Circuit Court for Prince George's County
Case No. CAE18-09341

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1645

September Term, 2019

SHANE SERRANT, et al.

v.

HLG CUSTOM HOMES, LLC
D/B/A STONE CASTLE CUSTOM HOMES

Graeff,
Gould,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: February 4, 2021

HLG Custom Homes, LLC ("HLG") filed, in the Circuit Court for Prince George's County, a petition to establish and enforce a mechanic's lien against Shane Serrant ("Mr. Serrant") and Leeann Serrant ("Mrs. Serrant") regarding alleged nonpayment of monies related to the construction of a home that HLG was contracted to build on land owned by Mr. and Mrs. Serrant (the "Serrants") as tenants by the entirety. The case later was stayed after the parties agreed to binding arbitration. Following a hearing, the arbitrator issued a monetary award solely against Mr. Serrant. Pursuant to that award, the circuit court entered an order establishing a mechanic's lien in favor of HLG. The Serrants thereafter noted this appeal, in which they raise a single question:

> Did the circuit court err by entering an order establishing a mechanic's lien against property owned as tenants by the entirety, when the arbitration award that disposed of all claims between the parties was issued against only one of the property owners?

For reasons to follow, we hold that the circuit court did not err. Accordingly, we affirm the court's judgment.

BACKGROUND

In January of 2016, Mr. Serrant entered into a contract (the "Contract") with HLG for the construction of a custom home (the "Home") at 2902 Westbrook Lane in Bowie, Maryland (the "Property"). At the time, Mr. Serrant had not yet acquired ownership of the Property. It does not appear from the record that his wife, Mrs. Serrant, was a party to the Contract, nor does it appear that Mr. Serrant was acting on Mrs. Serrant's behalf in executing the Contract.

In June of 2016, Mr. and Mrs. Serrant purchased the Property as tenants by the entirety. Around that same time, Mr. Serrant closed on a construction loan. In the months that followed, Mr. Serrant and HLG executed several addendums and a change order to the Contract. It does not appear from the record that Mrs. Serrant was a party to those alterations to the Contract.

Construction began on the Home in October of 2017. In June of 2018, after several disputes had arisen, the Contract was terminated. At that time, the Home had only been partially constructed.

In May of 2018, just prior to the termination of the Contract, HLG filed a verified petition in the circuit court against the Serrants, seeking to establish and enforce a mechanic's lien against the Property for monies HLG claimed were owed for the partial construction of the Home. The Serrants thereafter filed a verified answer to HLG's petition. In that answer, both Mr. and Mrs. Serrant admitted that they were the legal title owners of the Property; that the Home was new construction; that HLG supplied services and materials for the construction of the Home; and that HLG's last day for rendering services was January 10, 2018. The Serrants also claimed that HLG did not have a right to a mechanic's lien because Mr. Serrant was the sole party to the Contract and the Property was owned by the Serrants as tenants by the entirety.

Pursuant to HLG's petition, the circuit court issued a show cause order, directing the Serrants to show cause why a mechanic's lien should not be established. Shortly thereafter, the parties filed a joint motion to stay the circuit court proceedings. that motion,

the parties noted that, under the terms of the Contract, "any disagreement arising out of said contract or the application of any provision thereof shall be submitted to arbitration." The parties also expressed a desire to pursue arbitration "in lieu of expending time, funds, and other resources litigating the issues of the dispute at the Show Cause Hearing." The court ultimately granted the request, and the proceedings were stayed.

The parties thereafter submitted to an arbitration hearing, which lasted two days.[1] At that hearing, HLG submitted evidence in support of its claim for damages against the Serrants, which included: "(i) unpaid construction balance; (ii) penalty for use of architectural plans; (iii) additional architectural fees; (iv) additional monies owed for site clean-up; (v) additional loss of profit; (vi) interest on unpaid monies owed; and (vii) attorney's fees." Mr. and Mrs. Serrant were both active participants in the hearing.

At the conclusion of the hearing, the arbitrator issued a written decision. In that written decision, the arbitrator noted that, although Mrs. Serrant was not a party to the Contract, she was a named Respondent because the Property was owned by her and Mr. Serrant as tenants by the entirety. The arbitrator explained that, as a result, any references in the written decision to "Respondents" included both Mr. and Mrs. Serrant, whereas any reference to "Respondent" referred to Mr. Serrant alone.

The arbitrator then went on to make various findings of fact and conclusions of law regarding HLG's claims for damages against the Serrants. In some of those findings, the arbitrator identified certain actions by "Respondents":

[1] A transcript of the arbitration hearing was not made part of the record before this Court.

> The home was partially constructed by [HLG] at the time **Respondents** terminated the [Contract].
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> * * *
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> There was a fair amount of testimony regarding ownership and copyright of the architectural plans used to construct **Respondents'** home; however, the real issue is whether a penalty should be imposed for **Respondents'** use of the plans after termination of the [Contract]. [HLG] requests an award of $25,000.00 as a penalty for **Respondents'** use of the plans.
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> * * *
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> The Arbitrator notes that the plans were approved by Prince George's County for construction of **Respondents'** home and the home was under construction at the time **Respondents** terminated the Agreement. For all practical purposes, the home needed to be constructed in accordance with the plans as approved by Prince George's County, which left **Respondents** with no option but to complete construction of their home using these plans.
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> * * *
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> There is really no dispute that [HLG] is entitled to recover the funds it paid for clean-up of the site. … The total amount [HLG] incurred for clean-up of the site was $1,175.00.
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> It is undisputed that **Respondents** should receive a credit against this amount for the payment they directly made to Welding in the total amount of $120.00. After deducting $120.00 from [HLG's] claim, the Arbitrator will award [HLG] $1,055.00 for this claim.

At the conclusion of the written decision, the arbitrator awarded HLG $66,484.90 for unpaid construction balance, additional architectural fees, site clean-up, interest on unpaid monies owed, and attorney's fees. The arbitrator stated that the written decision "disposes of all claims by and between the parties and may be confirmed as a final judgment in any court of competent jurisdiction."

Following the issuance of the arbitrator's written decision, HLG filed a petition in the circuit court to enforce the arbitration award as a mechanic's lien against the Property.[2] Not long after, the Serrants asked the court to stay those proceedings pending the outcome of a separate petition they had filed with the arbitrator. In that petition, the Serrants asked the arbitrator to modify or correct the award to clarify certain factual issues, namely, whether Mr. Serrant was acting as an agent for Mrs. Serrant in executing the Contract; whether Mrs. Serrant was a "joint-debtor" under the Contract; whether the award was issued against both Mr. and Mrs. Serrant; and whether certain counterclaims raised by the Serrants against HLG had been arbitrated and adjudicated as part of the arbitration. The court ultimately agreed to stay the proceedings pending the arbitrator's decision on the Serrants' petition.

In response to the Serrants' petition, the arbitrator issued a written opinion, denying the petition in part and granting it in part. The arbitrator denied the Serrants' request to modify the award, finding that "all issues presented to the Arbitrator were adjudicated and decided." The arbitrator did, however, agree that "some clarification of the award would be helpful to the parties." The arbitrator then set forth the following clarifications:

> 1. Both Mr. Serrant and Ms. Serrant agreed to vacate the show cause hearing in the mechanic's lien case in order to submit the claims to binding arbitration. They were both active participants in the arbitration hearing. The award clearly referenced the fact that the [Contract] was only signed by Mr. Serrant. The issue of agency/undisclosed principal was not presented during the arbitration hearing and even if it had been, it is questionable whether the arbitration agreement gives the Arbitrator the

[2] The circuit court actually granted HLG's petition, but later vacated the order pending the arbitrator's decision regarding the Serrants' petition for modification or correction of the arbitration award.

> authority to decide that issue. Any contractual obligations are those of Mr. Serrant as he was the only signatory to the [Contract] with [HLG].
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> 2. Both Mr. Serrant and Ms. Serrant were Respondents in the arbitration, pursuant to their agreement to vacate the show cause order in the mechanic's lien case. The award clearly stated that Mr. Serrant was referred to as "Respondent" and any references to "Respondents" referred to both Mr. Serrant and Ms. Serrant. … All monetary payments to [HLG] in the award are the obligation of Respondent (*i.e.*, Mr. Serrant), not Respondents.
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> 3. Regarding payments due to [HLG], the award is against Respondent (*i.e.*, Mr. Serrant).
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> 4. All counterclaim issues for which evidence was presented during the hearing were adjudicated and decided. … The parties were given ample time and were granted wide latitude for the presentation of their claims and defenses. The award specifically states that "[t]his decision and award disposes of all claims by and between the parties and may be confirmed as a final judgment in any court of competent jurisdiction."

Following the arbitrator's decision, HLG again asked the circuit court to enforce the arbitrator's award as a mechanic's lien against the Property. The Serrants opposed that motion, and a hearing was scheduled in the circuit court. At that hearing, the Serrants argued that a mechanic's lien was not available because Mrs. Serrant was not a party to the Contract and the arbitrator's award was issued solely against Mr. Serrant. HLG argued that a mechanic's lien was appropriate because Mrs. Serrant took title to the Property after the Contract was signed and then actively engaged in the subsequent litigation and arbitration.

In the end, the circuit court ruled that HLG was entitled to the establishment of a mechanic's lien. In so doing, the court found that Mrs. Serrant took title after the Contract was signed and then "clearly participated" in the subsequent litigation and arbitration.

The circuit court thereafter entered a written order establishing a mechanic's lien against the Property in the amount of $66,484.90. This timely appeal followed.

DISCUSSION

Parties' Contentions

The Serrants contend that the circuit court erred in entering its final order establishing a mechanic's lien against the Property. They argue that Maryland law does not permit the establishment of a mechanic's lien against a property held as tenants by the entirety where only one of the owners is a party to the contract and where a subsequent judgment under the contract is issued solely against that owner.

HLG argues that the mechanic's lien statute supports the establishment of the lien and that the case law relied on by the Serrants is inapposite.

HLG asserts that Mrs. Serrants' status as a tenant by the entirety does not preclude the establishment of the lien given that she was an active participant in the litigation and arbitration.

Standard of Review

The circuit court's decision to establish a mechanic's lien is reviewed "on both the law and the evidence." Md. Rule 8-131(c); *see also Southern Management Corp. v. Kevin Willes Const. Co., Inc.*, 382 Md. 524, 538-39 (2004). We "will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c). "Our review on matters of law, however, is more expansive." *Southern Management*

Corp., 382 Md. at 539. "The clearly erroneous standard for appellate review in [Rule 8-131(c)] … does not apply to a trial court's determination[] of legal questions or conclusions of law based on findings of fact." *L.W. Wolfe Enterprises, Inc. v. Maryland National Golf, L.P.*, 165 Md. App. 339, 344 (2005) (quotations omitted) (citing *Ins. Co. of N. Am. v. Miller*, 362 Md. 361, 372 (2001)). "Instead, '… where the order involves an interpretation and application of Maryland statutory and case law, our Court must determine whether the lower court's conclusions are legally correct under a *de novo* standard of review.'" *Id.* (citing *Walter v. Gunter*, 367 Md. 386, 392 (2002)).

Analysis

"Mechanic's liens, as they exist in this State, are creatures of statute, and, thus, to be entitled to a mechanic's lien against property in Maryland, a claimant must satisfy the procedural criteria set forth in the statute." *Southern Management Corp.*, 382 Md. at 543. Mechanic's liens in Maryland are governed by Sections 9-101 to 9-114 of the Real Property Article of the Maryland Code. That statutory scheme provides, in pertinent part:

> (a) Every building erected and every building repaired, rebuilt, or improved to the extent of 15 percent of its value is subject to establishment of a lien in accordance with this subtitle for the payment of debts, without regard to the amount, contracted for work done for or about the building and for materials furnished for or about the building[.]
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> * * *
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> (d) However, a building or the land on which the building is erected may not be subjected to a lien under this subtitle if, prior to the establishment of a lien in accordance with this subtitle, legal title has been granted to a bona fide purchaser for value.

Md. Code, Real Property § 9-102.

"The purpose of the Maryland mechanic's lien statute is to protect those who furnish labor and materials during the construction process." *Celta Corp. v. A.G. Parrott Co.*, 94 Md. App. 312, 319 (1993). "A mechanic's lien is a statutorily created remedy against improved property on which work has been done or materials have been supplied." *Brendsel v. Winchester Const. Co., Inc.* 162 Md. App. 558, 580 (2005). The law "provides a remedy to unpaid contractors or subcontractors who furnish labor or materials in the improvement of real property by permitting them to establish a lien upon the property improved." *York Roofing, Inc. v. Adcock*, 333 Md. 158, 168 (1993). "[T]he mechanic's lien law historically has been construed in the most liberal and comprehensive manner in favor or mechanics and materialmen." *Ridge Heating, Air Conditioning and Plumbing, Inc. v. Brennen*, 366 Md. 336, 340 (2001). Nevertheless, "a court may not extend the mechanic's lien law beyond the obvious designs and plain requirements of the statute." *C & B Construction, Inc. v. Dashiell*, 234 Md. App. 424, 437 (2017) (citations and quotations omitted).

"A contract is a prerequisite to establishing a lien." *Judd Fire Protection, Inc. v. Davidson*, 138 Md. App. 654, 662 (2001). "'Contract' means an agreement of any kind or nature, express or implied, for doing work or furnishing materials, or both, for or about a building as may give rise to a lien under this subtitle." Md. Code, Real Property § 9-101(c).

That said, "[a]n action for a mechanic's lien is an *in rem* proceeding for collecting a debt against the particular property described in the lien claim." *Brendsel*, 162 Md. App. at 580-81. "A mechanic's lien thus is only a means of receiving payment; it is not a claim

upon which the lien is founded." *Id.* at 581 (citations and quotations omitted). In fact, "Maryland recognizes that a lien can be held against a building apart from the land because it is an *in rem* right against improved property." *Cabana, Inc. v. Eastern Air Control, Inc.*, 61 Md. App. 609, 618 (1985).

Moreover, the mechanic's lien statute establishes "the right of a creditor for labor or materials to proceed *in rem* against improved property even though he could show no privity of contract with the owner, nor personal liability of the owner to him." *Mervin L. Blades & Son, Inc. v. Lighthouse Sound Marina and Country Club*, 37 Md. App. 265, 268 (1977). In other words, "the mechanic's lien statute was enacted to ensure that subcontractors … would ultimately be compensated for work performed or materials delivered, despite the absence of a contractual relationship between the subcontractor and the owner of the property." *Cottage City Mennonite Church, Inc. v. JAS Trucking, Inc.*, 167 Md. App. 694, 706 (2006).

Finally, the mechanic's lien statute expressly provides that "every building" is subject to a lien and that only those buildings that have been granted to a bona fide purchaser for value prior to the establishment of the lien are exempt. Md. Code, Real Property § 9-102(a) and (d). Thus, "the mere taking of legal title prior to the establishment of a lien does not serve to exempt the property under § 9-102(d)." *Sterling Mirror of Maryland, Inc. v. Rahbar*, 90 Md. App. 193, 198 (1992). "The statute plainly requires that the intervening purchaser be a bona fide purchaser for value." *Id.*

As noted, the Serrants argue that a mechanic's lien cannot be enforced against property held as tenants by the entirety where the debt that serves as the basis for the lien claim was contracted by and enforced against one tenant alone. The Serrants' argument is based on *Blenard v. Blenard*, 185 Md. 548 (1946), a case in which a husband, without his wife's knowledge, contracted to have work performed on land that they owned as tenants by the entirety. *Id.* at 557-58. When the husband failed to pay for the work in full, the contractor sought to enforce a mechanic's lien against the husband's interest in the property. *Id.* The Court of Appeals ultimately held that the contract debt was not enforceable as a mechanic's lien against the husband's interest in the property because the husband "had no separate interest which can be subjected to a mechanic's lien for a debt contracted by him alone." *Id.* at 560. That holding was based on the general rule in Maryland that "a tenant by the entireties has no separate interest which can be seized and sold on execution and can therefore be subject to the lien of a judgment against him alone." *Id.*

The Court of Appeals later held, in *Wohlmuther v. Mt. Airy Plumbing & Heating, Inc.*, 244 Md. 321 (1966), that a contract entered into solely by a husband could be enforced as a mechanic's lien against property he held as tenants by the entirety with his wife, where the facts showed that there was an "agency relationship" between the husband and wife. *Id.* at 326-27. The Court explained that, ordinarily, "knowledge by the wife of the husband's intention to construct a building on her land, together with her failure to interpose objection, are not sufficient circumstances to constitute agency." *Id.* The Court

noted, however, that, in that case, "the additional facts and circumstances, necessary to support a finding of agency, based upon implied authorization and subsequent ratification, go beyond mere knowledge on the wife's part of her husband's intention to incumber this property, jointly held as tenants by the entireties." *Id.* Those additional facts and circumstances, according to the Court, were that the wife had entered into a deed of trust to secure the construction loan and had personally signed a check to a contractor for work performed on the property. *Id.* at 327. The Court reasoned that "[s]uch affirmative action, on the part of the wife, is sufficient in our opinion to establish that [the husband] was the agent of his wife in his dealings with the appellees." *Id.*

Against that backdrop, we hold that the circuit court did not err issuing its order establishing and enforcing a mechanic's lien against the Serrants' Property. To be sure, the Contract for the construction of the Home was executed solely by Mr. Serrant, and the subsequent award that served as the basis for the mechanic's lien was issued solely against Mr. Serrant. Nevertheless, we are persuaded that the statutory scheme and the pertinent case law supports the establishment of the mechanic's lien under the unique circumstances presented here. When Mr. Serrant entered into the Contract, neither he nor Mrs. Serrant had taken title to the Property. That fact alone distinguishes the instant case from *Blenard*, as the non-contracting spouse in that case was already a co-owner of the property when the contract was executed. Expanding the reach of *Blenard* to the facts of the instant case would allow a person to defeat a mechanic's lien by adding a spouse to the property's deed after the execution of the contract. Such a result would be contrary to the remedial nature

of the mechanic's lien statute, which, as noted, is designed to protect "the right of a creditor for labor or materials to proceed *in rem* against improved property even though he could show no privity of contract with the owner, nor personal liability of the owner to him." *Mervin L. Blades & Son, Inc.*, 37 Md. App. at 268. Such a result would also be at odds with the plain language of § 9-102(d) of the mechanic's lien statute, which we have construed as indicating that "the mere taking of legal title prior to the establishment of a lien does not serve to exempt the property under § 9-102(d)." *Rahbar*, 90 Md. App. at 198.

That said, even if Mrs. Serrant was required to be a party to the Contract in order for the Property to be encumbered by the mechanic's lien, the record sets forth sufficient facts and circumstances from which an agency relationship between Mr. and Mrs. Serrant can be implied. First, after HLG filed its initial claim for the mechanic's lien against the Property, Mrs. Serrant joined in a motion in which she not only recognized the Contract's arbitration clause, but she agreed to vacate the show cause hearing and attend arbitration pursuant to that clause. Then, following the arbitration hearing, the arbitrator found that Mrs. Serrant had been an "active participant" in the hearing. The arbitrator also made certain factual findings indicating that Mrs. Serrant had been involved in the construction of the home. Specifically, the arbitrator found that Mrs. Serrant had terminated the Contract with HLG; that she had used the architectural plans provided by HLG to complete construction of the Home; and that she had made a payment "to Welding in the total amount of $120.00," which the arbitrator deducted from HLG's claim for damages regarding monies owed for site clean-up.

From those additional facts and circumstances, we are persuaded that Mrs. Serrant's awareness of Mr. Serrant's intention to incumber the Property went "beyond mere knowledge." That is, the facts showed "implied authorization and subsequent ratification" on the part of Mrs. Serrant, such that an agency relationship could be inferred. Accordingly, and for all the reasons stated herein, the circuit court did not err in establishing and enforcing a mechanic's lien against the Property.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANTS.