

2014 IL App (1st) 133587-U

No. 1-13-3587

December 23, 2014

SECOND DIVISION

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

CLP II, INC., an Illinois corporation,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff,)	
)	
v.)	Nos. 08 CH 47211
)	
TELKOW CONSTRUCTION COMPANY,)	
INC., <i>et al.</i> ,)	The Honorable
)	Robert J. Quinn,
Defendants.)	Judge presiding.
)	
<hr/>)	
ALFONSO B. CASTRO and ANDREW A.)	
BUCHHEL,)	
)	
Counter-Plaintiffs,)	
)	
v.)	
)	
CLP II, INC., and NORTHBROOK BANK)	
AND TRUST COMPANY,)	
)	
Counter-Defendants-Appellant.)	

JUSTICE NEVILLE delivered the judgment of the court.
Justices Pierce and Liu concurred in the judgment.

ORDER

¶ 1 *Held:* After the completion of all work required by the contract, copying a few documents for use in a sales brochure and making unspecified changes to computer files cannot suffice to extend the time for recording a mechanics lien.

¶ 2 This case involves the timeliness of a mechanics lien claim. The Mechanics Lien Act (Act) (770 ILCS 60/7 (West 2008)) provides that the claimant must record his lien within four months after completion of the work for which he claims a lien. Andrew Buchel, an architect who recorded a lien against real estate in Chicago on August 18, 2008, testified that he last worked on the project in May 2008. The trial court awarded Buchel a lien and the property's owner now appeals.

¶ 3 We find that Buchel completed his work on the project before April 17, 2008, and therefore Buchel recorded his lien after the expiration of the four month limitation period in the Act. Accordingly, we reverse the trial court's judgment.

¶ 4 **BACKGROUND**

¶ 5 Joann Weinmann purchased real estate in Chicago in 2000. In 2001, Dan Shatner, acting on behalf of Weinmann, arranged for Buchel to design a building for the property, in exchange for office space in the building.

¶ 6 Buchel and Alfonso Castro co-owned Castro-Buchel Architects and Planners, Inc. (CBAP). In the lien recorded against the property on August 18, 2008, Castro and Buchel claimed that Weinmann owed them about \$450,000 for Buchel's architectural work, and they claimed that Buchel completed that work on May 7, 2008. Another contractor who worked on the project filed a complaint to foreclose its mechanics lien in December 2008. On

September 2, 2009, Castro and Buchel filed a counterclaim for foreclosure of their lien, along with a cross-claim against Weinmann for breach of contract. The trial court later awarded a judgment against Weinmann and in favor of Castro and Buchel on the contract claim. No party has raised any issue concerning that judgment in this appeal.

¶ 7 Weinmann sold the property to HP Ventures Group LLC -- Kennedy Project in December 2009. In February 2010, First Chicago Bank & Trust acquired a mortgage on the property in exchange for a loan. Northbrook Bank & Trust later acquired the mortgage. Northbrook opposed Castro and Buchel's claim for foreclosure of their mechanics lien.

¶ 8 In a deposition, Buchel testified that he started the lien process on April 20, 2008, after he had stopped working on the project. In 2002, he created a document labeled "invoice" to reflect the lienable work he and some employees of CBAP performed. He never presented the invoice to Weinmann or any other party for payment. He kept the document as a record of CBAP's work and expenses throughout the process. Because the Act permits the lien claim only for work performed in a three year period from the commencement of the work for which the claimant seeks the lien (770 ILCS 60/6 (West 2008); see *Robb v. Lindquist*, 23 Ill. App. 3d 186, 188 (1974)), the invoice in the record only reflects work performed and expenses incurred in the three-year period from April 20, 2005, to April 20, 2008.

¶ 9 The invoice showed that Buchel performed 416.5 hours of architectural services for the project from May 24, 2005, through April 16, 2008. In the lien claim, Castro and Buchel sought to recover all amounts reflected on the unsent invoice, including amounts spent on parking, copying, and other necessities. The invoice showed that Castro and Buchel sought to recover for costs incurred on April 17, 2008, and not for any costs incurred or work

performed thereafter. The case went to trial on disputed issues concerning the legitimacy of Castro and Buchel's claim for a lien in the amount of \$450,000, and the timeliness of the recording of the lien.

¶ 10 At the trial, Castro and Buchel presented testimony from a realtor that the office Weinmann agreed to give CBAP in exchange for Buchel's services had a value of \$275 per square foot. The proposed office measured 1877 square feet. Thus, the promised office had a value of about \$516,000. Buchel testified that Weinmann provided some compensation, reducing the amount due on the contract to about \$450,000. Buchel also said that he performed substantial work between 2001 and May 24, 2005, the first date listed on the invoice. The invoice reflected only lienable work performed in the three-year period from May 24, 2005 to May 24, 2008. Buchel charged \$225 per hour for his work, so the 416.5 hours he worked had a value of about \$93,000.

¶ 11 Although Buchel testified at his deposition that he did not work on the project after April 20, 2008, at the trial he testified that he performed some work related to the project after that date. Sometime late in April 2008, the real estate agent selling space in the proposed building asked Buchel to send documents for a brochure the agent was preparing as a marketing aid. Buchel also presented a printout from his computer screen showing that some of the design files showed April 25, 2008, as the last date for modification of the files. Buchel admitted that he made no entries on the invoice to reflect work done after April 17, 2008.

¶ 12 The trial court found that Buchel last worked on the project on April 25, 2008, and therefore Castro and Buchel perfected their lien by recording it on August 18, 2008, less than

four months after the last date of the work for which they sought the lien. The court limited the lien to the hourly price for Buchel's work times the hours shown on the invoice, plus the proven expenses, for a total of \$94,118.70, plus statutory interest. However, the court held that Castro and Buchel did not intend to defraud anyone when they claimed a lien for almost \$450,000, based on the value of the space Weinmann promised to give them in exchange for Buchel's work. The court expressly found no just cause to delay enforcement or appeal from the award of a mechanics lien. Northbrook now appeals.

¶ 13

ANALYSIS

¶ 14

Supreme Court Rule 304(a) gives this court jurisdiction to consider the appeal. Ill. Sup. Ct. R. 304(a) (eff. Feb. 26, 2010). Castro and Buchel did not file an appellee's brief. Because we find the issues sufficiently straightforward, we will address the appeal based solely on the arguments in Northbrook's brief. See *First Capitol Mortgage Co. v. Talandis Construction Co.*, 63 Ill. 2d 128, 133 (1976). Northbrook advances several arguments for reversing the award of a mechanics lien. We find the timeliness argument persuasive, so we confine our discussion to that issue.

¶ 15

The trial court made a factual finding that Buchel last worked on the project on April 25, 2008. We use the manifest weight of the evidence standard to review the trial court's finding. *Braun-Skiba, Ltd. v. LaSalle National Bank*, 279 Ill. App. 3d 912, 920 (1996).

¶ 16

Section 6 of the Act provides:

"In no event shall it be necessary to fix or stipulate in any contract a time for the completion or a time for payment in order to obtain a lien under this act, provided, that the work is done or material furnished within three years from the

commencement of said work or the commencement of furnishing said material."

770 ILCS 60/6 (West 2008).

¶ 17 For purposes of establishing a mechanics lien against a property, the claimant need not show that it first worked on the property less than three years before it finished its work. *Robb*, 23 Ill. App. 3d at 188. Instead, the claimant needs to show only that the work for which it seeks a lien commenced within three years before it completed the work for which it seeks a lien. 770 ILCS 60/6 (West 2008).

¶ 18 Section 7 of the Act provides:

"No contractor shall be allowed to enforce such lien against or to the prejudice of any other creditor or incumbrancer or purchaser, unless within 4 months after completion, or if extra or additional work is done or labor, services, material, fixtures, apparatus or machinery, forms or form work is delivered therefor within 4 months after the completion of such extra or additional work or the final delivery of such extra or additional labor, services, material, fixtures, apparatus or machinery, forms or form work, he or she *** shall file *** a claim for lien." 770 ILCS 60/7 (West 2008).

¶ 19 "[T]he four-month period is 'not merely a statute of limitations * * * [but] a condition of liability itself and not just a limitation on the remedy.' " *D.M. Foley Co. v. North West Federal Savings & Loan Ass'n*, 122 Ill. App. 3d 411, 418 (1984), quoting *Waldbillig Woodworking, Inc. v. King Arthur's North, Ltd.*, 104 Ill. App. 3d 417, 420 (1982). Just as the three-year period of section 6 starts when the contractor commences the work for which it seeks a lien, the four month period of section 7 starts when the contractor completes the work

for which it seeks a lien. See *Miller Bros. Industrial Sheet Metal Corp. v. LaSalle National Bank*, 119 Ill. App. 2d 23, 29-30 (1969). "Work that is trivial and insubstantial, and not 'essential to the completion of the contract' does not extend the time to file a lien under the Mechanics Lien Act." *Braun-Skiba*, 279 Ill. App. 3d at 919, quoting *Miller Bros.*, 119 Ill. App. 2d at 29.

¶ 20 Illinois courts consider various factors to determine whether work extends the time for filing a mechanics lien. Most significantly, courts focus on "whether the work is needed to complete the contract." Courts also consider "whether [the work] was done at the request of the owner. *** Other factors include whether the work *** was needed to make the project suitable for its intended purpose ***. [W]ork that is in the nature of maintenance or correction of a completed job, or that is repair work, will not extend the time to file a mechanic's lien." *Merchants Environmental Industries, Inc. v. SLT Limited Partnership*, 314 Ill. App. 3d 848, 858-59 (2000); *DuPage Bank & Trust Co. v. DuPage Bank & Trust Co. as Trustee*, 122 Ill. App. 3d 1015, 1021 (1984).

¶ 21 Here, the invoice Buchel prepared in support of his lien claim included no charge for any work performed after April 17, 2008. In his deposition, Buchel admitted that he finished his work on the project by April 20, 2008, and he did not specify any lienable work done after April 17, 2008. At the trial, he testified that some time after April 16, 2008, the real estate agent asked him to send some documents. Buchel had completed his contractual commitments related to design before he sent the documents to the realtor. Sending the documents did not form a necessary part of making the building suitable for its purpose. Applying the principles stated in *Merchants* and *Miller Bros.*, we find that sending the

documents to the realtor does not qualify as the kind of substantial work that can extend the time for filing a mechanics lien.

¶ 22 Buchel also pointed out that his computer file indicated that he last modified some of the designs on April 25, 2008. However, Buchel did not describe the modifications he made to the designs after April 17, 2008, and he did not include on the invoice any charge for time spent after April 17, 2008, modifying designs.

¶ 23 We hold that the manifest weight of the evidence contradicts the trial court's finding that Castro and Buchel performed sufficiently substantial work on the project after April 17, 2008, to extend the time for filing a mechanics lien to August 18, 2008. We find the lien claim recorded on August 18, 2008, invalid because the claimants did not meet the four month filing requirement stated in section 7 of the Act .

¶ 24

CONCLUSION

¶ 25 Castro and Buchel completed their work for Weinmann before April 17, 2008, and, therefore, the mechanics lien recorded August 18, 2008, came too late to impose a valid lien on the property. We reverse the trial court's judgment awarding Castro and Buchel a mechanics lien.

¶ 26 Reversed.