COURT OF APPEALS
DECISION
DATED AND FILED

March 10, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

No. 97-3617

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

NOFFKE LUMBER, INC.,

PLAINTIFF-RESPONDENT,

V.

DR. JAMES P. SIEPMANN AND
VICTORIA L. SIEPMANN,

DEFENDANTS-APPELLANTS,

LEE R. PRITZL AND MARGARET A. PRITZL,
D/B/A PRITZL CONTRACTING,

DEFENDANTS.

APPEAL from a judgment of the circuit court for Winnebago County: ROBERT A. HAASE, Judge. *Affirmed.*

Before Brown, Nettesheim and Anderson, JJ.

PER CURIAM. Dr. James P. and Victoria L. Siepmann (Siepmann) appeal from a judgment foreclosing Noffke Lumber, Inc.'s construction lien on their home. We affirm.

Siepmann contracted with Lee R. Pritzl to be the general contractor for the home construction. Noffke was not a party to this contract. Noffke delivered construction materials on an open account to the Siepmann site at Pritzl's request, and the materials were incorporated into the project. The house was under construction from October 1993 to approximately June 1994. In September 1994, Siepmann entered into an oral agreement with Pritzl to construct a detached garage; there was no written contract for the garage. The garage was constructed in November and December 1994 using materials delivered by Noffke. Subsequent to completion of the garage, Noffke complied with the procedures of ch. 779, STATS., to obtain a construction lien for the materials provided for the house and garage, which Noffke understood to be one project.

Pritzl did not apply all of the money he received from Siepmann to the subcontractors and material suppliers. In September 1996, Noffke sued Siepmann and Pritzl alleging an unpaid balance due for materials furnished for the house and detached garage and seeking foreclosure of its lien. Siepmann responded that Noffke did not have a properly perfected construction lien on the house because Noffke's notice of intent and claim for lien were not provided within the requisite period of time after construction on the house ceased in June 1994. Siepmann argued that several months later, he hired Pritzl to construct a separate garage which was not part of the original construction project, and Noffke did not have a lien for garage-related materials because it did not give a timely construction lien notice for the separate garage project.

After a trial to the court, the court found that Noffke acted in good faith in supplying materials to Pritzl for incorporation into the Siepmann project. Noffke believed that there was only one contract for the house and detached garage. The court found that the house and detached garage were "only one construction project" which required only one lien and one set of notices under ch. 779, STATS. The court then determined the balance due Noffke.

On appeal, Siepmann argues that his contract with Pritzl is unambiguous and provided only for construction of the house, that the garage was a separate project and that Noffke's lien filing was ineffective.

We are not required to address appellate arguments in the manner in which a party has structured them. *See* ***State v. Waste Management of Wis., Inc.***, 81 Wis.2d 555, 564, 261 N.W.2d 147, 151 (1977). We conclude that the controlling issue for appeal is whether the house and detached garage were one project. If they were, Noffke complied with ch. 779, STATS., and has a perfected lien for materials provided for the house and garage.[1] We turn to the court's findings that the house and detached garage constituted one project for purposes of ch. 779.

There was no evidence at trial that Noffke was notified that the detached garage was a separate project. Pritzl, the general contractor, submitted the architect's preliminary plan to Noffke for estimating material costs. This plan included one attached garage and one detached (storage) garage. Construction of the detached garage was delayed due to problems with its placement on the site.

[1] If the house and garage are treated as a single project for lien purposes, there is no dispute that Noffke complied with the requirements of ch. 779, STATS.

Pritzl testified that the house and garage were "wrapped together" and the garage materials were "the last thing" Pritzl received from Noffke. Pritzl did not provide Noffke with a copy of the Siepmann contract, and Noffke did not otherwise know of Pritzl's arrangements with Siepmann on the project.

Noffke's manager testified that Noffke did not see the contract between Siepmann and Pritzl prior to supplying materials for the project. Noffke supplied materials to the Siepmann project on Pritzl's open account. Noffke delivered the first materials on October 6, 1993, and the last materials on December 14, 1994.

James Siepmann testified that the detached garage was included in the initial plans. However, to reduce costs, the detached garage was deleted and not addressed in the construction financing documents. At the end of the project, Siepmann decided to build the detached garage, and materials for it were delivered in October 1994. The house was completed before the garage construction began. Numerous subcontractors, including Noffke, were not paid with draw money Siepmann authorized for Pritzl. Siepmann testified that the house and detached garage were separate projects.

In ***Taylor v. Dall Lead & Zinc Co.***, 131 Wis. 348, 356, 111 N.W. 490, 493 (1907), the court acknowledged that one lien procedure can cover delivery of materials from time to time on open account where the materials are "so connected as to constitute substantially one transaction." Where there is an understanding that the material purchases relate to each other and the purchases are kept on open account, several deliveries may be considered a single transaction for purposes of the lien statute. *See* ***id.*** at 357, 111 N.W. at 493.

Here, the trial court found that Noffke was not aware that the house and detached garage were separate projects and reasonably believed that the Siepmann site was one project. Noffke acted in good faith in supplying materials on Pritzl's open account for the Siepmann project. These findings are not clearly erroneous, *see* § 805.17(2), STATS., and under ***Taylor*** compel the conclusion that Noffke's lien covers all of the materials delivered for the house and garage.

Wisconsin's lien law is remedial in character and is to be liberally construed. *See* ***R. Fredrick Redi-Mix, Inc. v. Thomson***, 96 Wis.2d 715, 726, 292 N.W.2d 648, 653 (1980). This liberal construction "should be employed to effectuate the legislative intent to protect the claims of tradesmen, laborers and materialmen for work or materials provided in the improvement of real property." ***Id.*** at 726, 292 N.W.2d at 653-54.

Our holding effectuates the legislature's intent. In affirming the finding that Noffke reasonably assumed it was supplying materials to one project, we implicitly conclude that Noffke did not bear the burden to discern the agreement between Pritzl and Siepmann for construction at the site. Noffke was never notified that the house was completed and the account could be settled on that basis. Siepmann received lien notices from Noffke. Siepmann knew the terms of the contract; Noffke did not. "[I]f there was a continuous dealing and running account, and the work was done and the materials furnished at short intervals, and were appropriate to the condition and progress of the building, a presumption [arose] that it was understood from the beginning that the claimants were to do the work or furnish the materials for the construction of the building as the same should be required ...." ***McCormick v. Kuhnly***, 26 Wis.2d 193, 197, 131 N.W.2d 840, 842 (1965) (quoted source omitted).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.