Illinois Official Reports

Appellate Court

***American Steel Fabricators, Inc. v. K&K Iron Works, LLC*,**
2022 IL App (1st) 220181

Appellate Court Caption	AMERICAN STEEL FABRICATORS, INC., Plaintiff-Appellant, v. K&K IRON WORKS, LLC, Defendant-Appellee.
District & No.	First District, Sixth Division No. 1-22-0181
Filed	December 2, 2022
Decision Under Review	Appeal from the Circuit Court of Cook County, No. 21-CH-00924; the Hon. Lewis Nixon, Judge, presiding.
Judgment	Reversed and remanded.
Counsel on Appeal	Peter G. Swan, of Emalfarb, Swan & Bain, of Highland Park, for appellant. John E. Sebastian and Brian C. Padove, of Watt, Tieder, Hoffar & Fitzgerald, L.L.P., of Chicago, for appellee.
Panel	PRESIDING JUSTICE MIKVA delivered the judgment of the court, with opinion. Justices Walker and Tailor concurred in the judgment and opinion.

OPINION

¶ 1 The issue before us is whether a subcontractor on a construction project has authority, under section 34 of the Mechanics Lien Act (Act) (770 ILCS 60/34 (West 2020)), to issue a demand notice to commence suit on a mechanic's lien recorded by that subcontractor's sub-subcontractor on that same project. For the reasons that follow, we find that it does and reverse the decision of the circuit court dismissing the suit filed by the subcontractor to adjudicate the lien filed by the sub-subcontractor in this case.

¶ 2 I. BACKGROUND

¶ 3 American Steel Fabricators, Inc. (American Steel), and K&K Iron Works, LLC (K&K), are both Illinois-based businesses specializing in structural steel erection work. In November 2019, American Steel entered into a subcontract with a general contractor, Maris Construction, LLC (Maris), to perform structural steel erection work in the construction of the commercial building located at 1648 West Division Street in Chicago.

¶ 4 American Steel then entered into a sub-subcontract with K&K to perform installation work in furtherance of its contract with Maris. The contract price for this agreement, signed by American Steel and K&K on November 11, 2019, was $1.4 million. As counsel for American Steel explained at oral argument, the gist of the arrangement between the parties was that American Steel would provide the steel and K&K would install it. As the construction project progressed, a dispute arose between American Steel and K&K over whether K&K was satisfying its contractual obligations. American Steel alleges that by February 13, 2020, K&K had "fallen seriously behind the Subcontract's required construction completion schedule." K&K contests this characterization and asserts that it had substantially completed all the work under its contract. On June 26, 2020, K&K stopped working on the project, claiming that, despite requests for payment, American Steel still owed it $998,000.

¶ 5 On October 23, 2020, K&K recorded a mechanic's lien claim with the Cook County Recorder of Deeds against title to the premises in the amount of $998,000, a sum it claimed it was owed by American Steel or, in the alternative, by Maris and the property owner. On December 17, 2020, an attorney representing American Steel sent a demand letter by certified mail to K&K. In the letter, the attorney said that he had sent three previous letters attempting to negotiate a resolution to K&K's contract claims but had received no response. The attorney attached three change orders deducting costs for work that he claimed K&K failed to perform. If K&K agreed to the deductions, the attorney explained, he could facilitate a final payment to K&K for the adjusted amount. However, if K&K did not agree to the deductions by the end of that week, the attorney warned that he had "been instructed to immediately file a complaint against K&K for the filing of a knowingly fraudulent mechanics lien and for slander of title."

¶ 6 The final paragraph of the attorney's demand letter read as follows:

> "[B]y this letter I am making demand pursuant to 770 ILCS 60/34, that K&K foreclose its mechanics lien #2029710038 that has been recorded against title to the above referenced property. *Failure to respond to this notice within 30 days after receipt, as required by Section 34 of the Mechanics Lien Act, shall result in the forfeiture of the referenced lien*." (Emphasis in original).

K&K did not respond to the letter or foreclose its mechanic's lien as requested.

¶ 7 The attorney for American Steel then sent another demand letter to K&K by certified mail on February 9, explaining that, because K&K had failed to respond to the previous letter within the applicable 30-day period, the attorney was "now sending you a demand to release your mechanics lien pursuant to 770 ILCS 60/35 and I am enclosing a release of lien for your signature." K&K did not sign the release.

¶ 8 On February 25, 2021, American Steel filed a complaint in the circuit court seeking to clear title on the property pursuant to section 35 of the Act. *Id.* § 35. In the complaint, American Steel also requested attorney fees and $2500 in statutory damages for K&K's failure to respond to its section 35 demand.

¶ 9 K&K moved to dismiss American Steel's complaint on April 1, 2021, characterizing it as "a veiled attempt to continue to sidestep its payment obligations to K&K and enforce rights which it does not have under Illinois law." K&K argued that it never had any obligation to respond to American Steel's December 17, 2020, demand letter because, as a subcontractor, American Steel lacked the authority to issue a demand under section 34. For the same reason, K&K argued it had no obligation to respond to American Steel's subsequent correspondence invoking section 35. Due to this lack of authority to issue the demand upon which its complaint was based, K&K claimed that the "entire cause of action against K&K fail[ed] and dismissal of the Complaint [was] proper."

¶ 10 On February 3, 2022, the circuit court granted K&K's motion and dismissed American Steel's complaint with prejudice for failing to state a cause of action under section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2020)). The court concluded that "American Steel was without authority to issue a written demand under Sec. 34."

¶ 11 This appeal followed.

¶ 12 II. JURISDICTION

¶ 13 The circuit court entered a final judgment against American Steel dismissing its complaint with prejudice on February 3, 2022. American Steel timely filed a notice of appeal on February 7, 2022. This court has jurisdiction pursuant to Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) and Rule 303 (eff. July 1, 2017), governing appeals from final judgments entered by the circuit court in civil cases.

¶ 14 III. ARGUMENT

¶ 15 The issue before us is whether American Steel can be characterized as either "the owner, lienor, a recorder under Section 3-5010.8 of the Counties Code, or any person interested in the real estate," the only parties allowed under section 34 to issue demands to commence suit. 770 ILCS 60/34 (West 2020). The circuit court determined that American Steel did not fall within any of these categories and thus was without authority to issue a written demand under section 34 and dismissed its complaint with prejudice. In our view, American Steel qualifies as a lienor by virtue of its status as either a contractor or a subcontractor as those terms are defined in sections 1 and 21 of the Act. Accordingly, it had authority to issue its section 34 demand.

¶ 16 A. Standard of Review

¶ 17 The parties spend a significant portion of their briefs disagreeing about whether we should view the circuit court's dismissal order under the principles applicable to section 2-615 or 2-

619 of the Code. 735 ILCS 5/2-615, 2-619 (West 2020). Our review is *de novo* regardless of whether dismissal was under section 2-615 or section 2-619. *Neppl v. Murphy*, 316 Ill. App. 3d 581, 583-84 (2000). Moreover, "[w]here the dismissal was proper as a matter of law, we may affirm the circuit court's decision on any basis appearing in the record." *Rodriguez v. Illinois Prisoner Review Board*, 376 Ill. App. 3d 429, 433 (2007). Thus, we are not persuaded that this controversy, which the parties both brief vigorously, impacts the outcome. We will, however, briefly address this issue.

¶ 18 American Steel argues that, even though K&K's motion to dismiss was labeled as a motion under section 2-615, the content of the motion consisted entirely of an argument about standing and thus, "in actuality," the circuit court dismissed the cause pursuant to section 2-619(a)(2), which allows dismissal where "the plaintiff does not have the legal capacity to sue" or "the defendant does not have legal capacity to be sued." 735 ILCS 5/2-619(a)(2) (West 2020). In response, K&K argues that American Steel patently misinterpreted both its motion to dismiss and the circuit court's dismissal order, in which the court clearly stated that the basis of its dismissal was section 2-615.

¶ 19 Standing requires that a party " 'have a real interest in the action brought and in its outcome.' " *Aurora Bank FSB v. Perry*, 2015 IL App (3d) 130673, ¶ 17. K&K's motion to dismiss did not attack American Steel's standing—though it repeatedly used that word—but rather the legal sufficiency of American Steel's complaint, which is exactly what section 2-615 is for. "A motion to dismiss brought pursuant to section 2-615 of the Code is a facial challenge asserting that the complaint fails to state a cause of action upon which relief can be granted." *Village of Willow Springs v. Village of Lemont*, 2016 IL App (1st) 152670, ¶ 22. Here, K&K argued that, under the clear and unambiguous language of section 34, American Steel, as a subcontractor, did not have authority under the statute to issue a demand letter. K&K's argument was that, because the facts alleged in the complaint established this lack of statutory authority, the complaint failed to sufficiently state a cause of action against K&K and dismissal was thus proper pursuant to section 2-615. The circuit court agreed.

¶ 20 This is how the circuit court said that it viewed the matter in its order, and we too consider this a section 2-615 dismissal. As such, our role as the reviewing court is to examine "whether the well-pleaded facts of the complaint, taken as true and construed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted." *Loman v. Freeman*, 229 Ill. 2d 104, 109 (2008). As noted above, our standard of review is *de novo*.

¶ 21 B. The Mechanics Lien Act

¶ 22 The purpose of the Mechanics Lien Act is to " 'permit a lien upon premises where a benefit has been received by the owner and where the value or condition of the property has been increased or improved by reason of the furnishing of labor and materials.' " *First Federal Savings & Loan Ass'n v. Connelly*, 97 Ill. 2d 242, 246 (1983). The statute "attempts to balance the rights and duties of owners, subcontractors, and materialmen" (*Bricks, Inc. v. C&F Developers, Inc.*, 361 Ill. App. 3d 157, 163 (2005)), and it "provides several methods by which parties to the various contracts may protect themselves in order to ensure that they are compensated for their efforts" (*Struebing Construction Co. v. Golub-Lake Shore Place Corp.*, 281 Ill. App. 3d 689, 694 (1996)).

¶ 23 This case involves two closely related sections of the statute: sections 34 and 35. 770 ILCS 60/34, 35 (West 2020). Operating in tandem, these two sections "provide a method for a property owner 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." *Krzyminski v. Dziadkowiec*, 296 Ill. App. 3d 710, 712 (1998).

¶ 24 Section 34, titled "Notice to commence suit," reads as follows:

> "(a) Upon written demand of the owner, lienor, a recorder under Section 3-5010.8 of the Counties Code, or any person interested in the real estate, or their agent or attorney, served on the person claiming the lien, or his agent or attorney, requiring suit to be commenced to enforce the lien or answer to be filed in a pending suit, suit shall be commenced or answer filed within 30 days thereafter, or the lien shall be forfeited. Such service may be by registered or certified mail, return receipt requested, or by personal service.
>
> (b) A written demand under this Section must contain the following language in at least 10 point bold face type: 'Failure to respond to this notice within 30 days after receipt, as required by Section 34 of the Mechanics Lien Act, shall result in the forfeiture of the referenced lien.' " 770 ILCS 60/34 (West 2020).

¶ 25 When a properly issued section 34 demand goes unanswered for more than 30 days, the party seeking to "force the issue of the lien claim's validity" is then empowered to seek the satisfaction or release of the lien under section 35, which provides:

> "(a) Whenever a claim for lien has been filed with the recorder of deeds, either by the contractor or sub-contractor, 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 the preceding Section within the time by this Act limited 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 owner, lienor, or any person interested in the real estate, or his or her agent or attorney, and on neglect to do so for 10 days after such written demand he or she shall be liable to the owner for the sum of $2,500, which may be recovered in a civil action together with the costs and the reasonable attorney's fees of the owner, lienor, or other person interested in the real estate, or his or her agent or attorney incurred in bringing such action." *Id.* § 35.

¶ 26 Also relevant to this appeal are the statutory definitions of a few key terms. "Contractor" is defined in section 1 of the Act (*id.* § 1(a)):

> "Any 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 and has a lien upon the whole of such lot or tract of land and upon adjoining or adjacent lots or tracts of land of such owner constituting the same premises and occupied or used in connection with such lot or tract of land as a place of residence or business ***. This lien extends to an estate in fee, for life, for years, or any other estate or any right of redemption or other interest that the owner may have in the lot or tract of land at the time of making such contract or may subsequently acquire and this lien attaches as of the date of the contract."

¶ 27 A "sub-contractor" is defined in section 21 (*id.* § 21(a)):

> "[E]very 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, and shall have a lien for the value thereof, with interest on such amount from the date the same is due, from the same time, on the same property as provided for the contractor, and, also, as against the creditors and assignees, and personal and legal representatives of the contractor, on the material, fixtures, apparatus or machinery furnished, and on the moneys or other considerations due or to become due from the owner under the original contract."

¶ 28 The final section of the Act referenced by the parties is section 11, which establishes the pleading requirements for a party wishing to file a mechanic's lien. *Id.* § 11. Subsection (b) of section 11 provides:

> "Each claimant shall make as parties to its pleading (hereinafter called 'necessary parties') the owner of the premises, the contractor, all persons in the chain of contracts between the claimant and the owner, all persons who have asserted or may assert liens against the premises under this Act, and any other person against whose interest in the premises the claimant asserts a claim." *Id.* § 11(b).

¶ 29 C. American Steel's Authority to Issue a Section 34 Demand

¶ 30 Whether American Steel qualifies as one of the categories of parties enumerated in section 34 is a question of statutory construction. The "fundamental rule of statutory construction *** is to give effect to the intent of the legislature." *State v. Mikusch*, 138 Ill. 2d 242, 247 (1990). We have long recognized that the "best evidence of legislative intent is the language of the statute, which should be given its plain and ordinary meaning." *In re Application of the County Collector*, 2022 IL 126929, ¶ 19.

¶ 31 American Steel makes two arguments in support of its position that, as a subcontractor, it had authority to issue a section 34 demand on K&K. The first is that it qualifies as a "lienor" as that term is used in the Act, and the second is that it qualifies as a party "interested in the real estate" under the Act.

¶ 32 1. American Steel as a "Lienor"

¶ 33 The Act does not define "lienor" with any specificity. According to Black's Law Dictionary, "lienor" is a variation of the word "lienholder," which simply means "[a] person having or owning a lien." Black's Law Dictionary (11th ed. 2019). American Steel argues that it clearly qualifies as a lienor, as is made clear by the definitions in sections 1 and 21 of the Act.

¶ 34 Under section 1, the definition of a "contractor" includes a party who contracts with someone "whom the owner has authorized or knowingly permitted to contract, to improve the lot or tract of land." 770 ILCS 60/1 (West 2020). The Act defines "sub-contractor" in section 21 as "every mechanic, worker or other person" who furnishes "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." *Id.* § 21.

¶ 35 Sections 1 and 21 also both contain additional language expressly recognizing that contractors and subcontractors have lienholder rights. A contractor "has a lien upon" the premises, which "attaches as of the date of the contract" (*id.* § 1), while a subcontractor's lien attaches on the date the cost of its services becomes due (*id.* § 21). Relying on these definitional provisions, American Steel argues that it is a lienor by virtue of its status as either a contractor or a subcontractor, as those terms are defined in the Act, and as a lienor, it had authority to issue its section 34 demand.

¶ 36 K&K makes several arguments in response. First, it takes issue with American Steel's reference to the statutory definition of "sub-contractor" provided in section 21, claiming that it forfeited any right to invoke that section when it failed to raise the issue in the circuit court. But as American Steel explains in its reply brief, it mentions section 21 for additional textual support of its position that it qualifies as a "lienor" under the Act. Further, as this appeal concerns statutory interpretation, we consider the statute in its entirety, meaning "[w]ords and phrases should not be construed in isolation but must be interpreted in light of other relevant provisions of the statute." *People ex rel. Madigan v. Wildermuth*, 2017 IL 120763, ¶ 17. We thus reject K&K's forfeiture argument.

¶ 37 K&K next points to subsequent language in sections 1 and 21 indicating that the lienholder rights recognized in these sections are limited to "the amount due" to the contractor (770 ILCS 60/1 (West 2020)), or, in the case of a subcontractor, to the "value thereof, with interest" of whatever labor and materials were furnished by the subcontractor "from the date the same is due" (*id.* § 21). This clarifying language is relevant, K&K insists, because it demonstrates that there is no lien and thus no lienor, until the party with the right to assert a lien is actually owed something. Here, while K&K concedes that American Steel had inchoate lien rights by virtue of its status as either a contractor or a subcontractor, it argues that, because American Steel never alleged that "any monies were due" to it, its complaint to clear title insufficiently demonstrated that it was a lienor at the time it sent its section 34 demand. We reject this argument.

¶ 38 As American Steel explains in its reply brief, if, as K&K asserts, lien rights are only provided when "the contractor is presently due money," then "no one receiving a Section 34 notice would be able to determine if the notice was valid, unless the person receiving the notice was also privy to the financial records of the entity sending the notice." Further, even if we were to accept the premise of K&K's argument, American Steel attached to its complaint several exhibits establishing that it was in fact owed a debt, such as its contracts with both Maris and K&K, several change orders, and an e-mail it sent to K&K notifying it that it was behind schedule. American Steel also clearly stated on the second page of its complaint that "[a]s of December 17, 2020, Plaintiff had an interest in title to the Premises as it held inchoate mechanics lien rights against title to the Premises, which rights were being diminished by the existence of the mechanics lien claim recorded by K&K against title to the Premises." As American Steel noted at oral argument, to the extent that, even with all this information, its complaint insufficiently demonstrated that it was a lienor for failing to include information establishing that it was owed a debt, this was a defect that could have been easily fixed by simple technical amendment, rather than dismissal with prejudice.

¶ 39 K&K's final argument is that, even if contractors and subcontractors have lienholder rights under the Act, there is a substantive difference between merely possessing "inchoate mechanics lien rights" and possessing a "fully developed lien." Only those who possess the latter, K&K argues, should be properly understood to be "lienors" under the Act. We do not find this argument persuasive, as K&K's narrow interpretation of "lienor" is undermined by the plain text of the Act.

¶ 40 Section 34 does not refer to a lienor who has asserted its lien; it merely says "lienor." Likewise, sections 1 and 21 use the term "lien," not "perfected lien" or "asserted lien" or any other qualified form of the word lien that would lend support to K&K's interpretation. The only section of the statute referenced by the parties where the legislature makes any distinction between those with "inchoate liens" (to use K&K's language) and those who have "asserted liens" is section 11, which sets out the necessary parties for mechanic's liens. And there the distinction is functionally meaningless, as both persons "who have asserted" and persons who "*may* assert liens against the premises" are considered necessary parties. (Emphasis added.) *Id.* § 11(b).

¶ 41 While K&K is, of course, correct that there is a meaningful distinction between a party that merely has a statutory right to assert a lien when it is owed something and a party that actually asserts that lien, that distinction is irrelevant in this context. A context in which that might matter would be, for example, a case involving a dispute between creditors over whose debt has priority. See, *e.g.*, *Federal National Mortgage Ass'n v. Kuipers*, 314 Ill. App. 3d 631 (2000). Here, the issue is lien existence, not lien enforcement. The lien held by American Steel is a creature of the statute, bestowed upon it by virtue of its status as a contractor or subcontractor. It exists even if American Steel has not yet made the necessary filings to enforce it. See *W.W. Brown Construction Co. v. Central Illinois Construction Co.*, 234 Ill. 397, 402-03 (1908) ("the lien exists whether notice is given or not"); *Robertson v. Huntley & Blazier Co.*, 351 Ill. App. 378, 383-85 (1953) ("[t]he lien given by the statute exists from the date of the original contract, but notice of the claim of lien must be given within the time required by statute to preserve and enforce it").

¶ 42 The question here is simply whether American Steel was a lienor when it sent its demand letter. For the purposes of this dispute, just how developed that lien was—whether it was "inchoate" or not—is beside the point. In our view, under the plain language of sections 1 and 21 of the Act, by virtue of its status as either a contractor or a subcontractor, American Steel was a lienor at the time it sent its demand letter.

¶ 43 2. American Steel as a "Person Interested in the Real Estate"

¶ 44 American Steel argues that, in addition to its status as a lienor, it also has authority under section 34 because it is a "person interested in the real estate." While section 34 itself provides no definition of "any person interested in the real estate," American Steel urges us to look to section 11 of the Act, which sets out the necessary parties for mechanic's liens, for guidance on what the legislature meant by "interest" in this context. See 770 ILCS 60/11, 34 (West 2020).

¶ 45 Under section 11, necessary parties include

> "the owner of the premises, the contractor, all persons in the chain of contracts between the claimant and the owner, all persons who have asserted or may assert liens against

the premises under this Act, and any other person against whose interest in the premises the claimant asserts a claim." *Id.* § 11(b).

This last catch-all category, referring to "any *other* person against whose *interest* in the premises the claimant asserts a claim" (emphases added) (*id.*), references back to the prior more specific categories as examples of persons with an "interest" in the premises. Thus, under the plain language of section 11, any person in the chain of contracts and any person who may assert a lien are persons with an "interest" in the premises. American Steel was, indisputably, both a person in the chain of contracts and a person who could assert a lien. It argues that, if it would fall within the definition of a person with an "interest" in the premises under section 11, it follows that it also falls within the definition of a person "interested" in the real estate under section 34.

¶ 46 Put in simpler terms, American Steel's argument here is that all parties entitled to notice under section 11 as necessary parties also have authority under section 34 to issue a demand to commence litigation. While, of course, the question of whether a party qualifies as a necessary party under section 11 is distinct from whether it has authority to issue a section 34 demand, the two sections are related insofar as both are fundamentally concerned with protecting the rights of those parties with a material interest that could potentially be negatively affected by the filing of a lien; they just go about it in different ways. Section 11 requires that anyone filing a mechanic's lien notify all the parties whose material interests could potentially be negatively affected by the filing of the lien. Section 34, in contrast, provides a procedural mechanism for these same parties—those with a material interest that could potentially be negatively affected by the filing of a lien—to force the issue and compel the person who filed the lien to commence to enforce the lien within 30 days or the lien shall be forfeited.

¶ 47 While we understand the appeal of American Steel's interpretation of the relationship between sections 11 and 34, K&K raises a compelling argument in response: "had the legislature intended the Section 11 'necessary parties' to be the same as those parties with authority under Section 34, why did the Legislature not simply use the same definition in both sections?" This point is well taken. We are dealing here with an old statute that has been amended several times. Section 11 was last amended in 2006 (see Pub. Act 94-627 (eff. Jan. 1, 2006) (amending 770 ILCS 60/11)), and section 34 was last amended in 2019 (see Pub. Act 100-1061, § 10 (eff. Jan. 1, 2019) (amending 770 ILCS 60/34)). If the legislature intended for sections 11 and 34 to be coextensive, it could have said so or at least used similar rather than divergent language in the two sections.

¶ 48 In this case, we can decide the issue on narrower grounds. Since American Steel qualified as a lienor at the time it sent its demand letter, we need not resolve if it was also a person interested in the real estate.

¶ 49 IV. CONCLUSION

¶ 50 As a "lienor," American Steel was authorized to issue its demand to commence suit under section 34 of the Act. Accordingly, the circuit court erroneously granted K&K's motion to dismiss for lack of authority under the statute. We reverse the dismissal and remand for further proceedings consistent with this opinion.

¶ 51 Reversed and remanded.