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District Court of Appeal of Florida, Second District.

WITTERS CONTRACTING COMPANY  
and David J. Witters, Appellants,  
v.  
Paul WEST and Maria West, Appellees.

Case No. 2D18-4547

Opinion filed July 17, 2020

Appeal from the Circuit Court for Charlotte County; [Lisa S. Porter](#), Judge.

**Attorneys and Law Firms**

[W. Gus Belcher, II](#) of Belcher & Epstein, P.A., Fort Myers, for Appellants.

[J. Ben Vitale](#) of Vitale Law, P.A., Lakewood Ranch, for Appellees.

**Opinion**

[ATKINSON](#), Judge.

\*1 David J. Witters and his company, Witters Contracting Company, appeal from a final judgment entered in favor of Paul and Maria West on their slander of title and fraudulent construction lien claims and on Witters Contracting's counterclaims. Because the claim of lien recorded on June 16, 2016, was not unambiguously signed by Witters in his individual capacity, we reverse the portion of the judgment entered against Witters individually. We affirm the remainder of the judgment entered against Witters Contracting without further discussion.

On August 25, 2015, Paul and Maria West entered into a written agreement with Witters Contracting Company for renovations to the Wests' home. Under the agreement, the Wests agreed to pay a maximum of \$245,850 for the described work; it required that any extra services or work "be set out and agreed to in writing by both contractor and owner."

Notwithstanding the written agreement, the parties agreed that they entered into a "cost-plus" payment scheme, whereby Witters Contracting was entitled to a ten percent fee on the construction costs.

Approximately nine months into the renovation, the relationship between the Wests and Witters soured. Witters sent the Wests text messages threatening to cancel their permit and file a lien for \$100,000 if he did not receive \$30,000. On June 10, 2016, counsel for Witters sent counsel for the Wests a demand for \$59,706 with supporting documentation.

A claim of lien form was completed and recorded on June 16, 2016 (the June Claim of Lien). It begins with the following sentence, the underlined portion of which is handwritten on the otherwise printed form: "I, David John Witters pres Witters Contracting Company 8725 Placida Rd Suite 7 Placida FL 22946, being duly sworn state the following ...." The claim of lien stated that the unpaid balance was \$75,000 for the work completed between August 1, 2015, and June 3, 2016. Under the signature line are printed the words "Name of Person Claiming Lien." Above the signature line appears the handwritten signature of "David Witters pres." In the portion entitled "Notary Certification for Claim of Lien," the name of claimant is handwritten as "David Witters." The Certificate of mailing states the following, the underlined portion of which is handwritten: "I, David John Witters pres Witters Contracting Co, certify that on this date, June 20, 2016, I have mailed a copy of this Claim of Lien ...." Under the signature line appears the words "Name of Person Mailing Claim of Lien." Above the signature line appears, handwritten, "David John Witters pres Witters Contracting Co."

The Wests filed a complaint against Witters Contracting as well as David Witters individually alleging each recorded a fraudulent claim of lien. Witters Contracting subsequently recorded an amended claim of lien (the July Claim of Lien). This document stated that \$87,239 remained unpaid since June 3, 2016. At the bottom of the document appears the following signature block:

Witters Contracting Co.

\*2 By: \_\_\_\_\_

David Witters, President Lienor

The Wests filed a five-count amended complaint. Count one sought to discharge both the June and July Claims of Lien. Count two, directed at Witters and Witters Contracting,

alleged that the June Claim of Lien was fraudulent. Count three alleged that the July Claim of Lien was fraudulent but was directed solely at Witters Contracting. The last two counts alleged causes of action for slander of title; count four was directed at Witters individually.

Witters and Witters Contracting filed a joint answer and affirmative defenses. Witters Contracting also raised several counterclaims, including breach of contract and quantum meruit in the alternative. Witters Contracting also sought foreclosure of the construction lien or, alternatively, the imposition of an equitable lien.

The Wests moved for partial summary judgment on their Amended Complaint and for summary judgment on all counts of Witters Contracting's counterclaims. The motion was referred without objection to a magistrate, who held a hearing. The magistrate made findings, adopted by the trial court, including that the Wests had paid Witters Contracting in excess of the amount they owed and that "[i]ndividual Defendant Witters[]" lien is fraudulent." It further found that

Defendants cannot show cause why the June and July liens should not be cancelled. ... The June and July liens filed by Defendants were compiled with such gross negligence as to the amounts claimed therein to constitute willful exaggerations. The willful exaggerations were material and substantive in nature and the liens are deemed fraudulent by the Court. ... The Defendants' filing and recording of the fraudulent liens constitutes a slander of title upon Plaintiffs' real property.

The parties conducted a trial on damages before the magistrate. The magistrate recommended the trial court enter judgment against Witters Contracting in the amount of \$87,239 as punitive damages, \$91,442.25 in attorney's fees, and \$5533.25 in costs; and enter judgment against Witters individually in the amount of \$75,000 as punitive damages, \$91,442.25 in attorney's fees, and \$5533.25 in costs. The trial court entered the recommended judgments against Witters and Witters Contracting for punitive damages in the amounts of \$75,000 and \$87,239, respectively, and a single award

against Witters and Witters Contracting jointly and severally for \$96,975.50 for attorney's fees and costs.

We conduct a de novo review of the order granting partial summary judgment in favor of the Wests. See [Buck-Leiter Palm Ave. Dev., LLC v. City of Sarasota](#), 212 So. 3d 1078, 1081 (Fla. 2d DCA 2017) (citing [Volusia County v. Aberdeen at Ormond Beach, L.P.](#), 760 So. 2d 126, 130 (Fla. 2000)). To obtain summary judgment, the moving party must prove "the absence of a genuine issue of material fact." [Holl v. Talcott](#), 191 So. 2d 40, 43 (Fla. 1966). "If the record reflects the existence of any genuine issue of material fact, or the possibility of any issue, or if the record raises even the slightest doubt that an issue might exist, summary judgment is improper." [Competelli v. City of Belleair Bluffs](#), 113 So. 3d 92, 92–93 (Fla. 2d DCA 2013) (quoting [Snyder v. Cheezem Dev. Corp.](#), 373 So. 2d 719, 720 (Fla. 2d DCA 1979)).

\*3 In order to grant summary judgment in favor of the Wests on their fraudulent lien and slander of title claims against Witters individually, the June Claim of Lien had to unambiguously reflect that Witters filed and recorded it individually. See [Bruce Tansey Custom Carpentry, Inc. v. Goodman](#), 33 So. 3d 70, 71–72 (Fla. 2d DCA 2010) (concluding that the trial court erred by finding the company's president individually liable for filing a fraudulent claim of lien where the "signature block in the lien states 'Bruce Tansey Custom Carpentry, Inc. By: Bruce Tansey, President'"). Under the circumstances, the handwritten portions of the June Claim of Lien that identify David Witters as "pres" of Witters Contracting suggest that Witters may have signed the document on behalf of his company. The fact that the record evidence did not foreclose the possibility that Witters signed the June Claim of Lien as the president of Witters Contracting made summary judgment improper.

The trial court erred by granting summary judgment in favor of the Wests on count two of their Amended Complaint against Witters as well as count four and by holding Witters individually liable for the Wests' attorney's fees and costs.

Affirmed in part, reversed in part, and remanded.

VILLANTI and ROTHSTEIN-YOUAKIM, JJ., Concur.

#### All Citations

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