

NOTICE
Decision filed 05/12/15. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2015 IL App (5th) 140355-U

NO. 5-14-0355

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

JOHN E. HARRISON and STUART S. HARRISON,)	Appeal from the
)	Circuit Court of
Plaintiffs-Appellants,)	Edwards County.
)	
v.)	No. 13-CH-13
)	
NEXT ENERGY LLC, a Wyoming Limited)	
Liability Company, HEARTLAND BANK, an)	
Arkansas State Chartered Bank, AXYS)	
CAPITAL INCOME FUND, a Delaware)	
Limited Liability Company, WOOLSEY)	
ENERGY II, a Kansas Limited Liability)	
Company, DEE DRILLING COMPANY, an)	
Illinois Corporation, and POST OAK)	
EXPLORATION COMPANY, a Mississippi)	
Corporation,)	Honorable
)	Christopher L. Weber,
Defendants-Appellees.)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justice Welch and Chapman concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not err in dismissing the plaintiffs' complaint to foreclose liens pursuant to the Illinois Oil and Gas Lien Act of 1989 (the Act) (770 ILCS 70/1 *et seq.* (West 2012)) where the parties stipulated that the leases were wholly undeveloped and the defendants produced evidence that all of the leases had been released, and where the plaintiffs failed to comply with the requirements regarding the content of the notice provided in section 10 of the Act (770 ILCS 70/10 (West 2012)) because they failed to include the dates of work and the amount due and owing on each lease

for which they sought foreclosure.

¶ 2 The plaintiffs, John E. Harrison and Stuart S. Harrison (the Harrisons), appeal the December 26, 2013, order of the circuit court of Edwards County, which dismissed the Harrisons' complaint to foreclose oil and gas liens pursuant to the Illinois Oil and Gas Lien Act of 1989 (the Act) (770 ILCS 70/1 *et seq.* (West 2012)) against the defendants, Next Energy, LLC (Next Energy), Heartland Bank, AXYS Capital Income Fund, Woolsey Energy II, Dee Drilling Company, and Post Oak Exploration Company. On appeal, the Harrisons argue that the circuit court erred in dismissing their complaint because they properly perfected their liens pursuant to section 10 of the Act (770 ILCS 70/10 (West 2012)) and because Next Energy's release of the leases at issue did not destroy their properly perfected liens as to those leases. For the following reasons, we affirm.

¶ 3 **FACTS**

¶ 4 On September 23, 2013, the Harrisons filed, *pro se*, a complaint to foreclose oil and gas liens against the defendants in the circuit court of Edwards County. According to the complaint, the plaintiffs performed lease acquisition services for Next Energy under the terms of an oral agreement between May 2012 and September 2012. John Harrison alleged he acquired execution of approximately 65 oil and gas leases covering approximately 9,000 acres, and that Next Energy failed to pay \$26,469.07 as agreed for the services. Stuart Harrison alleged that he acquired approximately nine oil and gas leases covering approximately 1,000 acres, completed title work covering approximately 3,000 acres, and that Next Energy failed to pay \$32,368.20 as agreed for the services.

¶ 5 Stuart Harrison filed a "Verified Statement and Notice of Oil and Gas Lien Claim, Equitable Lien Claim, and Contractual Lien Claim" (Notice of Lien) with the Edwards County recorder's office on September 26, 2012, in order to secure the payment of the \$32,368.20 that Next Energy allegedly owed, and John Harrison filed a Notice of Lien in Edwards County on September 27, 2012, in order to secure the payment of the \$26,469.07. The Notices of Lien were attached to the complaint as exhibits.

¶ 6 The Notices of Lien filed by the Harrisons claimed that the liens asserted therein covered the working interest of Next Energy, its successors and assignees, and other owners, nonrecord claimants as to "those certain oil and gas leases referenced on the attached Exhibit A, and covering the lands as contained on said Exhibit A." With regard to "the nature and dates of labor performed *** by the lien claimant for the benefit of the owner," Stuart Harrison's Notice of Lien stated as follows:

"Lease acquisition, abstracting, title services, work, labor, services, expenses, and materials furnished in completing, improving, and servicing the herein described leasehold interests of NEXT ENERGY, LLC located on the lands herein described from June 18, 2012[,] through September 6, 2012[,] and as detailed in the attached exhibit and made a part hereof."

¶ 7 John Harrison's Notice of Lien contained a similar description and dates of labor performed, less the abstracting and title services. Both Notices of Lien stated the full amount that each plaintiff alleged Next Energy owed them. Finally, both Notices of Lien attached a table purporting to list the lease number, lessor, effective date, expiration date, location, short description, acreage, county, and citation to the county records for each

leasehold to which the Notice of Lien referred.

¶ 8 On October 1, 2013, and October 20, 2013, respectively, defendants Dee Drilling and Woolsey Energy II filed motions to dismiss pursuant to section 2-606 of the Illinois Code of Civil Procedure (the Code) (735 ILCS 5/2-606 (West 2012)), based on the fact that the Harrisons failed to attach a copy of the written instruments of record showing the interests of those defendants in the leaseholds at issue. On October 24, 2013, defendants Heartland Bank and AXYS Capital Income Fund jointly filed a motion to dismiss, strike, or make more definite and certain pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)). According to the motion to dismiss, the Harrisons failed to properly perfect their liens because their Notices of Lien were improper, in that they consolidated liens on multiple leaseholds, thereby giving improper notice of the amounts due and owing and the date and nature of the work performed on each. On December 2, 2013, defendant Next Energy filed a similar motion to dismiss, strike, or make more definite and certain.

¶ 9 On December 26, 2013, the circuit court held a hearing on all pending motions. Following the hearing, the circuit court granted the motions to dismiss and dismissed the Harrisons' complaint with prejudice based on its finding that the Harrisons failed to comply with section 10 of the Act (770 ILCS 70/10 (West 2012)) in filing their notices of lien because they did not specify the amounts due and the work performed as to each lease. The circuit court, in a detailed order, also made a finding that the release of the wholly undeveloped leases to which the Harrisons sought to attach their liens provided an additional basis to dismiss their complaint. The circuit court specified that its order in no

way prejudiced the Harrisons' personal claim for damages against any of the defendants pursuant to section 18 of the Act (770 ILCS 70/18 (West 2012)) and gave the Harrisons 28 days to file an amended complaint to state such claims.

¶ 10 On January 27, 2014, the Harrisons filed, *pro se*, both an amended motion to reconsider and a notice of appeal regarding the December 26, 2013, order. On March 4, 2014, this court issued a rule to show cause why the Harrisons' appeal should not be dismissed for a lack of jurisdiction because the December 26, 2013, order was not a final judgment pursuant to the terms of Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994). Having received no response to the rule to show cause, this court dismissed the appeal on March 27, 2014. On April 17, 2014, the circuit court held a hearing on the amended motion to reconsider, and on June 17, 2014, the circuit court denied same. The Harrisons did not file an amended complaint asserting personal actions for damages against any of the defendants. On July 17, 2014, the Harrisons, through counsel, filed a timely notice of appeal.

¶ 11 ANALYSIS

¶ 12 We begin by noting that the defendants did not file an appellee's brief. Our supreme court has long held that we are not to *pro forma* reverse a trial court's order or judgment for an appellee's failure to file its brief. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131 (1976). Rather, in order for the judgment of the circuit court to be reversed, the appellant's brief must demonstrate *prima facie* reversible error and the contentions of the brief must find support in the record. *Id.* at 133. With these principles in mind, we proceed to our standard of review.

¶ 13 As the Harrisons' brief aptly states, the circuit court dismissed the complaint pursuant to sections 2-615 and 2-619 of the Code (735 ILCS 5/2-615, 2-619 (West 2012)). Accordingly, our standard of review is *de novo*. *Hartman Realtors v. Biffar*, 2014 IL App (5th) 130543, ¶ 14 (section 2-615 motions); *People ex rel. Madigan v. Burge*, 2014 IL 115635, ¶ 18 (section 2-619 motions). The issues on appeal involve an interpretation of the Act, and the fundamental rule is to give effect to the intent of the legislature. *In re Marriage of Rogers*, 213 Ill. 2d 129, 137 (2004). The best indicator of the legislature's intent is the plain language of the statute. *Id.* When the statute's language is clear, it must be given effect without resort to other tools of interpretation. *Id.* (citing *Metzger v. DaRosa*, 209 Ill. 2d 30, 35 (2004)).

¶ 14 We begin by analyzing the effect of the release of the leases at issue on the Harrisons' liens, assuming *arguendo* that they were properly perfected pursuant to section 10 of the Act (770 ILCS 70/10 (West 2012)). Despite the Harrisons' argument to the contrary, even if their liens were properly perfected, the fact that the leases were all released by the time they filed their complaint to foreclose the liens would preclude a judgment in their favor. It is undisputed that the leases at issue were wholly undeveloped. Section 5 of the Act (770 ILCS 70/5 (West 2012)) sets forth the circumstances under which a lienholder could attach to a leasehold whereby title has been forfeited or there has been some other type of failure of title. Pursuant to section 5, failure of title does not impair the lien as to "proceeds of production, material, equipment, fixtures and appurtenances located thereon" to which the lien has attached prior to such failure of title. 770 ILCS 70/5 (West 2012). In the case at bar, because the leases were

released prior to any development whatsoever, there would be nothing to which the liens attached prior to the release. This provides an independent basis on which this court affirms the circuit court.

¶ 15 Even if there were property associated with the leases at issue to which the liens attached, we find that the liens were not properly perfected. Section 10 of the Act (770 ILCS 70/10 (West 2012)) contains the requirements for perfecting an oil and gas lien. A notice of lien, verified by affidavit and filed in the recorder's office of the county in which the leasehold, pipeline, or some part thereof is situated, must contain the following elements:

"(1) The name of an owner of the leasehold or pipeline, and the operator, if known, or the 'permittee' and such owner's and operator's mailing address, if known.

(2) A legal description of the leasehold to which the lien extends ***.

(3) The nature and dates of the labor performed or material or services furnished.

(4) Said statement of lien must be filed within four months after the date on which the claimant's labor was last performed or materials or services were last furnished under a single contract as provided for in Section 9. ***" 770 ILCS 70/10 (West 2012).

¶ 16 It is clear from the foregoing statute that the information that must be included in the notice of lien is required for each leasehold. The Harrisons contend that they properly perfected their lien because their contracts with Next Energy constituted a "single

contract" for "landman" work obtaining multiple connected leases "in single total-service payments," such that the work of each of them was conducted entirely on the same leasehold. According to the Harrisons, because all of these leases constituted a single leasehold, it was proper to file one notice of lien containing the work dates and amount owed in the aggregate, rather than breaking down the work performed and amount owed on each lease. In addition, following the Harrisons' argument, the last date on which they performed labor obtaining the final lease would begin the limitations period for filing the notice of lien on all of the leases they obtained pursuant to their "single contract" with Next Energy. The efficacy of the Harrisons' argument, then, rests entirely upon the definition of "leasehold" in the Act.

¶ 17 Pursuant to section 1 of the Act (770 ILCS 70/1 (West 2012)), "leasehold" is defined as "the interest of one holding as a lessee or assignee under an oil and gas lease *** under which the holder has the right to drill for and produce oil and gas, including the entire working interest." This definition is consistent with Black's Law Dictionary 890 (6th ed. 1990), which defines "leasehold" as "[a]n estate in real property held by lessee/tenant under a lease." Both of these definitions make clear that a "leasehold" is the interest conveyed by the "lease." Accordingly, each "lease" conveys a corresponding "leasehold," and the Harrisons' contention that multiple leases can form one leasehold under the Act must fail.

¶ 18 Our reading of the Act as a whole further convinces us that the requirements of section 10 must be set forth for each lease that is being impacted. Pursuant to section 9 of the Act (770 ILCS 70/9 (West 2012)), multiple contracts for services are to be

considered one contract for the purposes of the Act if performed upon the same leasehold. If the legislature intended that multiple leases be treated as a single leasehold for the purposes of perfecting a lien for services performed under a single contract, it would have done so explicitly, either by an expansive definition of "leasehold" or a specific section to this effect similar to section 9.

¶ 19 Unfortunately for the Harrisons, it is not the contract for services that determines the "leasehold" to which a lien may attach, but rather the lease itself. Accordingly, we find that section 10 of the Act (770 ILCS 70/10 (West 2012)) required the Harrisons to set forth the details contained therein for each lease to which it was claiming a lien. Because the notices of lien failed to contain the inclusive dates of the work performed and the amount due and owing under each lease, the circuit court did not err in dismissing the Harrisons' complaint to foreclose the lien. While we recognize that the plain language of the Act requires that "landmen" such as the Harrisons keep records that they may not be required to keep in accounting to their clients in the first instance, the parameters of the Act require that such records be kept in order to properly perfect a lien that may be asserted for the work that they perform when multiple leaseholds are involved under a single contract for services. The failure of the Harrisons to properly perfect their liens provides an additional basis on which we affirm the circuit court.

¶ 20

CONCLUSION

¶ 21 In conclusion, we find that the Harrisons failed to properly perfect their liens because they did not provide the required details in their notices of lien for each lease to which their liens attached. In addition, because the leases were all released prior to

development, there was nothing to which their liens could attach. For these reasons, the circuit court did not err in dismissing the Harrisons' complaint.

¶ 22 Affirmed.