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IN THE
COURT OF APPEALS OF INDIANA

Service Steel Warehouse Co., L.P.,

Appellant-Plaintiff,

v.

United States Steel Corp.,

Appellee-Defendant.

May 3, 2021

Court of Appeals Case No. 20A-CC-1643

Appeal from the Lake Superior Court

The Honorable Calvin D. Hawkins, Judge

Trial Court Cause No. 45D02-1311-CC-828

Weissmann, Judge.

[1] In this interlocutory appeal, we are asked to determine whether an off-site fabricator on a construction project is a subcontractor or a material supplier under Indiana's mechanic's lien statute. Our decision impacts whether the fabricator's material supplier has a valid mechanic's lien against the project site in light of Indiana case law prohibiting supplier-to-supplier-based liens.

[2] We hold that Indiana's mechanic's lien statute does not require on-site labor for subcontractor status. The essential feature making one a subcontractor, rather than a material supplier, is the performance of a definite and substantial portion of the project's prime contract. We reverse the trial court's entry of partial summary judgment and remand for further proceedings.

Facts[1]

[3] In 2008, United States Steel Corp. (U.S. Steel) contracted with Carbonyx, Inc. (Carbonyx) to design and build two carbon alloy synthesis facilities (the Project) in Gary, Indiana. The facilities—known as C Module and D Module—were intended to produce a cheaper alternative to coke, a high-carbon fuel used in the steelmaking process. Carbonyx contracted with Steven Pounds d/b/a Troll Supply (Troll Supply) to fabricate approximately 75% of the steel components

[1] We conducted a virtual oral argument in this case on March 17, 2021. We thank counsel for their participation and advocacy.

needed for the Project. Troll Supply contracted with CPN Ventures LLC d/b/a Texas Steel (Texas Steel) to assist with its fabrication work.

[4] Troll Supply's fabrication work involved altering (*e.g.*, cutting, bending, welding, riveting) thousands of structural steel pieces (*e.g.*, columns, beams, plates, pipes) to build infrastructure components needed for the Project (*e.g.*, trusses, platforms, stairs, ductwork). Each component weighed anywhere from 1,000 to 260,000 pounds, many were very large, and some spanned 130 feet when assembled. The work required thousands of labor hours, and the Project's carbon alloy synthesis process could not have functioned without the components Troll Supply fabricated.

[5] Troll Supply purchased approximately 90% of the structural steel pieces needed for the fabrication work from Service Steel Warehouse Co., L.P. (Service Steel). In nearly all instances, Service Steel shipped the steel pieces directly to Texas Steel's facility in Denton, Texas, where the fabrication work was performed. Once the work was completed, the fabricated components were shipped either to U.S. Steel's Project Site in Gary, Indiana, or to Carbonyx's staging facility in Catoosa, Oklahoma. At the latter, larger structures were assembled before being shipped to the Project site. Ultimately, all of the components and structures fabricated from steel supplied by Service Steel were delivered to the Project site.

[6] C Module was completed and became operational in late 2012. However, U.S. Steel permanently shut down the facility in 2014 for economic reasons. Around

the same time, U.S. Steel halted construction of D Module, which was never completed.

[7] At some point, a dispute between U.S. Steel and Carbonyx resulted in U.S. Steel agreeing to pay Troll Supply up to $1,780,249 for its fabrication work. At least 65% of this sum was paid in exchange for Troll Supply's release of any and all claims against U.S. Steel and its real estate. But Troll Supply allegedly did not pay Service Steel for $563,084 of the steel pieces it supplied for fabrication. Therefore, within ninety days of the last date Service Steel supplied Troll Supply with steel, Service Steel recorded a mechanic's lien against U.S. Steel's Project site.

[8] Service Steel later filed suit against U.S. Steel, asserting claims of unjust enrichment, property owner liability, and foreclosure on mechanic's lien.[2] U.S. Steel moved for summary judgment on Service Steel's foreclosure claim, challenging the validity of Service Steel's mechanic's lien under Indiana law. Following a hearing on the motion, the trial court entered partial judgment in favor of U.S. Steel.[3] Service Steel now appeals.

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[2] Service Steel also filed suit against Troll Supply and obtained a default judgment. However, Troll Supply's sole proprietor, Steven O. Pounds, passed away in 2015.

[3] U.S. Steel also moved for summary judgment on Service Steel's unjust enrichment and property owner liability claims, which motion the trial court denied.

Discussion and Decision

[9] Although the trial court did not enter findings of fact and conclusions of law, the parties agree that the court found both Service Steel and Troll Supply to be material suppliers under Indiana's mechanic's lien statute. The parties also agree that the statute does not grant lien rights to a remote material supplier, one who merely supplies materials to another material supplier on a project.

[10] Service Steel argues that the supplier-to-supplier prohibition does not apply to its mechanic's lien because Troll Supply was a subcontractor on the Project, not a material supplier. Accordingly, Service Steel contends the trial court erred in entering summary judgment in favor of U.S. Steel on Service Steel's mechanic's lien foreclosure claim.

I. Standard of Review

[11] When reviewing the grant of a summary judgment motion, we apply the same standard applicable to the trial court. *Wagner v. Yates*, 912 N.E.2d 805, 808 (Ind. 2009). Summary judgment is proper only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C). We do not weigh the evidence but will consider the facts in the light most favorable to the non-moving party. *Wagner*, 912 N.E.2d at 808. We must reverse the grant of a summary judgment motion if the record discloses an incorrect application of the law to those facts. *Id.*

II. Mechanic's Lien Statute

[1] Mechanic's liens are pure creatures of statute. *Premier Investments v. Suites of Am., Inc.*, 644 N.E.2d 124, 127 (Ind. 1994). They strive to prevent the inequity of a property owner enjoying the benefits of labor or materials provided by others without compensation. *Id.* at 130. When manual laborers and material suppliers are not paid, their recourse as unsecured creditors is minimal. *Id.* But mechanic's lien laws generally make the owner of improved property an involuntary guarantor of payments for the reasonable value of improvements made. *Id.*

[2] Indiana's mechanic's lien statute is codified as Indiana Code § 32-28-3-1. In pertinent part, this statute entitles the following class of individuals to a mechanic's lien:

> A contractor, a subcontractor, a mechanic, a lessor leasing construction and other equipment and tools, whether or not an operator is also provided by the lessor, a journeyman, a laborer, or any other person performing labor or furnishing materials[4] or machinery, including the leasing of equipment or tools, for . . . the erection, alteration, repair, or removal of . . . a house, mill, manufactory, or other building[.]

Ind. Code § 32-28-3-1(a)(1)(A).

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[4] Indiana case law often uses the terms "materialman" and "supplier" to describe those who furnish materials under the mechanic's lien statute. Where practical, this opinion favors the term "material supplier."

[3] Because lien rights are in derogation of common law, statutory provisions relating to the persons entitled to claim a mechanic's lien are to be narrowly construed. *Premier*, 644 N.E.2d at 127. Indiana Code § 32-28-3-1(a) "expressly sets forth those persons entitled to mechanic's liens," and the list is "exclusive." *Id.* at 127-28. A person who does not fall within one or more of the listed categories is not entitled to a lien. *Id.* The inquiry, however, focuses upon the nature of the services and materials provided rather than the identity of the provider. *Haimbaugh Landscaping, Inc. v. Jegen*, 653 N.E.2d 95, 101 (Ind. Ct. App. 1995).

III. Supplier-to-Supplier Prohibition

[4] Here, there is no dispute that Service Steel is a material supplier under Indiana's mechanic's lien statute. The parties' dispute concerns the status of Troll Supply, to whom Service Steel supplied materials. While material suppliers are generally within the class protected by Indiana Code § 32-8-3-1, the statute has not been construed "to permit a lien by those parties whose contribution to the effort is remote." *City of Evansville v. Verplank Concrete & Supply, Inc.*, 400 N.E.2d 812, 818 (Ind. Ct. App. 1980).

> As a general rule, a mechanic's lien must arise out of the express or implied consent of the owner or person whose interest in the realty is proposed to be bound by the lien. Thus, materialmen who directly supply the owner are permitted a lien upon the property. The law considers the immediate, or general, contractor to be the agent of the owner insofar as it is reasonably necessary to carry out the contract. Thus, materialmen who supply a contractor are permitted to file a lien. A subcontractor is

> within this chain of authority and may contract with materialmen for supplies necessary to the performance of his portion of the general contract. However, materialmen supplying others who must themselves be considered materialmen have traditionally been considered outside the ambit of the statute.

Id. at 818-19 (internal citations omitted).

[5] This Court has noted that the prohibition of supplier-to-supplier-based liens "promote[s] honesty and fair dealing among the parties to a construction contract." *R.T. Moore Co. v. Slant/Fin Corp.*, 966 N.E.2d 636, 642 (Ind. Ct. App. 2012). If the supplier of another supplier has a right to a lien, any supplier—no matter how far removed from a project's owner—has the same right. *Caulfield v. Polk*, 17 Ind. App. 429, 46 N.E. 932, 934 (Ind. Ct App. 1897). Thus, without the supplier-to-supplier prohibition, a distant supplier could assert a lien against an owner with whom it has had no contact by showing only that it furnished material for a project and that the material was used therein. *Id.*

IV. Subcontractor Status

[6] Service Steel contends its mechanic's lien is not barred by the supplier-to-supplier prohibition because Troll Supply was a subcontractor, not a materialman, under Indiana's mechanic's lien statute. U.S. Steel takes the opposite position.

[7] In defining who qualifies as a "subcontractor" for mechanic's lien purposes, two divergent lines of authority have emerged across the United States. *Vulcraft v. Midtown Bus. Park, Ltd.*, 800 P.2d 195, 197 (N.M. 1990). The minority view

requires on-site work for subcontractor status;[5] the majority view does not.[6] To the extent the issue has been addressed in Indiana, our courts seem to have sided with the minority. *See Verplank*, 400 N.E.2d at 820; *Rudolph Hegener Co. v. Frost*, 60 Ind. App. 108, 108 N.E. 16, 17 (Ind. Ct. App. 1915).

[8] In *Verplank*, this Court held that the supplier-to-supplier prohibition barred a cement supplier's mechanic's lien against a parking garage for the value of cement used in the garage's construction. 400 N.E.2d at 820. The owner of the garage, who was also the builder, contracted with a concrete fabricator to furnish "preformed and prestressed concrete beams, 'T's', and the like, according to [an] architect's specifications." *Id.* at 814. The fabricator, in turn, contracted with the supplier to furnish the cement used in fabricating the concrete components. *Id.*

[9] The fabricator formed the components in Lafayette and shipped them to the builder in Evansville. *Id.* The builder then used the components in erecting the garage. *Id.* Despite the "substantial size and unquestionable specificity" of the furnished components, this Court labeled the fabricator a material supplier

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[5] *See, e.g.*, *Am. States Ins. Co. v. Tri Tech, Inc.*, 812 S.W.2d 490, 493 (Ark. Ct. App. 1991); *J.W. Thompson Co. V. Welles Prod. Corp.*, 758 P.2d 738, 742 (Kan. 1988); *Am. Buildings Co. v. Wheelers Stores*, 585 P.2d 845, 848 (Wyo. 1978); *Leonard B. Hebert, Jr. & Co. v. Kinler*, 336 So. 2d 922, 924 (La. Ct. App. 1976); *Frazier v. O'Neal Steel, Inc.*, 223 So. 2d 661, 665 (Miss. 1969); *Rebisso, Inc. v. Frick*, 112 N.E.2d 651, 653 (Ohio 1953).

[6] *See, e.g.*, *Preussag Int'l Steel Corp. v. March-Westin Co.*, 655 S.E.2d 494, 507-08 (W. Va. 2007) (citing majority view cases from California, Massachusetts, Minnesota, and Nebraska, among others); *Unadilla Silo Co. V. Hess Bros*, 586 A.2d 226, 236-37 (N.J. 1991) (citing majority view cases from Alabama, California, Idaho, Montana, and New Hampshire, among others); *Vulcraft*, 800 P.2d at 199-200 (citing majority view cases from Arizona, Colorado, Texas, and Utah, among others).

under Indiana's mechanic's lien statute because it "was not responsible for the erection of the structure on the construction site in Evansville." *Id.* at 820.

V. On-Site Labor Requirement

[10] U.S. Steel urges us to follow this Court's decision in *Verplank* and to hold that on-site labor is required for subcontractor status under Indiana's mechanic's lien statute. We decline for several reasons.

[11] First, the plain language of Indiana's mechanic's lien statute does not include an on-site labor requirement for subcontractor status. *See* Ind. Code § 32-28-3-1. The goal of statutory interpretation is to discern and further the intent of the legislature, and to do so, we give a statute's words their ordinary meaning. *West v. Ind. Sec'y of State*, 54 N.E.3d 349, 353 (Ind. 2016). Indiana's mechanic's lien statute requires only the performance of labor "for the erection of a building." Ind. Code § 32-28-3-1(a)(1)(A) (cleaned up). We may not engraft new words onto a statute or add restrictions where none exist. *Kitchell v. Franklin*, 997 N.E.2d 1020, 1026 (Ind. 2013).

[12] Second, our Supreme Court has interpreted the erection requirement of Indiana's mechanic's lien statute to mean "some physical act of labor *in connection with* the creation of a structure or improvement on land." *Premier,* 644 N.E.2d at 128 (emphasis added) (upholding dismissal of mechanic's lien filed by hotel developer who performed supervisory services on a project but not physical labor). To the extent *Verplank* recognized an on-site labor requirement, it appears to have done so under a narrower interpretation of the erection

requirement than that articulated in *Premier. See Verplank*, 400 N.E.2d at 819-20 (discussing authorities that define a "subcontractor" as one who literally erects a building or a primary component thereof).

[13] Third, as the parties acknowledged during oral argument, off-site construction has been growing in popularity as a means of reducing costs and increasing efficiency in the construction industry. *See generally* Tom Tomaszewski, *Four Components Shaping Commercial Construction*, Inside Indiana Business (August 15, 2019), https://www.insideindianabusiness.com/story/40919313/four-components-shaping-commercial-construction. Given this changing landscape, the remedial purpose of Indiana's mechanic's lien statute is better realized by not limiting subcontractor status based on the location of the work performed.

[14] Finally, we note that Indiana does not recognize horizontal *stare decisis. In re C.F.*, 911 N.E.2d 657, 658 (Ind. Ct. App. 2009). While we respect the decisions of other panels, "each panel of this Court has coequal authority on an issue and considers any previous decisions by other panels but is not *bound* by those decisions." *Id.* (emphasis in original). Accordingly, we write upon a "clean slate." *In re F.S.*, 53 N.E.3d 582, 596 (Ind. Ct. App. 2016).

[15] Based on a plain reading of Indiana's mechanic's lien statute, the Indiana Supreme Court's interpretation of its operative language, and the statute's underlying purpose, we conclude that our legislature did not intend subcontractor status to be limited only to those who perform their physical labor at the construction site.

VI. Definite and Substantial Portion

[16] Given our conclusion above, Indiana courts still require a means of distinguishing between subcontractors and material suppliers in the context of the supplier-to-supplier prohibition. We therefore turn to the courts of other jurisdictions for guidance. Among the states that do not require on-site labor for subcontractor status, the common core inquiry is whether the party performs a "definite" and "substantial" portion of the physical labor called for by the original contract.[7] We find this baseline approach persuasive and adopt it as our own.

[17] On the issue of definiteness, we specifically agree with the New Mexico Supreme Court's articulation in *Vulcraft*:

> To qualify as a subcontractor, the party must perform some portion of the work for which the owner originally contracted. It is not necessary that the work be done at the construction site, but work must be performed to the contract's plans and specifications. The work can be performed on material supplied to another subcontractor of the contractor, but the material cannot be generic, stock, off-the-shelf items or items generally available without modification—it must be fabricated uniquely or

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[7] *See Preussag Int'l Steel Corp. v. March-Westin Co.*, 655 S.E.2d 494, 507-08 (W. Va. 2007); *Blue Tee Corp. v. CDI Contractors*, 529 N.W.2d 16, 20-21 (Neb. 1995); *Unadilla Silo Co. v. Hess Bros.*, 586 A.2d 226, 236-37 (N.J. 1991); *Vulcraft*, 800 P.2d at 199-200; *Lyle Signs v. Evroks Corp.*, 562 A.2d 785, 788 (N.H. 1989); *Jacobsen Constr. Co. v. Indus. Indem. Co.*, 657 P.2d 1325, 1328-29 (Utah 1983); *Weyerhaseuser Co. v. Twin City Millwork Co.*, 191 N.W.2d 401, 406 (Minn. 1971); *Kobayasli v. Meehleis Steel Co.*, 472 P.2d 724, 727-28 (Col. Ct. App. 1970); *Theisen v. Cnty. of L.A.*, 352 P.2d 529, 537 (Cal. 1960) (en banc).

> specially by the contractor for the requirements of the particular project.

800 P.2d at 200-01.

[18] We also agree with the New Mexico Supreme Court on the issue of substantiality: To qualify as a subcontractor, the work performed must be substantial. *Id.* at 200. "[A] relatively small expenditure of labor in relation to a contract mainly for material" is not sufficient. *Id.* However, we do not adopt a mechanical test based on a percentage of the total contract performed. *See generally id.* at 201 n.4. "Substantiality is determined based on evaluating the amount of labor and skill provided in relation to the material supplied and the importance of the contribution to the project." *Id.*

[19] By defining a "subcontractor" as one who performs a definite, substantial portion of the prime contract, we aim to reconcile the remedial purpose of Indiana's mechanic's lien statute with the policy underlying the supplier-to-supplier prohibition. The substantiality requirement, in particular, should ensure a project owner has notice of a subcontractor's participation on the project, enabling the owner to mitigate the risk of an unknown material supplier asserting a lien.

VII. Analysis

[20] Here, the designated evidence establishes that Troll Supply performed a definite and substantial portion of the prime contract between U.S. Steel and Carbonyx. Based on Carbonyx's unique plans and specifications, Troll Supply fabricated the majority of the steel components needed for the Project. App. Vol. II, pp.

218-19; App. IV, p. 165. The components required thousands of labor hours to produce. App. Vol. IV, p. 166. And the Project's carbon alloy synthesis process could not have functioned without them. App. Vol. IV, p. 167. We therefore find that Troll Supply was a subcontractor, not a material supplier, under Indiana's mechanic's lien statute.

[21] Accordingly, we hold that Service Steel's mechanic's lien is not barred by the supplier-to-supplier prohibition and the trial court erred in entering summary judgment in favor of U.S. Steel on Service Steel's mechanic's lien foreclosure claim. We make no decision regarding any other issue referenced in the parties' briefs, including the timeliness with which Service Steel recorded its mechanic's lien, the value of that lien, or whether Service Steel may be entitled to attorney's fees or prejudgment interest.

[22] The judgment of the trial court is reversed, and the case is remanded for further proceedings consistent with this opinion.

Mathias, J., and Altice, J., concur.