

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).

FIRST DIVISION
February 3, 2013

No. 1-13-0265
2014 IL App (1st) 130265

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

OXFORD 127 HURON HOTEL VENTURE, LLC,)	Appeal from the
)	Circuit Court of
Plaintiff and Counterdefendant-)	Cook County
Appellee,)	
)	
v.)	No. 08 CH 37270
)	
CMC ORGANIZATION, LLC,)	Honorable
)	Thomas Mulroy, Jr.,
Defendant and Counterplaintiff-)	Judge Presiding.
Appellant.)	
)	
(Dellisart-Chicago B, LLC; Dellisart Lodging LLC;))	
Miglin Properties, LLC; Duke Miglin; Douglas)	
Artusio, Walsh Construction Company; Alliance)	
Fire Protection, Inc.; Thomas P. Adamson, Jr. &)	
Associates. Inc; K&K Iron Works, Inc.; T&W)	
Edmier Corp.; Nations Roof North LLC; Streich)	
Corp.; and Unknown Owners and Nonrecord)	
Claimants,)	
)	
Defendants.))	

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Hoffman and Delort concurred with the judgment.

ORDER

Held: Releases of mechanics liens recorded by counter-claimant barred attempted enforcement of re-recorded liens.

¶ 1 This appeal is a sequel to our decision nearly three years ago in *CapitalSource Finance, LLC v. CMC Organization, LLC*, No. 1-10-2580 (May 17, 2011) (unpublished order under Supreme Court Rule 23), in which we reversed the circuit court's order dismissing defendant CMC Organization, LLC's counterclaim against plaintiff Oxford 127 Huron Hotel Venture, LLC's predecessor in interest. We remanded the case for resolution of some disputed facts about the counterclaim. After a trial, the circuit court ruled in favor of Oxford on the counterclaim, and we now affirm.

¶ 2 The underlying lawsuit here is a very complex, multiparty case that involves a huge number of mechanics liens on an ill-fated hotel project. For purposes of this appeal, however, we need only explain a few pertinent facts.

¶ 3 In 2006, a company called Dellisart-Chicago B, LLC took out a loan from CapitalSource Finance, LLC in order to purchase a property in the River North area of downtown Chicago and develop a 17-story hotel. The loan was secured by a mortgage on the property. For reasons not relevant here, Dellisart ran out of money, the project stalled, and foreclosure proceedings were instituted. Oxford, the current plaintiff here, later bought out the loan and became CapitalSource's successor in interest on the property. After lying dormant for several years during the foreclosure, the project was eventually redesigned and resumed under new ownership. When construction first stopped, however, many companies that had worked on the project filed mechanics liens against the property.

¶ 4 CMC was one of those companies. CMC had several different roles in the project, and it filed three liens that are at issue here: one related to its actions as construction manager or advisor to the property owners; one for a contract to oversee the interior framing of the hotel; and one for acting as a consultant on the interior finishing of the project. By the time that the project

ground to a halt in the summer of 2008, CMC had allegedly not been paid for its work in several months and, in light of the imminent foreclosure, CMC decided in June 2008 to file the three liens in order to secure its claim to payment. The liens, however, created new problems for the project because they were the first liens of significant value to be filed against the property. The project could not resume without additional funding, but the lender refused to release new funds while the liens were in place.

¶ 5 Dellisart, the property owner at the time, approached CMC and asked it to release the liens. After some negotiation, Dellisart promised to pay part of the amounts owed in exchange for CMC releasing the liens. After finalizing the deal with Dellisart, which was memorialized in a written agreement, CMC recorded unconditional lien releases on July 16, 2008. But according to CMC, Dellisart never followed through on its promise to pay. CMC claimed that Dellisart only paid a portion of what was owed under the release agreement, shortchanging CMC by about \$230,000. The record is unclear why this occurred, but the end result was that CMC considered Dellisart to be in breach of the agreement and it re-recorded the liens against the property in September 2008.

¶ 6 And so matters stood as of October 2008, when CapitalSource filed its complaint to foreclose the mortgage on the property. CMC, as a holder of mechanics liens against the property, was named as one of the defendants, and it counterclaimed for an adjudication of its liens. CapitalSource moved to dismiss the counterclaim, arguing among other things that CMC's July releases barred its claim to adjudicate the liens. CMC in turn contended that CapitalSource had fraudulently induced CMC to agree to release the liens by falsely telling CMC that the liens were holding up financing on the project. The circuit court rejected CMC's arguments and dismissed the counterclaim. We reversed that decision on appeal, finding that there was a

question of material fact as to whether the lien releases had been obtained by fraud. See *CapitalSource*, No. 1-10-2580 at 8-9.

¶ 7 On remand, the circuit court held a nine-day trial on the various mechanics liens against the property. Regarding CMC's claims, the circuit court found that no fraud had occurred. After resolving this issue, the circuit court once again found that CMC's releases barred adjudication of the re-recorded liens under section 35 of the Mechanics Lien Act (770 ILCS 60/35 (West 2008)). The circuit court also found that the new liens were barred because they were untimely under section 34 of the Act (770 ILCS 60/34 (West 2008)). Finally, the circuit court determined that, even if the liens were not barred, CMC failed to carry its burden of proving that the work secured by the liens had actually been performed. The circuit court accordingly entered judgment in favor of Oxford on CMC's counterclaim.

¶ 8 CMC has now appealed from that judgment, and it challenges the circuit court's determinations on each of the three bases that the circuit court used to support its judgment. We may, however, affirm the circuit court's judgment on any basis appearing in the record (see *Alpha School Bus Co. v. Wagner*, 391 Ill.App.3d 722 (2009)). The issue of the lien releases is dispositive, so we need only consider that issue.

¶ 9 Section 35 of the Mechanics Lien Act (770 ILCS 60/35 (West 2008)) deals with the effect of recording a lien release. It states, in pertinent part:¹

“Whenever a claim for lien has been filed with the recorder of deeds, *** and is paid with cost of filing same, or where there is a failure to institute suit to enforce the same after demand as provided in [section 34,] *** the person filing the same or some one by him duly authorized in writing so to do, shall acknowledge satisfaction or release thereof, in writing, on written demand of the

¹ There is no subsection (a) in section 35.

owner, lienor, or any person interested in the real estate, or his or her agent or attorney ***.

(b) Such a satisfaction or release of lien may be filed with the recorder of deeds in whose office the claim for lien had been filed and when so filed shall forever thereafter discharge and release the claim for lien and shall bar all actions brought or to be brought thereupon.

The idea behind section 35, as well as its companion section 34, is “to provide a method for property owners to force the issue on the validity of claims already filed and to clear a cloud on the owner's property created by the filing of a lien. If a claim for lien has not been filed by the contractor, then there is no cloud upon the owner's title.” *Kryzminski v. Dziadkowiec*, 296 Ill. App. 3d 710, 712 (1998). CMC did file a claim to adjudicate the lien, so the narrow question in this case is the effect of section 35(b)'s statement that “[s]uch a satisfaction or release of lien” operates as a permanent bar to an action to enforce the released lien. If it does, then CMC's July 2008 releases render ineffective CMC's attempt to re-record the liens in September 2008 and the liens themselves unenforceable.

¶ 10 CMC acknowledges that it filed the releases voluntarily (it has now abandoned its previous claim of fraud), but it contends that section 35(b) only applies to situations in which a lien is paid in full. That is, CMC claims that the releases are ineffective because Dellisart only paid CMC part of what it was owed pursuant to the release agreement, which was in turn only a portion of the amount claimed under the liens. CMC points out that section 35(b) uses the word “such”, which it contends refers only to a release recorded in response to the two situations specified in section 35: when the lien “is paid with cost of filing same”, or where the lien holder fails to file a lawsuit after a section 34 demand has been made. Focusing on the first situation,

CMC asserts that “is paid” must mean “is paid *in full*”. CMC argues that a partial payment of an undisputed amount is not a “satisfaction” of a debt. Because Dellisart agreed to pay CMC a certain amount under the release agreement but then paid only part of it, CMC contends that the debt was never “satisfied” within the meaning of the statute, and the releases were therefore ineffective.

¶ 11 We have, however, previously considered a strikingly similar situation. In *Rochelle Vault Co. v. First National Bank of DeKalb*, 5 Ill. App. 3d 354, 354-56 (1972), the plaintiff sought to adjudicate mechanics liens filed against a property owned by the defendant. During the foreclosure proceedings, however, the plaintiff had executed and recorded releases of the liens in exchange for a partial payment of the amount claimed under the liens. The defendant moved to dismiss the complaint on the ground that the lien had been released. The circuit court granted the motion, citing section 35 as authority, and we affirmed. See *id.* at 355-56.

¶ 12 *Rochelle* is directly on point, and CMC does little to distinguish it. Instead, CMC points to cases in which we have declined to enforce contractual lien waivers when the lienor received only part of the payment promised in the waiver. See, e.g., *Cordeck Sales, Inc. v. Construction Systems*, 382 Ill. App. 3d 334 (2008). CMC’s attempt to analogize this case vastly oversimplifies the analysis that we employed in those cases, but they are nonetheless inapplicable here for the simple reason that a contractual lien waiver is not the same thing as a recorded lien release under section 35. Had this been a situation where CMC had never recorded releases of its liens in the first place and had instead contractually agreed to waive its right to enforce any lien it might have, but had then only received part of the payment promised in exchange for the waiver, then cases such as *Cordeck* could guide our analysis. The dispositive fact in this case is that CMC voluntarily recorded a release in exchange for a partial payment,

which as we held in *Rochelle* was sufficient to bar any subsequent claim on the lien pursuant to section 35.

¶ 13 CMC's fundamental argument in this case is that Dellisart failed to pay all of what it promised in exchange for CMC's release of the liens, but this has no relevance to the statutory effect of the lien release that CMC voluntarily recorded. Given the clear language in section 35 regarding the effect of recording a lien release and the long-standing precedent of *Rochelle*, as well as the absence of any contrary authority, the circuit court was correct to find that CMC's lien releases precluded enforcement of the re-recorded liens even in spite of Dellisart's failure to honor the release agreement. CMC's argument might have been relevant to a breach of contract action, but that is not the claim that CMC brought in this case. The releases were recorded and are valid, and so enforcement of the liens is not a remedy that is available to CMC here.

¶ 14 Affirmed.