of section 7 of the Act. 770 ILCS 60/7 (West 2008). The trial court also indicated that PPI presented no evidence that Bloomfield authorized the 2005 contract. This finding by the trial court flies in the face of its other findings of fact that Bloomfield was the owner of the lots and

Kirk was Bloomfield's contractor. The contract itself was evidence that Bloomfield authorized the contract. Kirk signed as Bloomfield's manager. The contract identified both Bloomfield and "the Kirk Corporation, its manager." Furthermore, PPI put on evidence that to the extent it was paid for the work it did on the project at issue, it was paid by Bloomfield. At the very least, that is evidence that Bloomfield authorized Kirk to enter into the contract. Had Bloomfield not authorized Kirk, why would Bloomfield pay for work performed by PPI? There was certainly enough evidence to shift the burden to Bloomfield or Kirk to show that Kirk was not authorized to contract with PPI on behalf of Bloomfield.

¶ 35 The only evidence in this case is that PPI contracted with Bloomfield through its manager, Kirk. While contrary to the common understanding of contractor/subcontractor relationships, by contracting directly with the owner and/or its manager, PPI is clearly a contractor under the Act. 770 ILCS 60/1(a) (West 2008). The Act does not talk about intent, which is relied upon by the majority and the trial court, it talks about actions. Likewise, it makes clear that what a party calls itself is irrelevant if "the party with whom the lien claimant contracted was the owner or an agent of the owner." 770 ILCS 60/7 (West 2008).

¶ 36 The majority also makes much issue of the language of the lien notices and the contract identifying PPI as a subcontractor. Common sense dictates to me that lien forms and contract forms are, for the most part, boilerplates. It seems unlikely that a plumbing contractor would have boilerplate forms around referring to itself as a contractor as opposed to a subcontractor. It would seem to be a rare circumstance where a plumbing contractor was the contractor on the job as opposed to a subcontractor. This is especially true with respect to building new homes. However, in light of the clear language of the Act, the determinative factor is the party with

whom you contract, not what you call yourself.

¶ 37 PPI, for purposes of the Act, was a contractor, not a subcontractor. The trial court's finding to the contrary is against the manifest weight of the evidence. Therefore, PPI's lien is superior to that of the bank. In light of this finding, I would not reach the second issue. I would reverse and remand.