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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0525-15T3

SANTANDER CONDOMINIUM
ASSOCIATION, INC.,

Plaintiff-Respondent,

v.

AA CONSTRUCTION 1 CORPORATION
d/b/a AA CONSTRUCTION COMPANY,

Defendant-Appellant,

and

AMERICAN RETAIL CONSTRUCTION,
LLC,

Defendant.

Argued September 26, 2017 – Decided October 13, 2017

Before Judges Reisner, Hoffman and Mayer.

On appeal from Superior Court of New Jersey,
Law Division, Monmouth County, Docket No. L-
4818-14.

Michael Confusione argued the cause for
appellant (Hegge & Confusione, LLC, attorneys;
Mr. Confusione, of counsel and on the brief).

Cheryl Siegel argued the cause for respondent (Buckalew, Frizzell & Crevina, LLP, attorneys; Jeffrey S. Mandel, on the brief).

PER CURIAM

Defendant AA Construction 1 Corporation d/b/a AA Construction Company (AA) appeals from the March 6, 2015 order of the trial judge discharging its construction lien against plaintiff Santander Condominium Association, Inc. (Santander) and awarding counsel fees to Santander. We affirm.

The facts giving rise to AA's construction lien claim are undisputed. Santander hired American Retail Construction, LLC (American Retail) to repair the façade of a condominium building on its property located in Asbury Park. American Retail entered into a subcontract with AA to perform the façade work.¹ American Retail failed to pay AA for its work.

On May 16, 2013, AA's contract with American Retail was terminated. AA sent a "Demand for Statement Respecting Trust Relating to Improvement" to Santander and American Retail requesting the unpaid balance for its façade work. The document was sent by certified mail to Santander's condominium property in Asbury Park and the green card was signed by someone at the

¹ AA did not produce a copy of its contract with American Retail to verify that it was hired to perform the work and the amount to be paid for the work.

condominium property. Santander maintained that it did not receive this notice.²

On January 23, 2014, AA filed a second document seeking the unpaid balance for work performed. The second notice was mailed to Santander at "400 Deal Lake Drive, Allenhurst, NJ 07711."³ Santander claims that notices should have been mailed to its registered agent in Howell, not the condominium property in Asbury Park where the work was performed.

On or about March 21, 2014, AA filed a construction lien against Santander's property. Santander claimed it did not receive notice of the construction lien. AA's agent certified that notice of the construction lien was sent to Santander by regular mail and certified mail to the address in Asbury Park. The certified mail letter was returned "unclaimed." There is no indication in the record as to the status of the regular mail letter.

² During oral argument, Santander's counsel indicated that any one of the seventy plus condominium residents may have signed the green card. However, the condominium residents lacked authority to act on behalf of Santander, which is a separate legal corporate entity.

³ The property where the façade work was performed, known as Santander Condominium, is located at 400 Deal Lake Drive, Asbury Park, New Jersey, 07712. The address for Santander Condominium Association, Inc. is c/o Urban Building Evaluations, Inc., 1 Willow Pond Drive, Howell, New Jersey, 07731. The Allenhurst address is unconnected to any address related to this matter.

By October 31, 2014, Santander had remitted payment for work due to American Retail.⁴ Because it remitted payment in full to American Retail, Santander demanded discharge of the lien. AA declined to discharge the lien.

Santander filed a verified complaint and order to show cause seeking discharge of AA's construction lien and attorneys' fees and costs. In the complaint, Santander asserted that AA did not effectuate proper service of the lien. At the show cause hearing, Santander argued that AA's service of the lien claim was improper because, pursuant to its contract with American Retail, all notices were to be sent to Santander at a Howell address. Santander further argued that a corporate search would have disclosed the Howell address for Santander's registered agent. Instead, AA mailed all notices to the residential condominium property in Asbury Park where the work was performed. Santander asserted that it did not receive mail or maintain an office at the Asbury Park property.

AA responded that Santander had actual notice of AA's lien claim, which fulfilled the notice requirement of the construction lien statute. AA also maintained that it was not a party to the written contract between Santander and American Retail, and

⁴ American Retail filed for bankruptcy in December 2014.

therefore could not have known the address for service of notices on Santander.

By order dated March 6, 2015, the motion judge determined that AA did not effectuate service of the lien claim on Santander. Thus, he discharged AA's lien claim against Santander and awarded attorney's fees to be calculated by the court in a separate application. Santander subsequently submitted a certification for legal services. On August 17, 2015, the motion judge awarded attorney's fees to Santander in the amount of \$8,798.70.

This appeal involves interpretation of the requirements of the Construction Lien Law, N.J.S.A. 2A:44A-1 to -38. Statutory interpretations involve questions of law and are reviewed de novo by appellate courts. McGovern v. Rutgers, 211 N.J. 94, 108 (2012). "A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, LP v. Twp. Comm. of Twp. of Manalapan, 140 N.J. 366, 378 (1995). However, fact findings by a judge are entitled to deference on appeal "when supported by adequate, substantial and credible evidence" in the record. Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 484 (1974).

The motion judge discharged AA's lien claim on the basis that AA failed to properly serve Santander with its lien claim pursuant to N.J.S.A. 2A:44A-7, which provides:

a. . . . Service shall be by personal service as prescribed by the Rules of Court adopted by the Supreme Court of New Jersey or by:

(1) simultaneous registered or certified mail or commercial courier whose regular business is delivery service; and

(2) ordinary mail addressed to the last known business or residence address of the owner or community association, contractor or subcontractor. A lien claim served upon a community association need not be served upon individual "unit owners" as defined in section 3 of P.L. 1993, c. 318 (C.2A:44A-3).

b. The service of the lien claim provided for in this section shall be a condition precedent to enforcement of the lien; however, the service of a lien claim outside the prescribed time period shall not preclude enforceability unless the party not timely served proves by a preponderance of the evidence that the late service has materially prejudiced its position. Disbursement of funds by the owner, community association, a contractor or a subcontractor who has not been properly served . . . shall constitute prima facie evidence of material prejudice.

[N.J.S.A. 2A:44A-7.]

"When statutory language is clear and unambiguous, the court's function is to enforce the statute as written, absent any specific indication of legislative intent to the contrary."

Gallo v. Sphere Constr. Corp., 293 N.J. Super. 558, 563 (App. Div. 1996)(emphasis omitted).

AA argued it complied with service of process requirements under N.J.S.A. 2A:44A-7, which requires service of a lien claim by personal service or by mailing to the "last known business or residence address of the owner." As Santander is a corporation, it has only a business address. The address of the condominium property in Asbury Park was neither Santander's residential address nor its business address.⁵ Because Santander did not reside at 400 Deal Lake Drive, Asbury Park, New Jersey, service of the lien claim purportedly made by AA to that address failed to satisfy the statute's service requirements.

Further, N.J.S.A. 2A:44A-7(a)(1) and (2) require service of the lien claim by certified and ordinary mail. The record indicates that the lien claim sent to Santander by certified mail at the condominium property was "unclaimed." Thus, the lien claim sent by certified mail was not received by Santander. AA also attempted service of the lien claim upon Santander by ordinary mail addressed to the condominium property. However, the status of the ordinary mail letter was not part of the record. Thus, even assuming the Asbury Park address was correct for AA's service

⁵ Had AA done a corporate search, it would have found that Santander's registered agent for service was located in Howell.

of its lien claim on Santander, there is no evidence that either the certified mail or the ordinary mail were received at the Asbury Park address.

Additionally, Santander demonstrated it suffered "material prejudice" in accordance with N.J.S.A. 2A:44A-7(b) because it remitted payment for the façade work to American Retail. Pursuant to the statute, disbursement of funds by an owner who has not been properly served "shall constitute prima facie evidence of material prejudice." Id.

Because the motion judge discharged AA's lien claim for lack of proper service, he ordered an award of attorneys' fees and costs to Santander. Pursuant to N.J.S.A. 2A:44A-30(e), "[a]ny lien claimant who fails to discharge a lien claim of record pursuant to this section shall be liable for all court costs, and reasonable legal expenses." AA disputes the applicability of the statute in this case.

The statute expressly provides that any party can file an order to show cause to discharge a lien that has been filed "without factual basis." N.J.S.A. 2A:44A-30(c). The motion judge discharged the lien claim because AA failed to properly serve Santander with the claim pursuant to N.J.S.A. 2A:44A-7. As a result, AA is liable for Santander's court costs and reasonable legal expenses. On appeal, AA did not contest the reasonableness

of the legal fees awarded to Santander. AA merely challenged the award of fees to Santander.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.



CLERK OF THE APPELLATE DIVISION