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2015 IL App (4th) 140385-U

NO. 4-14-0385

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 18, 2015
Carla Bender
4th District Appellate
Court, IL

GERDAU AMERISTEEL US, INC.,)	Appeal from
Plaintiff,)	Circuit Court of
and)	Champaign County
AHAL CONTRACTING CO., INC., and BLAGER)	No. 09CH149
CONCRETE COMPANY,)	
Plaintiffs-Appellees and)	
Cross-Appellants,)	
v.)	
BROEREN RUSSO CONSTRUCTION, INC., and)	
CAMPUS INVESTORS 309, LLC,)	
Defendants-Appellants and)	
Cross-Appellees,)	
and)	
JACOBSMEYER-MAULDIN CONSTRUCTION)	
COMPANY; ROLAND REALTY, INC.; BROEREN)	
RUSSO CONSTRUCTION, INC.; CAMPUS)	
INVESTORS 309, LLC; RBS CITIZENS, N.A.;)	
CHARTER ONE, a Division of RBS CITIZENS, N.A.;)	
KLG CORPORATION; PENHALL COMPANY; AHAL)	
CONTRACTING CO., INC.; BLAGER CONCRETE)	
COMPANY; UNKNOWN OWNERS; and)	Honorable
NONRECORD CLAIMANTS,)	Charles McRae Leonhard,
Defendants.)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Knecht and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court reversed and remanded with directions, finding the trial court erred in granting interest under the Code of Civil Procedure instead of the Mechanics Lien Act.

¶ 2 In March 2009, plaintiff, Gerdau Ameristeel US, Inc. (Gerdau), filed a verified

complaint for foreclosure of its mechanics lien and other relief against defendants, Jacobsmeyer-Mauldin Construction Company (JMC); Roland Realty, Inc.; Broeren Russo Construction, Inc. (Broeren Russo); Campus Investors 309, LLC (Campus); RBS Citizens, N.A., and Charter One, a Division of RBS Citizens, N.A.; KLG Corporation; Penhall Company; Ahal Contracting Co., Inc. (Ahal); Blager Concrete Company (Blager); and unknown owners and nonrecord claimants. Blager and Ahal later sought to enforce liens under the Mechanics Lien Act (Act) (770 ILCS 60/0.01 to 39 (West 2008)).

¶ 3 In April 2012, the trial court entered judgment in favor of Ahal and against Campus and Broeren Russo in the amount of \$412,328.26. The court entered judgment in favor of Blager and against Campus and Broeren Russo in the amount of \$215,144.24.

¶ 4 In the appeal of Campus and Broeren Russo, this court reversed the trial court's judgment and remanded with directions, finding Ahal and Blager were entitled to the *pro rata* shares of the \$495,850 owed to their immediate contractor less any *pro rata* portion paid to Gerdau. The cross-appeals filed by Ahal and Blager were deemed moot.

¶ 5 In December 2013, Campus and Broeren Russo filed a motion for declaratory judgment, seeking a declaration that no interest was due on the *pro rata* shares. In May 2014, the trial court found Ahal and Blager were entitled to postjudgment interest under section 2-1303 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1303 (West 2012)).

¶ 6 In the appeal of Campus and Broeren Russo, they argue the trial court erred in awarding interest to Ahal and Blager under the Code. In their cross-appeals, Ahal and Blager argue the trial court erred in denying them postjudgment interest under the Act.

¶ 7 I. BACKGROUND

¶ 8 The parties are well aware of the factual history in this mechanics lien case, as

evidenced by our prior opinion. See *Gerdau Ameristeel US, Inc. v. Broeren Russo Construction, Inc.*, 2013 IL App (4th) 120547, 992 N.E.2d 27. Thus, we need only set forth the facts necessary for consideration of the issues currently before us.

¶ 9 Campus is the owner of the subject property located in Champaign. Broeren Russo is a general contractor. JMC is a subcontractor, and Ahal and Blager are secondary subcontractors. Gerdau is a material supplier.

¶ 10 In January 2010, Blager filed a motion for summary judgment pursuant to section 2-1005 of the Code (735 ILCS 5/2-1005 (West 2010)). In September 2010, Ahal filed a section 2-1005 motion for summary judgment. In June 2011, the trial court denied the motions.

¶ 11 In October 2011, Campus and Broeren Russo filed a section 2-1005 motion for summary judgment. Campus and Broeren Russo indicated they had settled with JMC and entered into a mutual release. The sole consideration was the dismissal of the claims against each other and the release of JMC's recorded lien. Campus and Broeren Russo argued Ahal and Blager were limited to their *pro rata* share of any settlement by the owner with JMC. Because JMC settled with Campus and Broeren Russo for the payment of no additional dollars, no additional money existed to which Ahal's or Blager's liens could attach. The motion stated the sole remedy was for Ahal and Blager to pursue contract claims against JMC. The trial court allowed Ahal and Blager to renew their prior motions for summary judgment.

¶ 12 In December 2011, the trial court granted the summary judgment motions filed by Ahal and Blager. In April 2012, the court entered a judgment of foreclosure and sale. The court entered judgment in favor of Ahal and against Campus and Broeren Russo in the amount of \$412,328.26. The court entered judgment in favor of Blager and against Campus and Broeren Russo in the amount of \$215,144.24. The court also found Ahal and Blager had liens on the

property for the amounts due. The court denied Ahal's and Blager's petitions for attorney fees and costs.

¶ 13 On appeal, Campus and Broeren Russo argued the trial court erred in granting summary judgment in favor of Ahal and Blager without limiting Ahal's and Blager's recovery to only their *pro rata* share of the amount of unpaid contract funds remaining at the time they served their notices of lien. This court agreed, reversing the judgment and remanding "for the entry of an order granting Ahal and Blager their *pro rata* shares of the \$495,850 owed to their immediate contractor less any *pro rata* portion paid to Gerdau." *Gerdau*, 2013 IL App (4th) 120547, ¶ 76, 992 N.E.2d 27. In the cross-appeals of Ahal and Blager, claiming the trial court abused its discretion in denying their petitions for attorney fees and not including deposition costs, we found the issues moot. *Gerdau*, 2013 IL App (4th) 120547, ¶ 80, 992 N.E.2d 27.

¶ 14 Ahal and Blager filed a petition for rehearing, which this court denied in July 2013. Thereafter, Ahal and Blager filed a petition for leave to appeal to the Illinois Supreme Court, which the court denied in September 2013. This court issued the mandate on November 5, 2013.

¶ 15 In December 2013, Campus and Broeren Russo filed a motion for declaratory judgment pursuant to section 2-701 of the Code (735 ILCS 5/2-701 (West 2012)). They noted Ahal and Blager were demanding 10% interest under the Act or 9% under the Code, but the motion asked the trial court for an order declaring Campus and Broeren Russo owed no interest under any statute.

¶ 16 In February 2014, the trial court conducted a hearing on the motion for declaratory judgment. Following arguments, the court held Ahal and Blager were not entitled to 10% interest under section 1(a) of the Act (770 ILCS 60/1(a) (West 2012)). The court also found

the claim for "regular judgment interest" under section 2-1303 of the Code (735 ILCS 5/2-1303 (West 2012)) had been forfeited. The following day, the court *sua sponte* modified its order to include an award of statutory judgment interest under section 2-1303.

¶ 17 In April 2014, Campus and Broeren Russo filed a motion for aid and direction, seeking clarification of the trial court's order as to the date the judgment interest should begin accruing. In May 2014, the court issued its written ruling. The court noted the *pro rata* portion of the unpaid contract funds due to Ahal amounted to \$135,229.38 and due to Blager amounted to \$69,597.75. The court found Ahal and Blager were entitled to postjudgment interest on their *pro rata* shares, pursuant to section 2-1303 of the Code, accrued since December 14, 2011, the date of the original judgment entered in favor of Ahal and Blager. This appeal and these cross-appeals followed.

¶ 18 II. ANALYSIS

¶ 19 A. Interest and the Appellate Court Mandate

¶ 20 Before arguing the merits of the trial court's decision to award interest in this case, Campus and Broeren Russo claim this court expressly refused to award interest in our prior reversal and in the denial of rehearing, such that the trial court was without authority to award interest on remand. We disagree.

¶ 21 In the prior appeal, this court concluded our opinion as follows:

"For the reasons stated, we reverse the trial court's judgment in Campus and Broeren Russo's appeal and remand for the entry of an order granting Ahal and Blager their *pro rata* shares of \$495,850 owed to their immediate contractor less any *pro rata* portion paid to Gerdau. In light of our decision to reverse the trial

court's judgment, the issues raised in Ahal's and Blager's cross-appeals are moot." *Gerdau*, 2013 IL App (4th) 120547, ¶ 82, 992 N.E.2d 27.

¶ 22 Thereafter, Ahal and Blager filed a joint petition for rehearing, arguing this court "overlooked and misapprehended" the law on multiple issues. Ahal and Blager also argued clarification was necessary on the issue of interest and costs due them under the Act. Ahal and Blager pointed out Campus and Broeren Russo asserted no interest or costs were due. Ahal and Blager requested this court grant the petition for rehearing or, in the alternative, indicate the remand should provide for a determination of the *pro rata* share and the interest due under the Act.

¶ 23 This court denied the petition for rehearing. Ahal and Blager filed a petition for leave to appeal to the Illinois Supreme Court, which the court denied in September 2013. In November 2013, this court issued the mandate, reversing and remanding with directions to the trial court "for such other proceedings as required by the order of this court."

¶ 24 Campus and Broeren Russo argue this court's directions on remand must be followed exactly, thereby prohibiting an award of interest in this case. Moreover, Campus and Broeren Russo argue the denial of the petition for rehearing constituted a binding decision, foreclosing consideration of the merits of the interest issue.

¶ 25 "The appellate court's mandate is its judgment, which, 'upon transmittal to the trial court, vests the trial court with authority only to take action that conforms with the mandate.' " *Quincy School District No. 172 v. Illinois Educational Labor Relations Board*, 366 Ill. App. 3d 1205, 1208-09, 853 N.E.2d 440, 443 (2006) (quoting *In re Marriage of Ludwinski*, 329 Ill. App. 3d 1149, 1152, 769 N.E.2d 1094, 1098 (2002)).

"The correctness of the trial court's action on remand is to be determined from the appellate court's mandate, as opposed to the appellate court opinion. [Citations.] However, if the direction is to proceed in conformity with the opinion, then, of course, the content of the opinion is significant. [Citations.]" *Aardvark Art, Inc. v. Lehigh/Steck-Warlick, Inc.*, 284 Ill. App. 3d 627, 630-31, 672 N.E.2d 1271, 1275 (1996) (quoting *PSL Realty Co. v. Granite Investment Co.*, 86 Ill. 2d 291, 308, 427 N.E.2d 563, 571 (1981)).

¶ 26 Directions that are precise and unambiguous must be obeyed. *People ex rel. Daley v. Schreier*, 92 Ill. 2d 271, 276, 442 N.E.2d 185, 188 (1982). When no such directions are given, the trial court must determine from the nature of the case what further proceedings are appropriate. *Pioneer Trust & Savings Bank v. Zonta*, 96 Ill. App. 3d 339, 344, 421 N.E.2d 239, 244 (1981). "Moreover, it has been held that questions which have not actually been decided by the reviewing court and which were not at issue or involved in the appeal may be considered by the court in subsequent proceedings." *People ex rel. Bernardi v. City of Highland Park*, 225 Ill. App. 3d 477, 482, 588 N.E.2d 427, 431 (1992).

¶ 27 The issue in the prior appeal centered on the amount of money due to Ahal and Blager, if any, under their liens. The trial court found Ahal and Blager were entitled to recover from Campus and Broeren Russo—\$412,328.26 for Ahal and \$215,144.25 for Blager. This court also found Ahal and Blager were entitled to recover, but in a different amount, *i.e.*, their *pro rata* share of \$495,850 owed to the immediate contractor less any *pro rata* portion paid to Gerdau. Contrary to the claim now on appeal by Campus and Broeren Russo that our opinion reversed the trial court's award of interest to Ahal and Blager, this court made no mention of

interest and did not rule on the propriety of the trial court's award of interest.

¶ 28 "[W]hen a judgment is reversed on appeal, the appellate court's judgment is final upon all issues decided, and those issues may no longer be decided by the trial court." *People v. Abata*, 165 Ill. App. 3d 184, 187, 518 N.E.2d 1065, 1067 (1988); see also *Hamilton v. Faulkner*, 96 Ill. App. 2d 415, 418, 238 N.E.2d 631, 633 (1968) (stating the appellate court's judgment "is the final disposition of the case on the issues decided in the first appeal, absent a petition for rehearing or a petition for leave to appeal to the Supreme Court"). Here, the interest issue was not decided in the first appeal. Campus and Broeren Russo are correct in noting that Ahal and Blager sought a clarification of the interest issue in the petition for rehearing, and this court denied the petition. But the denial did not constitute a decision on the merits. Instead, the denial allowed the interest issue to be fully argued by all parties and decided by the trial court on remand. We do not agree the trial court's decision to consider the interest issue was inconsistent with or beyond the authority of this court's mandate. Accordingly, we will now address the court's decision to award interest to Ahal and Blager.

¶ 29 B. Interest Under the Code or the Act

¶ 30 On February 27, 2014, the trial court found Ahal and Blager were not entitled to 10% interest "pursuant to section 1 of the Act under the law of the case, given its procedural history, and that section 28 affords them only the *pro rata* share of amounts due." The court also found Ahal's and Blager's claims for "regular judgment interest" under the Code had been forfeited.

¶ 31 On February 28, 2014, the trial court *sua sponte* reconsidered its ruling. After overlooking any procedural default, the court modified the judgment entered for Ahal and Blager on their respective *pro rata* shares "to include statutory judgment interest."

¶ 32 In its May 1, 2014, written order on the motion for declaratory judgment, the trial court found Ahal and Blager were entitled to postjudgment interest on the *pro rata* shares under section 2-1303 of the Code, "which has accrued since December 14, 2011, the original date of judgment entered in favor of Ahal and Blager."

¶ 33 Now, on appeal, Campus and Broeren Russo argue a reading of sections 1 and 28 of the Act precludes an award of interest in this case. Section 1(a) of the Act (770 ILCS 60/1(a) (West 2012)) provides, in part, that a contractor:

"has a lien upon the whole of such lot or tract of land *** for the amount due to him or her for the material, fixtures, apparatus, machinery, services or labor, and interest at the rate of 10% per annum from the date the same is due."

Section 28 of the Act (770 ILCS 60/28 (West 2012)) states that in suits to enforce a lien, "the owner shall be liable to the plaintiff for no more than the *pro rata* share that such person would be entitled to with other sub-contractors out of the funds due to the contractor from the owner."

¶ 34 Campus and Broeren Russo argue section 1(a) establishes that interest is a part of the lien, not a separate component to be added on in addition to the lien. They argue the lien to which a contractor may be entitled is for both the amount due and the interest. Thus, when a contractor's lien is reduced to a *pro rata* share, the amount reduced includes any interest due.

¶ 35 In response and in their cross-appeals, Ahal and Blager argue the Act did not preclude the trial court from including interest on their *pro rata* shares. Ahal contends interest on the *pro rata* share is to be added when the principal amount is reduced to a *pro rata* share. Blager argues reading section 28 to preclude an award of interest would render section 1(a) meaningless.

¶ 36 Both Ahal and Blager point out the First District's decision in *Premier Electrical Construction Co. v. American National Bank of Chicago*, 276 Ill. App. 3d 816, 658 N.E.2d 877 (1995). In that case, the trial court awarded the subcontractor, Premier Electrical Construction Company (Premier), a *pro rata* share of settlement funds on its mechanics lien claim plus interest. *Premier Electrical*, 276 Ill. App. 3d at 820, 658 N.E.2d at 882. On appeal, the First District affirmed the trial court's determination that Premier was entitled to its *pro rata* share of the settlement proceeds. *Premier Electrical*, 276 Ill. App. 3d at 822, 658 N.E.2d at 884.

¶ 37 In addition to other issues on appeal, Premier argued it was entitled to interest on its mechanics lien claim. *Premier Electrical*, 276 Ill. App. 3d at 829, 658 N.E.2d at 888. The First District noted section 1 of the Act, prior to January 1, 1990, provided interest to be the legal rate, which the court determined by looking at the Interest Act (Ill. Rev. Stat. 1989, ch. 74, par. 6402). *Premier Electrical*, 276 Ill. App. 3d at 829, 658 N.E.2d at 888. Effective January 1, 1990, the Act was amended to provide for the 10% interest rate. *Premier Electrical*, 276 Ill. App. 3d at 830, 658 N.E.2d at 888. Thus, the court concluded Premier was entitled to 5% interest prior to the amendment date and 10% thereafter until the date judgment was entered. *Premier Electrical*, 276 Ill. App. 3d at 830, 658 N.E.2d at 889.

¶ 38 The issue at hand centers on whether the *pro rata* shares due to Ahal and Blager include interest under the Act or whether Ahal and Blager are entitled to their *pro rata* shares plus interest. While not directly addressing the issue before us, *Premier Electrical* would seem to indicate Ahal and Blager are entitled to their *pro rata* shares plus interest, *i.e.*, the amount of interest owed is not subsumed in the *pro rata* share pot. Given the interplay between the various sections of the Act, we agree Ahal and Blager are entitled to their *pro rata* shares plus interest for the following reasons.

¶ 39 As we noted in our previous opinion, " 'the purpose of the Act is to protect contractors and subcontractors providing labor and materials for the benefit of an owner's property.' " *Gerdau*, 2013 IL App (4th) 120547, ¶ 27, 992 N.E.2d 27 (quoting *Weather-Tite, Inc. v. University of St. Francis*, 233 Ill. 2d 385, 391, 909 N.E.2d 830, 834 (2009)). Section 1(a) provides for a lien on the amounts due for, *inter alia*, materials and labor, and interest at a rate of 10% per annum. 770 ILCS 60/1(a) (West 2012). Section 21(a) of the Act provides a subcontractor "shall have a lien for the value thereof, with interest on such amount from the date the same is due." 770 ILCS 60/21(a) (West 2012). While section 28 of the Act limits the owner's liability to no more than the *pro rata* share (770 ILCS 60/28 (West 2012)), the *pro rata* share applies to the principal claim amount involving materials and labor. A contrary reading would allow owners or general contractors to deprive the subcontractors of the value of their money, without penalty, by refusing to pay over their *pro rata* shares. See *Illinois State Toll Highway Authority v. Heritage Standard Bank & Trust Co.*, 157 Ill. 2d 282, 301, 626 N.E.2d 213, 223 (1993) (stating the "assessment of interest is neither a penalty nor a bonus, but instead a preservation of the economic value of an award from diminution caused by delay"). Finding the interest provision of section 1(a) applicable in this type of case prevents the judgment debtor from benefitting from retaining the money judgment and provides the debtor with the incentive to promptly pay amounts due.

¶ 40 While we have found interest is appropriate under the Act, the trial court ordered interest pursuant to section 2-1303 of the Code, which provides, in part, as follows:

"Judgments recovered in any court shall draw interest at the rate of
9% per annum from the date of the judgment until satisfied ***.

When judgment is entered upon any award, report or verdict,

interest shall be computed at the above rate, from the time when made or rendered to the time of entering judgment upon the same, and included in the judgment. Interest shall be computed and charged only on the unsatisfied portion of the judgment as it exists from time to time. The judgment debtor may by tender of payment of judgment, costs and interest accrued to the date of tender, stop the further accrual of interest on such judgment notwithstanding the prosecution of an appeal, or other steps to reverse, vacate or modify the judgment." 735 ILCS 5/2-1303 (West 2012).

"Where two statutes appear to be in conflict, the more specific controls over the more general. [Citation.] A general statute is one that applies to cases generally while a specific statute is particular and relates to only one subject. [Citation.]" *Village of Chatham v. County of Sangamon*, 351 Ill. App. 3d 889, 896, 814 N.E.2d 216, 223 (2004).

¶ 41 Here, section 2-1303 of the Code is a general statute, whereas section 1(a) of the Act is a specific statute applying only to mechanics lien claims. Accordingly, the Act controls over the Code in this mechanics lien case.

¶ 42 In the final argument in their brief, Campus and Broeren Russo argue the trial court erred in ordering interest to be paid despite their offer of tender. A judgment debtor may stop the judgment creditor's right to draw interest by making a sufficient offer to tender payment to the creditor. *Poliszczuk v. Winkler*, 2011 IL App (1st) 101847, ¶ 18, 962 N.E.2d 610. Sufficient tenders of payment must include interest on the judgment plus applicable costs. *Poliszczuk*, 2011 IL App (1st) 101847, ¶ 19, 962 N.E.2d 610. "A tender will not stop the accrual of interest unless it is made unconditionally." *Halloran v. Dickerson*, 287 Ill. App. 3d 857, 865,

679 N.E.2d 774, 780 (1997).

¶ 43 Here, the evidence fails to show Campus and Broeren Russo made an unconditional tender of the judgment amount with interest. Thus, the interest under the Act continues to accrue until paid.

¶ 44 Because we have found the interest provision of section 1(a) of the Act applies in this case, the trial court's decision to award interest pursuant to section 2-1303 of the Code instead of the Act was erroneous. Accordingly, we reverse the court's judgment and remand with directions to grant Ahal and Blager interest under section 1(a) of the Act at the rate of 10% per annum on the principal amount of its *pro rata* share of the funds withheld to pay JMC and its subcontractors from the dates such invoices became due until the date paid.

¶ 45 III. CONCLUSION

¶ 46 For the reasons stated, we reverse the trial court's judgment and remand with directions.

¶ 47 Reversed; cause remanded with directions.