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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

REGIONAL BUILDERS, INC.,

Plaintiff, Cross-defendant
and Appellant,

v.

BRIAN HUGHES et al.,

Defendants, Cross-
complainants and Respondents.

C065392

(Super. Ct. No.
34200900055173CUBCGDS)

Plaintiff Regional Builders, Inc. (Builders) appeals from an order granting respondents Brian and Karen Hughes (the Hugheses) petition to expunge a mechanics lien by Builders

against property owned by the Hugheses. (Civ. Code,¹ §§ 3144, 3154.) We find no error² and shall affirm.

BACKGROUND

The relevant facts are undisputed, and the timing of these events is central to the dispute.

On August 10, 2009, Builders filed a complaint against the Hugheses, alleging causes of action for breach of contract and common counts, and seeking damages of \$230,000 for labor and materials supplied to the Hugheses for construction at their home. Builders attached to the complaint a copy of its written contract with the Hugheses and, in addition to damages, interest, and attorney fees, prayed for "such relief as is fair, just and equitable[.]"

On October 2, 2009, Builders recorded a mechanics lien³ against the Hugheses property in the amount of \$117,435.20.

¹ Further undesignated statutory references are to the Civil Code.

² We returned the Hugheses brief unfiled for noncompliance with certain rules of the California Rules of Court. Despite our invitation to make corrections and resubmit the brief for filing, the Hugheses subsequently failed to file a brief. Both parties appeared for oral argument, but we declined the Hugheses' request to be heard. (See California Rules of Court, rule 8.220(a)(2).)

"[W]e do not treat the failure to file a respondent's brief as a 'default' (i.e., an admission of error) but examine the record, [appellants'] brief, and any oral argument by appellant[s] to see if [they] support[] any claims of error made by the appellant[s]. [Citations.]" (*In re Marriage of Riddle* (2005) 125 Cal.App.4th 1075, 1078, fn. 1.)

In March 2010, Builders sought leave to file an amended complaint to add a cause of action for foreclosure on its mechanics lien. The Hugheses opposed the motion, arguing that the proposed cause of action for foreclosure on the mechanics lien was barred by section 3144, which requires an action to foreclose on a mechanics lien be filed no later than "90 days after" the lien was recorded. The trial court granted the motion by Builders, but noted in its minute order that the Hugheses could challenge the amended complaint by demurrer and "may ultimately prevail" on their argument that the mechanics lien cause of action was barred by the statute of limitations.

Builders filed its amended complaint on March 18, 2010, adding a cause of action for foreclosure of its October 2009 mechanics lien.⁴

The Hugheses then filed a petition to expunge the mechanics lien, which is the subject of the instant appeal, arguing that the lien by Builders was void as a matter of law because it failed to file "an action to foreclose the lien" within "90 days

³ "Mechanics lien" has also been spelled both "mechanic's lien" (see *T.O. IX, LLC v. Superior Court* (2008) 165 Cal.App.4th 140, 144) and "mechanics' lien" (see *Connolly Development, Inc. v. Superior Court of Merced County* (1976) 17 Cal.3d 803, 811). We follow the Legislature which, in its recent recodification of the applicable statutes, dropped the apostrophe. (See § 8000 et. seq.; Stats. 2010, ch. 697, § 20; see 4 Witkin, Summary of Cal. Law (2008 & 2011 supp.) Sec. Trans. in Real Prop., § 31B, p. 125.)

⁴ At some point, the Hugheses cross-complained against Builders; the cross-complaint is not in the record.

after the recording of the claim of lien," as required by section 3144.

Builders argued in opposition, as it now does on appeal, that: (1) the original complaint's omnibus prayer for "fair, just and equitable" relief implicitly included enforcement of a mechanics lien; (2) the foreclosure cause of action in the amended complaint was timely because it "related back" to the original complaint; and, (3) the presence of a foreclosure claim in the amended complaint precluded the Hugheses' petition.

The trial court rejected Builders arguments, and granted the Hugheses' petition to expunge the mechanics lien. It reasoned that the foreclosure cause of action in the amended complaint could not relate back to the original complaint because Builders did not record the lien until *after* it filed the original complaint, and the amended complaint could not revive a lien which had been rendered "null and void" by virtue of the passage of more than 90 days. (§ 3144, subd. (b).) This appeal followed.

DISCUSSION

I

Mechanics Liens and Standard of Review

"Mechanics, persons furnishing materials, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens." (Cal. Const., art. XIV, § 3; see

Connolly Development, Inc. v. Superior Court, supra, 17 Cal.3d at p. 808.)

As the mechanics lien is the only creditors' remedy stemming from constitutional command, our courts "have uniformly classified the mechanics' lien laws as remedial legislation, to be liberally construed for the protection of laborers and materialmen." [Citation.] (*Coast Central Credit Union v. Superior Court* (1989) 209 Cal.App.3d 703, 708 (*Coast Central*.) But the constitutional provision "is not self-executing, and is inoperative except as supplemented by legislation." (*Coast Central*, supra, 209 Cal.App.3d at p. 709.) Thus, the Legislature has the power "reasonably to regulate and to provide for the exercise of the right, the manner of its exercise, the time when it attached, and the time within which and the persons against whom it could be enforced." (*Coast Central*, supra, at p. 709; see § 3082 et seq.)⁵

The mechanics lien statutes at issue in this case are sections 3144 and 3154. We review the trial court's construction and application of these statutes de novo, as the decisive facts are undisputed. (*City of San Jose v. International Assn. of Firefighters, Local 230* (2009)

⁵ The existing mechanics lien law was repealed and replaced in 2010, effective July 1, 2012. (See § 8000 et. seq.; Stats. 2010, ch. 697, § 20; see 4 Witkin, Summary of Cal. Law (10th ed. & 2011 supp.) Sec. Trans. in Real Prop., § 31A, supp. pp. 122-123.)

178 Cal.App.4th 408, 424 [questions of statutory interpretation are subject to de novo review].)

Generally, doubts concerning the meaning of the mechanics lien statutes are resolved in favor of the claimant. (*T.O. IX, LLC v. Superior Court, supra*, 165 Cal.App.4th at p. 146.) This does not mean, however, that lien laws are to be "applied blindly without regard to the rights of property owners." (*Baker v. Hubbard* (1980) 101 Cal.App.3d 226, 233.) Rather, courts have also recognized that the mechanics lien laws are intended to protect both the owner whose title is clouded by a lien and the lien claimant. Thus, courts must balance the interests of both parties. (*Borchers Bros. v. Buckeye Incubator Co.* (1963) 59 Cal.2d 234, 238-239.)

II

Section 3144 and the 90-Day Requirement

Section 3144 states that "[n]o [mechanics'] lien . . . binds any property for a longer period of time than 90 days after the recording of the claim of lien, unless within that time an action to foreclose the lien is commenced[.]" (§ 3144, subd. (a).) If the lien claimant then "fails to commence an action to foreclose the lien within the time limitation provided in this section, the lien automatically shall be null and void and of no further force and effect." (§ 3144, subd. (b).)

It is undisputed that more than 90 days had elapsed since Builders recorded its mechanics lien by the time it amended its complaint to add a cause of action for foreclosure on the mechanics lien. The consequence of failure to commence an

action to foreclose on a mechanics lien within 90 days after the lien was recorded is stated in subdivision (b) of section 3144: if an action to foreclose the lien is not commenced "within the time limitation provided in this section," the lien is automatically null and void. (§ 3144, subd. (b).) The only "time limitation provided in this section" is the 90-day period that begins to run "after the recording of the claim of lien[.]" (§ 3144, subd. (a).) Because Builders failed to commence an action to foreclose the mechanics lien within that period, its mechanics lien was automatically rendered "null and void." (See *Solit v. Tokai Bank* (1999) 68 Cal.App.4th 1435, 1443 (*Solit*).)

Builders contends the statute permits an action to foreclose on a mechanics lien to "be filed *prior* to the mechanic's lien being recorded" (italics added) so long as "the action ripens" within 90 days of the recording. It claims the original complaint can fairly be categorized as such an action. We disagree with both contentions.

First, we note that a prayer for all "just and equitable" relief available under a breach of contract cause of action, without more, cannot fairly be read to constitute a cause of action to foreclose a mechanics lien *that did not yet exist*. Nor did the parties' agreement that Builders "may record mechanics liens and sue . . . in court to foreclose the lien" (CT 10) put the Hugheses on notice that Builders intended to record a lien, let alone that it would do so successfully. (See *Halbert's Lumber, Inc. v. Burdett* (1988) 202 Cal.App.3d Supp.

14, 17 [the "right to a mechanic[s] lien depends upon strict compliance" with the applicable statutes].)

Further, the plain meaning of the statute precludes Builders interpretation that the 90-day period somehow applies to a time period other than that between the recording of the lien and the filing of the foreclosure action. Section 3144, subdivision (a) states that a mechanics lien cannot bind the subject property "longer . . . than 90 days after the recording of the claim of lien unless within that time an action to foreclose is commenced[.]" The 90-day period thus begins by its own terms to run only "after the recording of the lien[.]" not before, as Builders suggests. The phrase "within that time" in the same sentence clearly refers to the time period identified in the preceding clause of the same sentence, that is, "90 days after the recording of the claim of lien[.]" The lien survives past 90 days after it is recorded only if "an action to foreclose the lien is commenced" within 90 days after the lien was recorded. Otherwise, it becomes null and void.

III

Section 3154

Our interpretation of the 90-day requirement contained within section 3144 is supported by section 3154, which provides that a property owner can obtain a recordable decree, so that the title records reflect that a specific lien has, by operation of section 3144, automatically become "null and void and of no further force and effect." (*Solit, supra*, 68 Cal.App.4th at p. 1443.)

"Under section 3154, after expiration of the 90-day period within which a foreclosure action must be commenced after a lien is recorded, if no action has been commenced to enforce such lien, and if the claimant is unable or unwilling to execute a release of the lien or cannot with reasonable diligence be found, then the owner of the property or the owner of any interest therein may petition the court for a decree to release the property from the lien." (*Solit, supra*, 68 Cal.App.4th at p. 1443.) Section 3154 thus provides an "expedited procedure" by which "a judgment in favor of the petitioner results in a decree which, when recorded, will mean that the property described in the decree 'shall be released from the lien'."⁶

⁶ Section 3154 provides in material part: "(a) At any time after the expiration of the time period specified by Section 3144 with regard to the period during which property is bound by a lien after recordation of a claim of lien, where no action has been brought to enforce that lien, the owner of the property or the owner of any interest therein may petition the proper court for a decree to release the property from the lien.

"(b) The petition shall be verified and shall allege all of the following:

"(1) The date of recordation of the claim of lien.

"(2) The legal description of the property affected by the claim of lien.

"(3) That no action to foreclose the lien is pending, or that no extension of credit has been recorded, and that the time period during which suit can be brought to foreclose the lien has expired.

"(4) That the lien claimant is unable or unwilling to execute a release of the lien or cannot with reasonable diligence be found.

(*Solit, supra*, at p. 1443.) See also *Koudmani v. Ogle Enterprises, Inc.* (1996) 47 Cal.App.4th 1650, 1657-1658 ["the tangible lien created by the timely recordation of a claim of lien becomes null and void if no foreclosure action is commenced within 90 days after recordation"]; see also *Automatic Sprinkler Corp. v. Southern Cal. Edison Co.* (1989) 216 Cal.App.3d 627, 630.)

Treatises agree, explaining that "[i]n order to perfect the mechanics' lien the claimant must file a complaint to foreclose the lien in the proper court within 90 days after the claim of lien is recorded." (10 Miller & Starr, *Cal. Real Estate* (3d ed. 2001) § 28:65, p. 207; see also 1 Marsh, *Cal. Mechanics' Lien*

"(5) That the owner of the property or interest in the property has not filed for relief under any law governing bankruptcy, and that there exists no other restraint to prevent the lien claimant from filing to foreclose the lien. A certified copy of the claim of lien shall be attached to the petition. The petition shall be deemed controverted by the lien claimant.

"[¶] . . . [¶]

"(f) In the event judgment is rendered in favor of the petitioner, the decree shall indicate all of the following:

"(1) The date the lien was recorded.

"(2) The county and city, if any, in which the lien was recorded.

"(3) The book and page of the place in the official records where the lien is recorded.

"(4) The legal description of the property affected. Upon the recordation of a certified copy of the decree, the property described in the decree shall be released from the lien. . . ."

Law (6th ed. Lexis Nexis Matthew Bender 2010) § 4.40, pp. 4-57 ["At the time of recordation, it should be specifically requested that the recorded instrument be returned in due course, and also the Recorder's serial number should be obtained for ready reference in the meantime. Then, immediately, the case must be calendared *for filing complaint to foreclose within 90 days following the date of recordation of the notice and claim of lien*. This filing time is mandatory"]; Cal. Mechanic's Liens and Related Construction Remedies (Cont.Ed.Bar 3d ed. 2005) § 3.49, p. 154.1 ["A recorded mechanics' lien is released by operation of law if the claimant does not bring a lien foreclosure action within 90 days after the lien was recorded"]; see also 4 Witkin, Summary of Cal. Law, *supra*, Sec. Trans. in Real Prop., § 29, pp. 822-823.)

IV

Relation Back Doctrine

Builders also argues the foreclosure action contained in its amended complaint, filed well after 90 days had elapsed from the lien's recording, should be considered timely because it "relates back" to the original complaint. We are not persuaded.

An amended complaint is considered a new action for purposes of a statute of limitations only if the claims do not "relate back" to an earlier, timely filed complaint. Under the relation-back doctrine, an amendment relates back to the original complaint if the amendment: (1) rests on the same general set of facts; (2) involves the same injury; and (3) refers to the same instrumentality. (*Pointe San Diego*

Residential Community, L.P. v. Procopio, Cory, Hargreaves & Savitch, LLP (2011) 195 Cal.App.4th 265, 276 (*Pointe*) and cases cited therein.) However, the doctrine will not apply if the “the plaintiff seeks by amendment to recover upon a set of facts entirely unrelated to those pleaded in the original complaint.” [Citation.]” (*Pointe, supra*, 195 Cal.App.4th at p. 277.)

In determining whether the amended complaint alleges facts that are sufficiently similar to those alleged in the original complaint, the critical inquiry is whether the defendant had adequate notice of the claim based on the original pleading. (*Pointe, supra*, 195 Cal.App.4th at p. 277.) “The policy behind statutes of limitations is to put defendants on notice of the need to defend against a claim in time to prepare a fair defense on the merits. This policy is satisfied when recovery under an amended complaint is sought on the same basic set of facts as the original pleading. [Citations.]” (*Pointe, supra*, at p. 277; see also *Benfield v. Mocatta Metals Corp.* (2d Cir. 1994) 26 F.3d 19, 23 [finding that for relation-back doctrine to apply, “there must be a sufficient commonality” of alleged acts of wrongdoing to preclude a claim of “unfair surprise”].)

The original complaint contains no mention of an extant mechanics lien. Indeed, it is undisputed that the lien *did not yet exist*. Nor do we agree that the cause of action for breach of contract was sufficient to place the Hugheses on notice that a “foreclosure was included” merely because a mechanics lien is among the *possible* enumerated remedies for breach identified in

the contract. Indeed, the statutory scheme contemplates that the recording of a mechanics lien itself will give the property owner both notice of the amount claimed by the mechanic and of the existence of a lien on the property to secure payment. (See, *inter alia*, § 3084.) As the necessary predicate to a foreclosure action--a valid lien, properly recorded--*did not exist* when the original complaint was filed, we cannot say that the original complaint gave notice that a foreclosure action was among the contemplated consequences of Builders prevailing on its breach of contract claim.

Although we agree that courts have held that the relation-back doctrine applied in some mechanics lien cases, these cases are distinguishable. (See *Sobeck & Associates, Inc. v. B & R Investments No. 24* (1999) 215 Cal.App.3d 861, 867 [doctrine applied to allow a plaintiff to amend its complaint under the fictitious names statute and substitute a named defendant in place of a previously designated Doe defendant]; *Wachovia Bank v. Lifetime Industries, Inc.* (2006) 145 Cal.App.4th 1039, 1050-1051 [doctrine applied to relate the lien back to the date the first labor or material was furnished for the work or improvement, therefore an interest in the property acquired after work has begun but before the claim of lien is recorded is subject to the lien]; see also *Tesco Controls, Inc. v. Monterey Mechanical Co.*, (2004) 124 Cal.App.4th 780, 793 ["The relation-back doctrine feature of mechanics' liens is of particular importance to construction lenders. Lenders who have made loans after the commencement of work on a jobsite have found their

loans subordinate to mechanics' liens arising out of work performed or material delivered after trust deeds securing those loans were recorded because some work was performed or materials delivered before recordation. [Citations.] Accordingly, lenders typically require releases of existing lien rights before they will make progress payments on construction loans"].) These cases are not at all analogous to the facts presented here.

V

Pending Lien

Finally, we reject Builders contention that the Hugheses' petition to expunge the lien was defective because section 3154 requires the petitioner applicant to aver (among other things) that "no action to foreclose the lien is pending" (§ 3154, subd. (b)(3)). Although Builders claims that at the time the petition was filed, the amended complaint to foreclose the lien was pending, the lien was already null and void.

As we have explained, the mechanics lien recorded by Builders automatically became null and void 90 days after it was filed, as no action to foreclose upon the lien was commenced during that period. When the Hugheses thereafter petitioned to expunge the lien, there was no lien, thus no valid claim of foreclosure. To construe section 3154 otherwise would render inoperative section 3144, subdivision (b), which voids any lien upon which a timely foreclosure action has not been filed. (See *Schmitt v. Tri Counties Bank* (1999) 70 Cal.App.4th 1234, 1242.)

DISPOSITION

The orders of the trial court are affirmed. The Hugheses shall recover their costs on appeal. (Cal. Rules of Court, rule 8.278(a)(2).)

DUARTE, J.

We concur:

RAYE, P. J.

ROBIE, J.