

STATE OF MINNESOTA

FILED

DISTRICT COURT

COUNTY OF SCOTT

OCT 23 2009 A

FIRST JUDICIAL DISTRICT

Case Type: Mechanic's Lien Foreclosure

SCOTT COUNTY COURTS

In re M.W. Johnson Construction, Inc.
Mechanic's Lien Foreclosure Litigation

Consolidated Master Court File: 70-CV-09-7343

Judge: Jerome B. Abrams

Wenzel Plumbing & Heating, Inc.,

Scott County Court File: 70-CV-09-7909

Plaintiff,

Dakota County Court File: 19HA-CV-08-1622

vs.

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, ORDER FOR SUMMARY
JUDGMENT AND JUDGMENT**

Bridget A. Gjerde; U.S. Bank National
Association, N.D.; Bernco, a division
of United Building Centers, n/k/a Dee-
Co Holdings, Inc.; XYZ Corporation;
ABC Partnership; John Doe and Mary
Roe, whose true names are to the
Plaintiff unknown

Defendants.

The above-captioned matter came on for hearing before the undersigned Judge of District Court on August 5, 2009, pursuant to Plaintiff Wenzel Plumbing & Heating, Inc.'s ("Wenzel") Motion for Summary Judgment. Gary G. Fuchs, Esq. appeared on behalf of Wenzel. Steven R. Little, Esq. appeared on behalf of Defendants Bridget A. Gjerde ("Gjerde") and U.S. Bank National Association, N.D. ("U.S. Bank"). The Court, having been fully advised in the premises, together with all of the files and proceedings herein, makes the following:

FINDINGS OF FACT

1. This mechanic's lien foreclosure action involves certain real property located in Dakota County, Minnesota, legally described as follows:

Lot 11, Block 2, Bristol Square Fifth Addition and interest attributable to common area known as Lot 12, Block 2, CIC No. 504

(the "Property").

2. Wenzel entered into a contract or series of contracts with M.W. Johnson Construction, Inc. under which Wenzel provided certain plumbing materials and labor for the improvement of the Property.

3. M.W. Johnson sold the Property to Gjerde by way of a warranty deed dated August 3, 2007, recorded with the Dakota County Recorder on October 3, 2007, as Document No. 2547976. Gjerde is the current fee owner of the Property.

4. U.S. Bank is the holder of a mortgage dated August 3, 2007, secured by the Property, given by Gjerde, as mortgagor, in favor of U.S. Bank, as mortgagee, recorded with the Office of the Dakota County Recorder on October 3, 2007, as Document No. 2547977 ("U.S. Bank Mortgage").

5. Wenzel recorded a blanket mechanic's lien statement against the Property dated August 26, 2007, in the combined original principal amount of \$20,380.00, recorded with the Office of the Dakota County Recorder on August 30, 2007, as Document No. 2540989 ("Wenzel's Mechanic's Lien Statement").

6. Wenzel's first item of improvement to the Property was June 14, 2007, and its last item of improvement to the Property was July 26, 2007.

7. Wenzel commenced this action on May 27, 2008, within one year of its last item of improvement to the Property. In its Summons and Complaint, Wenzel seeks to enforce and foreclose a pro rata amount of its blanket Mechanic's Lien in the original principal amount of \$5,095.00 against the Property.

8. Defendant Bernco, a division of United Building Centers, k/k/a Dee-Co Holdings, Inc. ("Bernco") recorded a mechanic's lien statement against the Property dated November 7, 2007, recorded with the Office of the Dakota County Recorder on November 2, 2007, as Document No. 2554078 ("Bernco Mechanic's Lien").

9. Bernco failed to answer Wenzel's Complaint or otherwise appear in this action and has not commenced a separate action to foreclose its Mechanic's Lien.

10. More than one year has passed since the last item of improvement that Bernco claimed it provided for the improvement to the Property.

11. Wenzel's Mechanic's Lien is valid in the original principal amount of \$5,095.00 and is prior and superior to the rights, title and interests of Gjerde and U.S. Bank in the Property.

CONCLUSIONS OF LAW

1. Wenzel is entitled to summary judgment.

2. Wenzel's Mechanic's Lien against the Property is valid and enforceable in the amount of \$5,095.00 in principal together with pre-judgment interest pursuant to Minn. Stat. § 514.135 in the amount of \$ 484.80 through 10-20, 2009, which continues to accrue at the rate of \$.56 per diem until entry of Judgment, together with attorneys' fees in the amount of \$ 4565.29 and costs and disbursements in the amount of \$ 711.24 for a total judgment of \$ 10,856.33.

3. Wenzel's Mechanic's Lien is prior and superior in all respects to Gjerde's and U.S. Bank's interests in the Property.

4. Bernco's Mechanic's Lien is expired and is void and of no affect against the Property pursuant to Minn. Stat. § 514.012, subd. 3.

5. Wenzel's Mechanic's Lien shall be foreclosed and the Property sold by the Sheriff of Dakota County, Minnesota at a public auction in the manner provided by Minnesota Stat. § 514.15.

6. The proceeds of said sale shall be applied first to the payment of costs and expenses of the sale and then to payment of the amounts adjudged to be due and owing to Wenzel with interest at the judgment rate provided herein from the date this judgment is entered to the date of said sale.

7. The sale shall be reported to and made subject to the approval of this Court. At that time, Wenzel may make application to the Court for an additional award of attorneys' fees and costs incurred in connection with the sale.

8. All the parties herein, and all persons claiming under them or any of them, shall be forever barred and foreclosed from any equity of redemption and all right, title and interest, lien or claim in the Property, except that Gjerde and her legal representatives, successors, and assigns shall have the right to redeem the Property from said sale in accordance with Minn. Stat. § 514.15 within six (6) months from the date of the order confirming said sale and persons having junior liens, specifically the holder of the U.S. Bank Mortgage, shall therefore have such redemption rights as provided by statute for junior lienholders.

ORDER FOR JUDGMENT

1. Wenzel's Motion for Summary Judgment is hereby GRANTED.
2. There is no just reason for delay of entry of final judgment as provided herein, and the District Court Administrator is directed to immediately enter final judgment in accordance with these Findings of Fact and Conclusions of Law.
3. The Dakota County Recorder shall accept a certified copy of these Findings of Fact, Conclusions of Law and Order for Judgment against the Property legally described in Paragraph 1 of these Findings

BY THE COURT:



Jerome B. Abrams
Judge of District Court
Court File Nos. 70-CV-09-7343
and 70-CV-09-7909

Dated: 10-21, 2009

JUDGMENT

I DO HEREBY CERTIFY THAT THE FOREGOING ORDER
CONSTITUTES THE JUDGMENT OF THIS COURT.

DATE 10-23-09

GREGORY M. ESS
COURT ADMINISTRATOR, SCOTT COUNTY, MINN.

DEPUTY *Audreyk Brown*