

STATE OF MICHIGAN
COURT OF APPEALS

DAN ALLOR PLUMBING & HEATING, CO.,
INC.,

UNPUBLISHED
May 19, 2011

Plaintiff-Appellee,

V

No. 294256
Wayne Circuit Court
LC No. 07-728404-CK

ABBAY HOMES, L.L.C., LOCAL INITIATIVES
SUPPORT CORPORATION, CREDIT UNION
ONE, E. W. KITCHENS, INC., STOCK
BUILDING SUPPLY, L.L.C., MICHIGAN
SHELF DISTRIBUTORS, INC., DONALD CARL
LILE, GENEVA LILE, CITIMORTGAGE, INC.,
f/k/a ABN AMRO MORTGAGE GROUP, INC.,
LEWIS G. GENTRY, MULTILAKE
ENTERPRISES, INC., ROBERT E. SHIMKOSKI,
JR., and DELICIA H. SHIMKOSKI,

Defendants,

and

CHEROKEE CARPET & FLOOR COVERING,
INC.,

Defendant-Appellee,

and

BANK OF AMERICA, N.A., f/k/a LASALLE
BANK MIDWEST, N.A.,

Defendant-Appellant.

Before: CAVANAGH, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant, Bank of America, N.A. (“BOA”), appeals as of right the trial court’s August 28, 2009, order enforcing judgment and ordering payment of closing proceeds. We affirm.

BOA, the successor-in-interest of LaSalle Bank Midwest, N.A. (“LaSalle”), acquired a construction mortgage originally given by Abbey Homes, L.L.C. (“Abbey”) to JPMorgan Chase Bank for the purchase of the St. Anne’s Gate construction site and the construction of 72 condominium units on the property. On appeal, BOA argues that the trial court erred in finding that plaintiff, Dan Allor Plumbing & Heating Co., Inc.’s (“Allor”), construction lien had priority over BOA’s construction mortgage and in allowing Allor to collect the entire \$36,675.01 judgment from its construction liens on condominium units 18, 19, 20 and 21 from the net proceeds of the sale of unit 20. We disagree.

Questions regarding the interpretation and application of a statute, including the construction lien act, are reviewed de novo on appeal. *Schuster Constr Servs, Inc v Painia Dev Corp*, 251 Mich App 227, 230; 651 NW2d 749 (2002). The construction lien act constitutes remedial legislation that sets forth a comprehensive scheme aimed at securing payment for the individuals and businesses that perform construction work through equitable actions. MCL 570.1118(1); *Solution Source, Inc v LPR Assoc Ltd Partnership*, 252 Mich App 368, 373; 652 NW2d 474 (2002). It is designed to protect the rights of all subcontractors and contractors to receive payment for labor and material, and it is to be liberally construed to secure the beneficial results, intents, and purposes of the act. MCL 570.1302; *Pitsch v ESE Mich, Inc*, 233 Mich App 578, 602; 593 NW2d 565 (1999). It is well settled that the construction lien act was enacted for the dual purposes of (1) protecting the rights of lien claimants to payment for expenses and (2) protecting property owners from paying twice for these expenses. *Solution Source*, 252 Mich App at 373-374.

A mortgage is “a lien on real property intended to secure performance or payment of an obligation.” *Prime Fin Servs LLC v Vinton*, 279 Mich App 245, 256; 761 NW2d 694 (2008). A construction lien is intended to secure payment for the furnishing of labor or material for improvement of the property. MCL 570.1111(1). When there are construction liens and mortgage liens on the same property, the priority of the liens is determined from the construction lien act. MCL 570.1119. If the mortgage lien is recorded before the first physical improvement to the property, then the mortgage lien takes priority over the construction lien. *M D Marinich, Inc v Mich Nat Bank*, 193 Mich App 447, 454; 484 NW2d 738 (1992). However, if the first physical improvement to the property is made before the mortgage lien is recorded, then the construction lien takes first priority, regardless of whether the construction lien was recorded before or after the mortgage lien. *Id.*

Abbey admits that the first physical improvement to the property at issue occurred on July 14, 2004. BOA admits that Allor’s construction lien for \$2,110 on unit 20 has priority over its construction mortgage on unit 20. Because BOA concedes Allor’s construction lien has priority and it has failed to provide evidence regarding when its construction mortgage was recorded, the trial court properly determined that Allor’s construction lien had priority over

BOA's construction mortgage on unit 20. Therefore, the trial court's August 28, 2009, order properly allocated the net proceeds from unit 20 to Allor and Cherokee Carpet & Floor Covering, Inc., because their construction liens enjoy equal priority. MCL 570.1119(1)¹.

BOA, however, disputes the amount Allor may collect from the net proceeds of the foreclosure sale of unit 20. The construction lien act is the decisive authority on construction liens. *Brown Plumbing and Heating Inc v Homeowner Constr Lien Recovery Fund*, 442 Mich 179, 183; 500 NW2d 733 (1993). Regarding construction liens on condominiums, the construction lien act, MCL 570.1126, provides:

(1) A construction lien, concerning a condominium, arising under this act is subject to the following limitations:

(a) Except as otherwise provided in this section, a construction lien for an improvement furnished to a condominium unit or to a limited common element shall attach only to the condominium unit to which the improvement was furnished.

(b) A construction lien for an improvement authorized by the developer of a condominium project and performed upon the common elements shall attach only to condominium units owned by the developer at the time of recording of the claim of lien.

(c) A construction lien for an improvement authorized by the association of coowners of condominium units shall attach to each condominium unit only to the proportional extent that the coowner of the condominium unit is required to contribute to the expenses of administration, as provided by the condominium documents.

(d) A construction lien shall not arise or attach to a condominium unit for work performed on the common elements, if the work was not contracted for by the developer or the association of coowners of condominium units.

(2) This section shall be subject to the definitions and limitations of [the condominium act, MCL 559.101 *et seq.*].

Nothing in the construction lien act prohibits the trial court from fashioning an appropriate remedy in order to secure the beneficial results, intents, and purposes of the act. *Solution Source*, 252 Mich App at 373-374; *Pitsch*, 233 Mich App at 602. The trial court found that Abbey did not pay Allor \$36,625.01 for work performed on units 18, 19, 20 and 21. The

¹ MCL 570.1119(1) provides, “[e]xcept as otherwise provided by subsection (4), as between parties entitled to claim construction liens under this act, their claims of lien shall be treated as having equal priority.”

trial court also found that units 18, 19 and 21 were purchased by homeowners, but Abbey still owed unit 20. “A court possesses inherent authority to enforce its own directives.” *Walworth v Wimmer*, 200 Mich App 562, 564; 504 NW2d 708 (1993). A trial court also has the express authority to direct and control the proceedings before it. MCL 600.611.² The trial court did not err in allowing Allor to satisfy all of its construction liens on units 18, 19, 20 and 21 from the net proceeds of the sale of unit 20 because unit 20 was the only unit Abbey still owned.

BOA asserts that any amount awarded to Allor over the \$2,110 stated in Allor’s claim of lien against unit 20 is akin to a judgment lien. Because Allor did not receive this “judgment lien” for \$34,515.01 until August 14, 2008, BOA claims its construction mortgage, allegedly recorded sometime after July 14, 2004, but before August, 14, 2008, has priority. BOA’s argument is misplaced.

MCL 600.2801(c) defines a “judgment lien” as “an encumbrance in favor of a judgment creditor against a judgment debtor’s interest in real property, including, but not limited to, after acquired property.” A judgment lien involves contract claims, and it is a separate remedy from a construction lien. See *Old Kent Bank of Kalamazoo v Whitaker Constr Co*, 222 Mich App 436, 439; 566 NW2d 1 (1997) (an in personam proceeding brought by a contractor is separate from an in rem proceeding to collect money for work performed on improved property). The trial court’s August 14, 2008, order and August 28, 2009, order explicitly stated that the trial court awarded damages pursuant to the construction liens, and not the breach of contract or accounts stated claims alleged by Allor. Thus, the trial court’s orders did not give Allor a judgment lien. Rather, the orders gave Allor first priority to the net proceeds from the sale of unit 20 to satisfy its construction liens.

We note that Allor incorrectly suggests that BOA’s interest in unit 20 stems from the trial court’s December 3, 2008, order. That order set aside all construction liens against unit 21, but allowed parties with a construction lien against unit 21 to seek satisfaction of their construction lien on unit 21 from the proceeds of the sale of unit 20. While CitiMortgage, Inc., f/k/a ABN AMRO Mortgage Group, Inc., did assign its interest in the homeowner’s mortgage on unit 21 to LaSalle, the trial court’s December 3, 2008, order only dismissed all construction liens against unit 21. Thus, BOA’s mortgage lien on unit 21 was not dismissed and it is still valid.

² MCL 600.611 provides, “[c]ircuit courts have jurisdiction and power to make any order proper to fully effectuate the circuit courts’ jurisdiction and judgments.”

Affirmed.

/s/ Mark J. Cavanagh
/s/ Cynthia Diane Stephens
/s/ Amy Ronayne Krause