

STATE OF MINNESOTA

**FILED**

DISTRICT COURT

COUNTY OF SCOTT

OCT 23 2009 A  
SCOTT COUNTY COURTS

FIRST JUDICIAL DISTRICT  
Case Type: Mechanic's Lien Foreclosure

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

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

Judge: Jerome B. Abrams

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Wenzel Plumbing & Heating, Inc.,

Scott County Court File: 70-CV-09-8025

Plaintiff,

Dakota County Court File: 19HA-CV-08-1623

vs.

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

M.W. Johnson, Construction, Inc.;  
Jeffrey S. Duncan; Wells Fargo Bank,  
N.A.; Cemstone Products Co., Berneo,  
a division of Dee-Co Holdings, Inc.;  
Pyramid Enterprises, Inc.; Ryan  
Contracting Company; XYZ  
Corporation; ABC Partnership; John  
Doe and Mary Roe, whose true names  
are to the Plaintiff unknown,

Defendants.

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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 Jeffrey S. Duncan ("Duncan") and Wells Fargo Bank, N.A. ("Wells Fargo"). 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 6, Block 4, Sunrise Ponds, LLC

(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 Duncan by way of a warranty deed dated July 11, 2007, recorded with the Dakota County Recorder on August 9, 2007, as Document No. 2514202. Duncan is the current fee owner of the Property.

4. Wells Fargo is the holder of a mortgage dated July 11, 2007, secured by the Property, given by Duncan, as mortgagor, in favor of Wells Fargo, as mortgagee, recorded with the Office of the Dakota County Recorder on August 9, 2007, as Document No. 2536131 (the "Wells Fargo Mortgage").

5. Wenzel recorded a mechanic's lien statement against the Property dated August 7, 2007, in the original principal amount of \$10,400.00, with the Office of the Dakota County Recorder on August 9, 2007, as Document No. 2536057 ("Wenzel's Mechanic's Lien Statement").

6. Wenzel's last item of improvement to the Property was June 26, 2007.

7. Wenzel commenced this action on May 27, 2008, within one year of its last item of improvement to the Property.

8. Wenzel's Mechanic's Lien is valid in the original principal amount of \$10,400.00 and is prior and superior to the rights, title and interests of Duncan and Wells Fargo in the Property.

9. Defendant Bernco, a division of United Building Centers, n/k/a Dee-Co Holdings, Inc. ("Bernco") recorded a mechanic's lien statement against the Property dated October 17, 2007, with the Office of the Dakota County Recorder on October 17, 2007, as Document No. 2550920 ("CCS Mechanic's Lien Statement").

10. 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.

11. More than one year has passed since the last item of improvement of July 6, 2007, that Bernco claimed it provided for the improvement to the Property as set forth in its Mechanic's Lien Statement.

12. Defendant Cemstone Products, Co. ("Cemstone") recorded a mechanic's lien statement against the Property dated September 18, 2007, with the Office of the Dakota County Recorder on September 18, 2007, as Document No. 2544696 ("Cemstone Mechanic's Lien Statement").

13. Cemstone 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.

14. More than one year has passed since the last item of improvement of May 23, 2007, that Cemstone claimed it provided for the improvement to the Property as set forth in its Mechanic's Lien Statement.

15. By Order dated December 22, 2008, the Court in Dakota County Court File No. 19HA-CV-08-1625, *inter alia*, dismissed all of Defendant Ryan Contracting Company's claims against Wenzel and Third-Party Defendants without prejudice.

**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 \$10,400.00 in principal, together with pre-judgment interest pursuant to Minn. Stat. § 514.135 in the amount of \$ 1025.19 through 10-20, 2009, which continues to accrue at the rate of \$ 1.14 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 \$ 16,701.72
3. Wenzel's Mechanic's Lien is prior and superior in all respects to Duncan's and Wells Fargo's interests in the Property.
4. The Mechanic's Liens of Bernco and Cemstone have expired and are void and of no affect against the Property pursuant to Minn. Stat. § 514.012, subd. 3.
6. 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.
7. 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.

8. 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.

9. 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 Duncan and his 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 Wells Fargo 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:

  
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Jerome B. Abrams  
Judge of District Court  
Court File Nos. 70-CV-09-7343  
and 70-CV-09-8025

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 Audrey K Brown