

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2214

September Term, 2015

PLUS ONE-MIDATLANTIC CO., INC.,

v.

VISNIC IMPROVED PROPERTIES, LLC.

Arthur,
Shaw Geter,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),
JJ.

Opinion by Shaw Geter, J.

Filed: April 5, 2017

*This is an unreported opinion, and may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This is an appeal from the dismissal of an action by the Circuit Court for Prince George's County. After not being paid for services rendered as a masonry subcontractor for a residential home construction project, Appellant Plus One filed a complaint to establish a mechanics' lien and for other relief. The homeowners, in response, filed an answer and motion for summary judgment, alleging that Plus One did not possess a home improvement contractor's license at the time of performance and, as a result, could not obtain relief. The general contractor, appellee Visnic, also filed an answer to Plus One's complaint, denying appellant's claims.

Following a hearing, wherein the circuit court heard argument on the show cause order and the homeowner's motion for summary judgment, the court issued its Opinion and Order, denying appellant's mechanics' lien because they were unlicensed at the time they performed the work. The court also held that Plus One was not entitled to receive payment from Visnic because they were unlicensed at the time the order was issued. Appellant subsequently filed a motion to alter or amend judgment, averring that it had obtained a subcontractor's license before the judgment, and should therefore receive payment from Visnic. The court denied appellant's motion.

On appeal, appellant presents the following questions for our review:

1. Did the circuit court violate Plus One's Right to Due Process by dismissing its breach of contract claim against Visnic?
2. Is Plus One's receipt of a subcontractor's license after suit was filed against Visnic sufficient to warrant the court's consideration of its claim?
3. Did the circuit court abuse its discretion in denying Plus One's Motion to Alter or Amend the Judgment when it had been established that Plus one was a licensed entity?

For the reasons set forth below, we shall reverse the order of the circuit court.

BACKGROUND

In March of 2014, Plus One-MidAtlantic Co., Inc. (“Plus One”) entered into a contract with general contractor, Visnic Improved Properties, LLC (“Visnic”), to perform masonry work on an addition to Keith and Andrea Glenns’ (the “Glenns”) residence. They also agreed to supply the brick needed for the construction of an adjoining garage.

Plus One performed the required work and supplied all needed materials during the period of September 4, 2014 through October 23, 2014. They, thereafter, billed Visnic a total of \$117,608.10, of which only \$9,196.50 was paid.

On March 16, 2015, Plus One filed a complaint in the Circuit Court for Prince George’s County, seeking a mechanics’ lien against the Glenn’s property and a judgment against Visnic for its failure to pay sums due under the subcontract. The circuit court, on April 8, 2015, entered an order pursuant to Maryland Rule 12-304(b), directing the Glenns to show cause why a mechanics’ lien should not attach to their property. The Glenns, in response, filed a verified answer, as well as a motion for summary judgment, alleging that Plus One did not possess a home improvement contractor’s license when it performed work on the addition. Visnic filed an answer to the Complaint on May 26, 2015, which generally denied appellant’s claims, but it did not reference appellant’s licensing status.

A hearing on the Glenns’ motion and the show cause order was held on July 10, 2015. Counsel for the Glenns questioned Plus One’s ability to recover because they were unlicensed. Although counsel for Visnic and Plus One were present and addressed the court with regards to the mechanics’ lien against the Glenns, neither party addressed the

licensing issue, nor was there reference or argument regarding the breach of contract claim. The matter was then taken under advisement.

Visnic, on July 15, 2015, filed a motion to dismiss, or, in the alternative, a motion to stay the proceedings pending arbitration, with a request for a hearing. The licensing issue vis-à-vis Plus One's right to recover against Visnic was not addressed in any of the corresponding pleadings. Appellant filed an opposition and requested a hearing on July 20, 2015. However, the court did not schedule a hearing.

On October 8, 2015, the circuit court issued its Opinion and Order, denying Plus One's claim for a mechanics' lien against the Glenn's property. The court held that Plus One could not receive payment from the Glenns for the home improvement project because it was an unlicensed subcontractor when the work was performed. The court also held that Plus One was not entitled to receive payment from Visnic because it was unlicensed at the time the court issued its opinion. However, in a footnote, the court stated that "if [Plus One] had obtained the proper license by the time payment was due – or prior to this decision – [Plus One] would be entitled to receive payment from Visnic."

Plus One, subsequently, filed a motion to alter or amend the judgment on October 14, 2015, averring that it had obtained a subcontractor's license from the Maryland Home Improvement Commission on September 1, 2015, prior to the court's ruling, and was therefore entitled to pursue its claim against Visnic. The circuit court denied Plus One's motion on December 10, 2015.

This appeal followed.

STANDARD OF REVIEW

“The question of whether a party is deprived of the right to due process involves an issue of law and not of fact. As such, the standard of review applied by an appellate court is *de novo*.” *Regan v. Board of Chiropractic Examiners*, 120 Md. App. 494, 509 (1998).

A circuit court “‘has broad discretion [under Maryland Rule 2-534] whether to grant motions to alter or amend filed within ten days of the entry of judgment,’ and ‘[i]ts discretion is to be applied liberally so that a technicality does not triumph over justice.’” *Schlottzauer v. Morton*, 224 Md. App. 72, 84 (Md. Ct. Sp. App. 2015) (quoting *Benson v. State*, 389 Md. 615, 653 (2005) (internal citations omitted)). “In general,” therefore, “the denial of a motion to alter or amend a judgment is reviewed by appellate courts for abuse of discretion.” *Schlottzauer*, 224 Md. App. at 84 (quoting *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 673 (2010) (internal citations omitted)).

DISCUSSION

I. The circuit court violated Plus One’s right to Due Process by dismissing its breach of contract claim against Visnic.

The Court of Appeals “‘has long held that procedural due process requires that litigants must receive notice, and an opportunity to be heard.’” *Bartlett v. Portfolio Recovery Associates, LLC*, 438 Md. 255, 290 fn. 17 (2014) (quoting *Pickett v. Sears, Roebuck & Co.*, 365 Md. 67, 81 (2001)). Due process requires “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). “[U]nless...a party otherwise

receives adequate notice of an issue during the course of a proceeding, due process was denied.” *Blue Cross of Md., Inc. v. Franklin Square Hosp.*, 277 Md. 93, 101 (1976).

Appellant contends they were denied due process when the circuit court dismissed their claim against appellee without notice. They assert that the scheduled show cause hearing was based on the viability of Plus One’s application for a mechanics’ lien against the Glenns and the Glenns’ motion for summary judgment. In fact, in addressing the court at the hearing, appellee explicitly stated they did not “have a dog in this fight.”

Appellee, however, argues that because the court addressed the effect of Plus One’s licensing status with regards to the viability of their claim against the Glenns, Plus One was on notice that the court was considering the viability of their claim against Visnic.

We disagree. The court hearing, in the present case, was scheduled to address the show cause order and the Glenns’ motion for summary judgment. Appellants were not, therefore, on notice or afforded an opportunity to be heard on their contract claim against Visnic. Less than a week later, Visnic filed a motion to dismiss or stay the proceedings pending arbitration. Plus One, thereafter, filed an opposition. Although both parties requested a hearing, none was scheduled. Several months later, the court issued its opinion.

In our view, the court was required to hold a hearing prior to rendering its decision under Maryland Rule 2-311(f). The Rule provides courts generally with discretion and latitude in determining whether a motion requires a hearing. However, it expressly states “the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.” “[W]here there has been a timely request for a hearing on a motion that is dispositive of a claim or defense, procedural due

process requires that the court provide an oral hearing and adequate notice of the time, place and nature of that hearing.” *Briscoe v. Mayor of Baltimore*, 100 Md. App. 124, 128 (Md. Ct. Spec. App. 1994) (citing *Phillips v. Venker*, 316 Md. 212, 222 (1989)).

The dismissal of a claim is, clearly, a dispositive decision. As such, the court was required to provide a hearing prior to rendering its ruling. Under these circumstances, Plus One was denied procedural due process.

II. Plus One’s receipt of a subcontractor’s license is sufficient to warrant the court’s consideration of its claim.

Section 8-301(b) of the Maryland Home Improvement Law requires that “a person must have a subcontractor license or contractor license whenever the person acts as a subcontractor in the State.” This requirement that contractors and subcontractors be licensed before performing any home improvement “is a regulatory statute enacted for the protection of the public,” *Baltimore Street v. Stewart*, 186 Md. App. 684, 695 (Md. Ct. Spec. App. 2009), and therefore, any “contract entered into by an unlicensed person engaged in a trade...required to be licensed...cannot be enforced by such a person” against a member of the public. *See Berenter v. Berman*, 258 Md. 290, 294 (1970).

In keeping with this requirement, Section 8-301(b)(1) mandates that “[e]xcept as otherwise provided in subsection (b) of this section, a contractor may not pay or otherwise compensate another person,” like a subcontractor, “for performing or selling a home improvement unless” “the person to be paid or compensated is licensed.”

The Court of Appeals, however, has held that this prohibition does not totally protect general contractors from unlicensed subcontractors. The Court, in *Stalker Bros., Inc. v.*

Alcoa Concrete Masonry, Inc., found that subcontractors could recover from general contractors as long as they are licensed at the time payment is to be made. *Stalker Bros.*, 422 Md. 410, 419 (2011). The Court held this is because “[t]he reason for the rule denying enforceability does not exist when persons engaged in the same business or profession are dealing at arms length with each other.” *Id.* at 419 (quoting *Kennoy v. Graves*, 300 S.W.2d 568 (Ky.App. 1957), “in which the Kentucky Court of Appeals affirmed a judgment in favor of an unlicensed consulting engineer for services rendered to a contractor.”) The Court also acknowledged that enforcing contracts between a general contractor and an unlicensed subcontractor avoids unjust enrichment, and, further, “benefits the public by reducing a general contractor’s incentive to enter into a contract with an unlicensed subcontractor.” *Stalker Bros.*, 422 Md. at 420.

The Court further noted that “Section 8-315(a) contains a prohibition against paying an unlicensed contractor, but the plain language of that prohibition limits its operation to the time when *payment under the subcontract is to be made.*” *Id.* (emphasis added). “This reading of § 8-315 is also consistent with the general principle that a construction of a statute that would result in a forfeiture is to be avoided whenever possible.” *Id.* at 421.

Appellee contends that the case *sub judice* is distinguishable because in *Stalker Bros.*, the subcontractor was licensed at the time suit was filed, while Plus One was not. This distinction, however, is inapposite. The Court in *Stalker Bros.* makes clear that the subcontractor need only be “licensed at the time of payment.” *Id.* at 421. The circuit court, in the present case, acknowledging the holding in *Stalker Bros.*, made a specific finding

that Plus One would have been entitled to payment if they had obtained their license prior to the court's ruling.

Further, Visnic had already paid Plus One in the amount of \$9,196.50, prior to the court filing. As the Court held in *Stalker Bros.*, “[i]t is not a reasonable construction of the statute to allow [the general contractor] to withhold payment, now that [the subcontractor] is licensed, on the ground that [the subcontractor] previously was unlicensed when [the general contractor] was violating the Act by making some payments during that period.” *Stalker Bros.*, 422 Md. 421.

We, therefore, hold that Plus One's receipt of a subcontractor's license is sufficient to warrant the circuit court's consideration of its claim.

III. The circuit court abused its discretion in denying Plus One's motion to alter or amend judgment when it had been established that Plus One was a licensed entity.

Maryland Rule 2-534 allows a court, upon a motion from any party, to re-open a judgment and receive additional evidence, and either add to “its finding or its statement of reasons for the decision...set forth additional findings or reasons...enter new findings or new reasons...amend the judgment, or...enter a new judgment.” “Pursuant to this Rule, the circuit court ‘has broad discretion whether to grant motions to alter or amend filed within ten days of the entry of judgment,’ and ‘[i]ts discretion is to be applied liberally so that a technicality does not triumph over justice.’” *Schlotzhauer v. Morton*, 224 Md. App. 72, 84 (Md. Ct. Sp. App. 2015) (quoting *Benson v. State*, 389 Md. 615, 653)).

“In general, the denial of a motion to alter or amend a judgment is reviewed by appellate courts for abuse of discretion.” *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413

Md. 638, 673 (2010) (citing *Wilson-X v. Dep't of Human Res.*, 403 Md. 667, 674-75 (2008)). “Nevertheless, a ‘court’s discretion is always tempered by the requirement that the court correctly apply the law applicable to the case.” *Arrington v. State*, 411 Md. 524, 552 (2009). “[I]n appeals from the denial of a post-judgment motion, reversal is warranted in cases where there is both an error and a compelling reason to reconsider the underlying ruling.” *Schlottzhauer v. Morton*, 224 Md. App. 72, 84-85 (Md. Ct. Sp. App. 2015); *see also Williams v. Hous. Auth. of Baltimore City*, 361 Md. 143, 153 (2000) (holding that it is an abuse of discretion not to strike judgment and allow further proceedings where judgment was “based on a clear mistake” later brought to court's attention).

The circuit court, in its Opinion and Order, held that because Plus One was not licensed at the time of its decision, they were not entitled to receive payment from Visnic. The court then made clear in its footnote that “if [Plus One] had obtained the proper license by the time payment was due – *or prior to this decision* – [Plus One] would be entitled to receive payment from Visnic.” When the court rendered its decision, Plus One had indeed received its license. Appellant’s motion to alter informed the court of its status. As such, we hold the circuit court abused its discretion in failing to alter the judgment in light of the express language in its prior opinion.

There is, in addition, compelling reason for the court to reconsider the underlying ruling. At the time of the suit, the Glenns had paid Visnic for the work completed by Plus One. Allowing Visnic to avoid paying Plus One would provide a windfall for Visnic, permitting “a technicality [triumph] over justice,” *Schlottzhauer v. Morton*, 224 Md. App. 72, 84 (Md. Ct. Sp. App. 2015) (quoting *Benson v. State*, 389 Md. 615, 653)), an outcome

specifically considered by the Court of Appeals in *Stalker Bros.* to justify enforcement of contracts between general contractors and unlicensed subcontractors.

Accordingly, we reverse the Circuit Court in this matter and remand for further proceedings consistent with this opinion.

**JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE
GEORGE'S COUNTY
REVERSED. COSTS TO BE
PAID BY APPELLEE.**