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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

RAM CONCRETE CONSTRUCTION,
INC.,

Plaintiff and Respondent,

v.

MONTECITO REALTY GROUP L.P.,

Defendant and Appellant.

H050865
(Santa Clara County
Super. Ct. No. 19CV341666)

I. INTRODUCTION

Respondent Ram Concrete Construction, Inc. (Ram Concrete) brought an action against appellant Montecito Realty Group, L.P. (Montecito) arising from Ram Concrete's contract with the general contractor, Everspring Construction, Inc. (Everspring) to perform concrete foundational work at a townhouse development on property owned by Montecito. Ram Concrete alleged that Everspring breached the contract by failing to pay Ram Concrete for its work and sought to foreclose on a mechanic's lien on the property.

After a court trial, the trial court ruled that Everspring had breached the contract and Ram Concrete could foreclose on its mechanic's lien, although Ram Concrete had failed to serve the construction lender with a preliminary notice of mechanic's lien as required by Civil Code section 8204, subdivision (a).¹ The provisions of the January 3,

¹ All further statutory references are to the Civil Code unless otherwise indicated.

2023 judgment included, among other things, a ruling that Ram Concrete has a mechanic's lien in the amount of \$622,536.75 on Montecito's property that could be enforced by foreclosure sale if necessary.

On appeal, Montecito contends that the trial court erred in sustaining the cause of action for foreclosure on mechanic's lien because (1) Ram Concrete failed to prove that its mechanic's lien was senior to the construction lender's deed of trust; and (2) Ram Concrete did not serve the statutorily required preliminary notice of mechanic's lien on the construction lender. For the reasons stated below, we agree with the trial court that Ram Concrete's failure to serve a preliminary mechanic's lien notice on the construction lender was not fatal to the cause of action for foreclosure on mechanic's lien because there was no prejudice to the construction lender, and we will affirm the judgment.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Pleadings

1. Ram Concrete's Complaint

The operative pleading is Ram Concrete's first amended complaint (complaint). According to the allegations in the complaint, plaintiff Ram Concrete, a licensed contractor, entered into a contract with defendant Everspring, the prime contractor, to perform concrete foundational work at a project in Mountain View. Defendant Patrick Tsao is the president of Everspring, and he is also the owner of defendant Montecito. In 2017, when Ram Concrete entered into the contract, Montecito owned the property where the project was to be built.

Ram Concrete further alleges that its contract with Everspring provided that Everspring would pay Ram Concrete \$1,770,720 for construction services and materials. Ram Concrete performed under the contract but Everspring failed to make all of the payments owed to Ram Concrete, leaving a balance due in the total amount of \$588,084.29. After Ram Concrete sent a notice of intent to file a mechanic's lien, Ram Concrete received a letter of termination from Everspring. On October 30, 2018, Ram

Concrete filed a mechanic's lien on the property in the amount of \$582,676.73. Ram Concrete also sent preliminary notices of its intent to foreclose on the mechanic's lien to Montecito and Everspring. Ram Concrete did not send a preliminary notice of intent to foreclose to the construction lender because allegedly there was no known construction lender for the project.

Based on these and other allegations, Ram Concrete asserted causes of action for (1) common counts (Everspring owes Ram Concrete \$588,084.29) ; (2) breach of contract; (3) foreclosure of mechanic's lien; and (4) license bond (defendant Suretec Indemnity Company is indebted to Ram Concrete in the full amount of the contractor's license bond obtained by Everspring).

2. Montecito's Complaint

The record reflects that Montecito and Everspring filed a complaint against defendant Ram Concrete arising from the contract between Everspring and Ram Concrete. (*Montecito Realty Group L.P. et al v. Ram CC, Inc.* (Super. Ct. Santa Clara County, 2019, No. 19CV342891).) This action was consolidated by stipulation with Ram Concrete's action.

Montecito's complaint was not included in the record on appeal. However, the record reflects that the complaint included causes of action for breach of written contract, slander of title, cancellation of cloud on title, express indemnity, intentional interference with contract, and negligent interference with contract. No issues have been raised on appeal with respect to Montecito's action.

B. The Court Trial

The consolidated actions proceeded to a court trial.² The following is a brief summary of the pertinent witness testimony and other evidence presented at trial.

² The record reflects that defendant Suretec Indemnity Company was no longer in the case by the time of trial.

Brendant Palomo is the owner of Ram Concrete, which is in the business of residential and commercial concrete construction. Palomo has a contractor's license for structural concrete. He became involved in the subject project in Mountain View after his materials vendor put him in contact with Tsao, who was the president of Montecito, the project developer. Tsao was also the owner of the general contractor, Everspring. Montecito owned the property where the project was to be built.

The project was described to Palomo as eight townhomes with a large podium underground garage. Funding for the project included a construction loan in the amount of \$13.8 million, which was secured by a construction deed of trust on the property.

Ram Concrete entered into a contract and scope of work with Everspring in August 2017. The contract price was \$1,777,720. The parties disagree as to whether Palomo or Tsao prepared the scope of work. In any event, the scope of work included building the garage slabs, the garage's retaining walls, the stairs, and the podium deck (roof of parking garage).

Regarding the timeline for Ram Concrete's work on the project, the contract provided that " '[t]his project shall take three months. This only includes business working days. This does not include included delays from other subcontractor or changes in plans, work, holidays, weather, and inspections.' " However, Tsao understood that Ram Concrete's work was to be completed in 90 days, from September 2017 to November 2017. Palomo, on the other hand, calculated that Ram Concrete's scope of work on the project would take 220 working days to complete. Ram Concrete's work was to be performed in three phases.

According to Palomo, Ram Concrete's work on the project was delayed for several reasons. At the beginning of Phase 1 the excavation company's work was delayed by the presence of groundwater in the project site. Since Ram Concrete was not able to begin site work due to the delay, it performed offsite work such as building the

preforms for the basement's wood walls. After the groundwater was controlled, Ram Concrete was able to perform onsite work, beginning on September 25, 2017.

When Ram Concrete's onsite work had progressed to the point of installing the rebar prior to pouring the concrete garage floor, Ram Concrete's work was inspected by a special inspector, a structural engineer, and a City of Mountain View inspector. All three inspectors approved Ram Concrete's rebar installation and pre-pour work. Ram Concrete poured the garage floor slab on November 2, 2017. Ram Concrete's work was inspected again after rebar was installed in the garage walls.

After completing the garage walls, Ram Concrete's next step was to install scaffolding in preparation for installing the rebar and post-tension cables for the podium deck. This work also passed inspection. Ram Concrete then poured the slab for the podium deck, completing that work in February 2018.

Ram Concrete's work in Phase 2 of the project included pouring another concrete slab. This work was delayed due to the presence of more groundwater, which delayed the excavation company's work. Ram Concrete's work was also delayed due to multiple cave-ins on the property. However, Ram Concrete's rebar installation passed inspection, as did its pour of the concrete slab in Phase 2. In September 2018 Ram Concrete poured a third slab in Phase 3 of the project. This slab did not initially pass inspection because Tsao had failed to provide a required letter from the structural engineer, but later passed inspection after the letter was provided.

Ram Concrete's last day of work on the project was September 28, 2018. Palomo received a letter dated October 17, 2018, terminating Ram Concrete's contract with Everspring. At the time the contract was terminated, Ram Concrete had completed 70 percent of the scope of work. Palomo had not received any notice that Ram Concrete's work was defective prior to Everspring's termination of the contract. He understood that the contract was terminated because Ram Concrete had delayed the

project. Tsao hired several specialty contractors to finish the foundation work on the project after Ram Concrete's contract was terminated.

Ram Concrete sent preliminary mechanic's lien notices to Everspring and Montecito. Ram Concrete had been paid approximately \$800,000 and, according to Palomo, was still owed \$588,084.29 for its work on the project. Ram Concrete did not send a preliminary mechanic's lien notice to CTBC Bank, the construction lender for the project.

Palomo subsequently caused a mechanic's lien in the amount of \$582,676.73 to be recorded on the property. Montecito obtained a release of lien bond, which was required by the construction lender in order to clear the cloud on the title. The release of lien bond was recorded in March 2021.

C. Statement of Decision and Judgment

1. Proposed Statement of Decision

After the court trial concluded, the trial court issued a proposed statement of decision. Regarding Ram Concrete's breach of contract claims, the trial court found that defendant Everspring had breached the contract by failing to pay Ram Concrete for work performed and owed Ram Concrete \$439,423.56. The trial court denied the breach of contract claim by Everspring and Montecito.

However, the trial court denied Ram Concrete's claim for foreclosure of mechanic's lien because Ram Concrete had failed to serve a preliminary notice on the construction lender, as required by section 8204, subdivision (a).

Since Ram Concrete had prevailed on its claim for breach of contract, the trial court found it unnecessary to rule on the cause of action for common counts. As to Ram Concrete's license bond claim, the trial court found that Ram Concrete had already received payment under the license bond and therefore that cause of action was no longer at issue.

As to the complaint filed by Everspring and Montecito, the trial court noted that Everspring and Montecito had dismissed the remaining causes of action in their complaint for slander of title, cancellation of cloud on title, express indemnity, intentional interference with contract, and negligent interference with contract “via closing arguments,” and therefore the trial court denied the remaining causes of action.

Finally, the trial court ruled that Ram Concrete was the prevailing party entitled to an award of attorney fees. The trial court also added to the judgment the amount of \$4,762.50 that Everspring, Montecito, and their attorney owed for an unpaid award of discovery sanctions.

2. Objections to Proposed Statement of Decision

Ram Concrete filed combined objections to the proposed statement of decision and a motion to modify the proposed statement of decision, or, in the alternative, grant a new trial and reopen the evidence. Ram Concrete’s objections to the proposed statement of decision concerned the trial court’s ruling denying Ram Concrete’s claim for foreclosure of mechanic’s lien. Ram Concrete argued that its failure to serve the construction lender with a preliminary notice of mechanic’s lien was not fatal to its claim for two reasons: (1) the construction lender was not a party and the lack of notice did not cause any prejudice; and (2) the evidence should be reopened to allow the testimony of a preliminary lien notice service provider that the general contractor had indicated that there was no construction lender on the project, and for that reason no preliminary lien notice was served on the construction lender. Everspring and Montecito opposed Ram Concrete’s motion to modify the statement of decision or, in the alternative, reopen the evidence.

3. Final Statement of Decision

The final statement and judgment was filed on January 3, 2023. The final statement of decision modified the proposed statement of decision with respect to Ram Concrete’s cause of action for foreclosure of the mechanic’s lien.

The trial court was persuaded by Ram Concrete's authorities in support of its argument that failure to serve a preliminary notice of mechanic's lien on the construction lender was not fatal to the cause of action for foreclosure of mechanic's lien where no prejudice resulted from the lack of notice. The court found there was no evidence of prejudice to the construction lender due to the lack of notice because the construction deed of trust was a senior lien, and also because Tsao had obtained a release of mechanic's lien bond. For those reasons, the trial court sustained the cause of action for foreclosure of the mechanic's lien.

The trial court denied Ram Concrete's motion for a new trial or to reopen the evidence, finding that Ram Concrete had not shown that the evidence of the preliminary lien services provider was newly discovered or could not have been presented at trial.

4. Judgment

The judgment entered on January 3, 2023, provides as follows: (1) Everspring owes Ram Concrete \$439,423.56 for breach of contract; (2) Ram Concrete is awarded prejudgment interest of \$183,113.19; (3) Ram Concrete is entitled to attorney fees and costs, subject to proof; (4) the court declines to rule on Ram Concrete's cause of action for common counts as unnecessary; (5) all causes of action in Everspring's complaint were dismissed and are denied; (6) Ram Concrete's request to present evidence on Everspring's corporate veil is denied as untimely; (7) Ram Concrete's motion for a new trial or to reopen the evidence is denied; (8) Ram Concrete has a lien in the amount of \$622,536.75 on Montecito's property as described in the judgment; (9) a nonjudicial foreclosure sale of Montecito's property is to be held unless it is not necessary; (10) the proceeds of the foreclosure sale shall be distributed as specified; and (11) claims by persons holding liens subsequent to Ram Concrete's lien are barred.

D. Postjudgment Proceedings

On February 14, 2023, Everspring and Montecito filed an amended motion to set aside the judgment. In support of the motion, they argued that the trial court had erred in

ruling in Ram Concrete's favor on the cause of action for foreclosure of the mechanic's lien because Ram Concrete had not shown that its mechanic's lien was senior to the construction lender's deed of trust, and therefore Ram Concrete could not foreclose. They also argued that the trial court erred because Ram Concrete had failed to serve the statutorily required preliminary lien notice on the construction lender. Ram Concrete opposed the motion to set aside the judgment on the grounds that none of the arguments in support of the motion had merit.

In the March 24, 2023 order, the trial court ruled that the court had been divested of jurisdiction to hear the motion to set aside the judgment because Montecito had filed a notice of appeal from the judgment on February 27, 2023. However, the trial court determined that the motion to tax costs filed by Everspring and Montecito and Ram Concrete's motion for attorney fees were ancillary matters that could be heard notwithstanding the pending appeal. The trial court subsequently denied the motion to tax costs, awarded Ram Concrete costs in the amount of \$5,726.14, and also awarded Ram Concrete attorney fees in the amount of \$195,972.50.

III. DISCUSSION

On appeal, appellant Montecito contends that the trial court erred and the judgment enforcing Ram Concrete's mechanic's lien should be reversed for three reasons: (1) the trial court lacked subject matter jurisdiction; (2) Ram Concrete failed to prove that its mechanic's lien was senior to the construction lender's deed of trust; and (3) Ram Concrete did not serve a preliminary notice of mechanic's lien on the construction lender.³

We need not address Montecito's contention that the trial court lacked subject matter jurisdiction because Montecito has not supported that contention with any argument or legal authorities. An appellant must present argument supported by relevant

³ Defendant Montecito is the only party listed as an appellant on the notice of appeal.

legal authority as to each issue raised on appeal. “ ‘[E]very brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration. [Citations.]’ [Citations.] ” (*People v. Stanley* (1995) 10 Cal.4th 764, 793.)

Before evaluating appellants’ remaining two issues, we will address the applicable standard of review.

A. *Standard of Review*

“In reviewing a judgment based upon a statement of decision following a bench trial, we review questions of law de novo. [Citation.] We apply a substantial evidence standard of review to the trial court’s findings of fact. [Citation.] Under this deferential standard of review, findings of fact are liberally construed to support the judgment and we consider the evidence in the light most favorable to the prevailing party, drawing all reasonable inferences in support of the findings. [Citation.]” (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 981.)

B. *Lien Priority*

We understand Montecito to contend that Ram Concrete’s mechanic’s lien cannot be enforced by foreclosure because Ram Concrete did not prove that its mechanic’s lien was the senior lien on the project property.

We are not persuaded by Montecito’s contention, since it is not supported by the rules pertaining to lien priority. “It is established in California, . . . that a recorded deed of trust given as security for the purchase price of property or for other purposes, such as a construction loan, has priority over subsequent mechanics’ liens and that a trustee’s sale of the property covered by the deed of trust extinguishes such liens. [Citations.]” (*Rheem Mfg. Co. v. United States* (1962) 57 Cal.2d 621, 625; see also *Schmitt v. Tri Counties Bank* (1999) 70 Cal.App.4th 1234, 1240 [generally, deeds of trust recorded before any work of improvement commences have priority over mechanic’s liens].)

However, where the deed of trust attaches after commencement of the site improvement, section 8450, subdivision (a)(1) provides that a mechanic's lien has priority.

Montecito has not directed us to any provision of the Civil Code's statutory scheme for mechanic's liens that requires a mechanic's lien be the senior lien in order to enforce the mechanic's lien by foreclosure. To the contrary, the general rule is that a junior lienholder who purchases a property by foreclosing on its junior lien "takes the property subject to the senior lien. [Citations.]" (*Romo v. Stewart Title of California* (1995) 35 Cal.App.4th 1609, 1614 (*Romo*); see also *MTC Financial, Inc. v. Nationstar Mortgage, LLC* (2018) 19 Cal.App.5th 811, 814 [property purchased at a foreclosure sale by holder of second deed of trust remains subject to the first deed of trust].)

Accordingly, Ram Concrete's right to foreclose on its mechanic's lien did not require Ram Concrete to hold the senior lien on the project property. Assuming that Ram Concrete was the junior lienholder, Ram Concrete could potentially enforce its mechanic's lien by foreclosure, but its purchase of the property would remain subject to any senior liens. (See *Romo, supra*, 35 Cal.App.4th at p. 1614.) We therefore find no merit in Montecito's contention that Ram Concrete's mechanic's lien cannot be enforced because Ram Concrete did not prove that its mechanic's lien was the senior lien on the project property.

C. Notice to Construction Lender

We understand Montecito to contend that the trial court erred in ruling that Ram Concrete's failure to serve a preliminary notice of mechanic's lien on the construction lender was not fatal to Ram Concrete's cause of action to foreclose on the mechanic's lien since there was no evidence that the lack of notice was prejudicial to the construction lender. Montecito asserts that both itself and the construction lender were prejudiced due to the loss of the "entire real property and construction loan money proximately caused by an unlawful enforcement of mechanics lien and Sheriffs Foreclosure Sale." (Bold & underscoring omitted.)

Ram Concrete responds that the lack of preliminary notice to the construction lender did not cause prejudice to Montecito, the property owner, since Montecito had received notice. Ram Concrete also maintains that the lack of notice did not prejudice the construction lender because the construction lender's deed of trust had priority over the mechanic's lien, and also because Montecito had obtained a release bond that released its property from the mechanic's lien. Additionally, Ram Concrete points out, correctly, that Montecito's assertion that the mechanic's lien was enforced in a foreclosure sale of its property is not supported by any evidence in the record.

We begin our analysis with a brief overview of the notice requirements at issue in this case. Section 8200, subdivisions (a) and (c) provide in part the requirements for a preliminary mechanic's lien notice, as follows: "(a) Except as otherwise provided by statute, before recording a lien claim, . . . a claimant shall give preliminary notice to the following persons: [¶] (1) The owner or reputed owner. [¶] (2) The direct contractor or reputed direct contractor to which the claimant provides work [¶] (3) The construction lender or reputed construction lender, if any. [¶] . . . [¶] (c) Compliance with this section is a necessary prerequisite to the validity of a lien claim. . . ." The Legislature intended the notice requirements to serve "the concurrently valid purpose of alerting owners and lenders to the fact that the property or funds involved might be subject to claims arising from contracts to which they were not parties and would otherwise have no knowledge." (*Romak Iron Works v. Prudential Ins. Co.* (1980) 104 Cal.App.3d 767, 778 (*Romak*).

It has been held that strict compliance with the statutory notice requirements is ordinarily required to perfect a mechanic's lien. The appellate court in *Harold L. James, Inc. v. Five Points Ranch, Inc.* (1984) 158 Cal.App.3d 1, ruled that a preliminary mechanic's lien notice that used outdated statutory language failed to comply with the current statutory notice requirements, stating: "[W]here the Legislature has provided a detailed and specific mandate as to the manner or form of serving notice upon an affected

party that its property interests are at stake, any deviation from the statutory mandate will be viewed with extreme disfavor.” (*Id.* at p. 6; see also *Romak, supra*, 104 Cal.App.3d at p. 778 [untimely preliminary notice to construction lender fatal to action to enforce stop notice]; *IGA Aluminum Products, Inc. v. Manufacturers Bank* (1982) 130 Cal.App.3d 699, 702 [summary judgment granted in action against construction lender to foreclose on mechanic’s lien where preliminary notice was not sent by the statutorily required certified or registered mail].)

However, other appellate courts have concluded that strict compliance with the notice requirements is not necessary where the failure to comply is not prejudicial. In *Industrial Asphalt, Inc. v. Garrett Corp.* (1986) 180 Cal.App.3d 1001 (*Industrial Asphalt*), the trial court entered judgment in the defendant property owner’s favor on a subcontractor’s action to foreclose on its mechanic’s lien because the subcontractor had failed to serve a preliminary notice of mechanic’s lien on the original contractor. (*Id.* at p. 1004.) The appellate court reversed the judgment, first observing that “courts have ‘uniformly classified the mechanics’ lien laws as remedial legislation, to be liberally construed for the protection of laborers and materialmen.’ [Citations.]” (*Id.* at p. 1007.) Noting that the property owner had been properly served with the preliminary notice, the appellate court stated that “[w]e see no reason, in the absence of prejudice to the property owner [citations], why the subcontractor’s failure to serve notice upon an original contractor should render unenforceable a lien against an owner who *did* receive proper notice.” (*Ibid.*)

The *Industrial Asphalt* court concluded that “strict notice requirements apply only to parties a lien will affect.” (*Industrial Asphalt, supra*, 180 Cal.App.3d at p. 1009; see also *Wand Corp. v. San Gabriel Valley Lumber Co.* (1965) 236 Cal.App.2d 855, 861, fn. omitted [where “no one is prejudiced, technical requirements shall not stand in the way of achieving the purpose of the Mechanics Lien Law”]; *Hub Construction Specialties, Inc. v. Esperanza Charities, Inc.* (2016) 244 Cal.App.4th 855, 856–857

[mechanic's lien was not invalid where the plaintiff subcontractor failed to comply with a former statutory requirement of proof that the preliminary notice was served on the defendant property owner by certified mail].)

In the present case, we determine that the trial court did not err in ruling that Ram Concrete's failure to serve a preliminary notice of mechanic's lien on the construction lender was not fatal to its cause of action for foreclosure on mechanic's lien because there was no prejudice to the construction lender. It was undisputed that Montecito, owner of the subject property, had obtained a release of lien bond, which was required by the construction lender in order to clear the cloud on the title. The release of lien bond was recorded in March 2021. "Pursuant to section 8424, an owner faced with a mechanic's lien may record a release bond amounting to 125 percent of the lien claim. 'On recordation of the bond, the real property is released from the claim of lien and from any action to enforce the lien.' (§ 8424, subd. (c).)" (*RGC Gaslamp, LLC v. Ehmcke Sheet Metal Co., Inc.* (2020) 56 Cal.App.5th 413, 424 (*RGC Gaslamp*)).

Thus, "[o]nce a release bond is recorded, it becomes the lien claimant's sole recourse for collecting sums due. [Citation.]" (*RGC Gaslamp, supra*, 56 Cal.App.5th at p. 424.) In other words, "[t]he recording of the release bond does not extinguish the lien; rather, the bond is substituted for the land as the object to which the lien attaches." (*Hutnick v. United States Fidelity & Guaranty Co.* (1988) 47 Cal.3d 456, 463.) Consequently, once Montecito's release bond was recorded the construction lender's interest in the subject property was not at risk, since Ram Concrete's mechanic's lien no longer attached to the property. Under these circumstances, there could be no prejudice to the construction lender because Ram Concrete did not serve it with a preliminary notice of mechanic's lien.

We therefore conclude the trial court did not err in sustaining Ram Concrete's cause of action for foreclosure of the mechanic's lien despite the lack of preliminary notice to the construction lender. As aptly stated in *Industrial Asphalt, supra*, 180

Cal.App.3d at page 1006, “[t]o construe the [preliminary notice] statute strictly would require us to invalidate a lien against an owner who received notice because someone else, . . . did not receive notice. That strict statutory construction would allow a party who received the required notice to be insulated from liability because another party did not receive notice. We do not believe that the statute’s purpose should, or does, lead to this aridly formalistic result.”

For these reasons, we will affirm the judgment.

IV. DISPOSITION

The January 3, 2023 judgment is affirmed. Costs on appeal are awarded to respondent.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

GREENWOOD, P.J.

WILSON, J.

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