

STATE OF MICHIGAN
COURT OF APPEALS

TERRY R. BAKER, d/b/a KATER
ENGINEERING ASSOCIATION,

Plaintiff-Appellee,

v

HBI,

Defendant,

and

GREWAL DEVELOPMENT, LLC.,

Defendant-Appellant.

UNPUBLISHED
June 12, 2007

No. 265994
Ingham Circuit Court
LC No. 04-001196-CH

Before: Markey, P.J., and Sawyer and Bandstra, JJ.

PER CURIAM.

Following a bench trial, the circuit court found that defendant was liable to plaintiff based on plaintiff's valid construction lien and under a theory of quantum meruit. We agree that plaintiff should be permitted to recover based on the construction lien and therefore affirm.

Plaintiff began work on the project—which involved the development of real property for use as a manufactured home community—at issue in this case in April 2000. Plaintiff performed various services for the property's first owner, Wayne Hull of HBI. Hull eventually lost his right to the property, and it was purchased by defendant, who had become an investor in the property at some point. Manvir Grewal testified for defendant at trial that his company purchased the property only so that it would not lose its investment and was not otherwise interested in developing the property. In addition, the relevant township revoked the property's zoning status as a residential property and zoned it for agricultural use only.

In litigation unrelated to the present action, HBI sued the township for the right to develop the property for residential use. Plaintiff testified for HBI and defendant as an intervenor about the property and his work on the project. This Court concluded that the property could be used for residential purposes as to HBI only, but because defendant was the current owner of the property, the issue was moot. See *HBI Corp v Locke Twp*, unpublished per curiam opinion of the Court of Appeals, issued October 5, 2004 (Docket No. 244795). Manvir

testified before the circuit court in this case that plaintiff's work with respect to the property was useless to his company because they could not develop it as a manufactured home community, and all of plaintiff's work on the property had been directed towards this purpose. Defendant argues that plaintiff's construction lien was invalid and that it was not liable to plaintiff under quantum meruit. We disagree with the first argument and, therefore, need not reach the second.

MCL 570.1119(3)¹ provides, "[a] construction lien arising under this act shall take priority over all other interests, liens, or encumbrances which may attach to the building, structure, or improvement, or upon the real property on which the building, structure, or improvement is erected when the other interests, liens, or encumbrances are recorded subsequent to the first actual physical improvement."

Similarly, section 107 of the Construction Lien Act (CLA) sets forth the circumstances under which certain parties may recover under the act. It provides that

[e]ach contractor, subcontractor, supplier, or laborer who provides an improvement to real property shall have a construction lien upon the interest of the owner or lessee who contracted for the improvement to the real property, . . . the interest of an owner who has subordinated his or her interest to the mortgage for the improvement of the real property, and the interest of an owner who has required the improvement. [MCL 570.1107(1).]

These sections trigger the existence of a construction lien upon an "actual physical improvement" or an "improvement," terms that are defined as follows:

"Improvement" means the result of labor or material provided by a contractor, subcontractor, supplier, or laborer, including, but not limited to, surveying, engineering and architectural planning, construction management, clearing, demolishing, excavating, filling, building, erecting, constructing, altering, repairing, ornamenting, landscaping, paving, leasing equipment, or installing or affixing a fixture or material, pursuant to a contract. [MCL 570.1104(7).]

"Actual physical improvement" is defined as

the actual physical change in, or alteration of, real property as a result of labor provided, pursuant to a contract, by a contractor, subcontractor, or laborer which is readily visible and of a kind that would alert a person upon reasonable inspection of the existence of an improvement. Actual physical improvement does not include that labor which is provided in preparation for that change or

¹ Plaintiff argues that this section is inapplicable here and that it did not, therefore, have to show an "actual physical improvement" to establish its lien. We need not decide that question as, in any event, we conclude that the trial court properly found that such an improvement had been made.

alteration, such as surveying, soil boring and testing, architectural or engineering planning, or the preparation of other plans or drawings of any kind or nature. Actual physical improvement does not include supplies delivered to or stored at the real property. [MCL 570.1103.]

The trial court concluded that the two wells placed upon the property qualified as an “actual physical improvement” and an “improvement” under these sections. We agree. The wells were “readily visible” upon “reasonable inspection,” and they themselves represented a “change or alteration” rather than merely the “preparation for” such a change or alteration.

We affirm on that basis and need not reach the merits of the alternative ground the trial court employed (quantum meruit) in support of its finding for plaintiff.

/s/ Jane E. Markey

/s/ David H. Sawyer

/s/ Richard A. Bandstra