

SUPREME COURT OF KANSAS

Owen Lumber Co. v. Chartrand, 283 Kan. 911

157 P.3d 1109 (2007) · No. No. 96,391 · Decided May 4, 2007

SUMMARY

The Kansas Supreme Court reviewed a mechanic's lien foreclosure dispute involving Owen Lumber Company and property owners Arthur and Carol Chartrand. The court held that the lien notice requirements were satisfied under the statutory savings provision, rejected the Chartrands' proposed limitation on lien liability under K.S.A. 60-1103(d), and addressed related issues concerning prejudgment interest and trial fairness. The appeal followed two prior decisions in the same case.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Luckert, J.
JURISDICTION	Kansas
DECIDED	May 4, 2007
DOCKET	No. 96,391
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Chartrands appealed a district court judgment enforcing Owen Lumber's mechanic's lien, awarding \$12,980.61 in principal and prejudgment interest. The appeal was transferred to the Supreme Court of Kansas on the court's own motion under K.S.A. 20-3018(c).
STANDARD OF REVIEW	Statutory interpretation and conclusions of law are reviewed de novo. Findings of fact are reviewed for substantial competent evidence. The award of prejudgment interest is reviewed for abuse of discretion. A negative finding on equitable estoppel is not disturbed absent arbitrary disregard of undisputed evidence or an extrinsic consideration such as bias, passion, or prejudice.
PRECEDENTIAL VALUE	Published, precedential Kansas Supreme Court opinion
PARTIES	Arthur Chartrand, Carol Chartrand v. Owen Lumber Company

TOPICS

- mechanics liens
- construction law
- statutory interpretation
- damages
- appellate procedure

PRACTICE AREAS

construction law

mechanics liens

real estate

remedies

appellate procedure

QUESTIONS PRESENTED

1. Whether Owen Lumber properly served the Chartrands with the mechanic's lien statement under K.S.A. 60-1103(c), including whether the statutory savings provision applied based on actual receipt.
2. Whether K.S.A. 60-1103(d) limited the Chartrands' liability on the mechanic's lien.
3. Whether the district court abused its discretion by awarding prejudgment interest.
4. Whether the Chartrands were denied a fair trial or whether Owen Lumber was barred by unclean hands or equitable estoppel because the same attorneys represented Owen Lumber and other defendants.

HOLDINGS

1. The statutory savings provision in K.S.A. 60-1103(c) was satisfied because the Chartrands actually received a copy of the mechanic's lien statement attached to Owen Lumber's properly served 1997 foreclosure petition. The statute did not permit proof of service merely through a presumption of receipt from first-class mailing where restricted-mail service was required, but actual receipt independently satisfied the savings provision.
2. K.S.A. 60-1103(d) did not limit the amount of the mechanic's lien under the facts of this case.
3. The district court properly awarded prejudgment interest because the mechanic's-lien claim was liquidated and ascertainable by mathematical calculation, notwithstanding the parties' dispute over liability and offsets.
4. The Chartrands failed to prove that dual representation by the attorneys for Owen Lumber and other defendants deprived them of a fair trial or justified equitable estoppel based on unclean hands.

KEY QUOTATIONS

“We conclude that the theory of presumptive receipt of legal service which provides that service of process by mail is deemed complete when the summons or writ is deposited in the post office, properly addressed, with the proper amount of postage does not apply to K.S.A. 60-1103(c) which requires service by restricted mail.”
(at 1115)

“The district court correctly applied the savings provision of K.S.A. 60-1103(c) and correctly concluded that because the Chartrands obtained actual receipt of the mechanic's lien statement, the statutory notice requirement was satisfied.” (at 1116)

“Therefore, the district court correctly determined that the claim became fixed and liquidated as of the date they became owners of the property, or February 5, 1996.” (at 1119)

FACTUAL BACKGROUND

Owen Lumber supplied building materials to Design Build Group for construction of the Chartrands' home. The Chartrands recorded an affidavit of equitable interest before Owen Lumber filed its mechanic's lien, later

received notice of multiple liens through a title report, and acquired the property from Design Build by quitclaim deed. After prior appellate proceedings required Owen Lumber to provide the Chartrands a copy of the lien statement within 60 days of the mandate, Owen Lumber sent the statement by restricted and first-class mail, and the record also showed that the Chartrands had received the lien statement attached to the original foreclosure petition in 1997. The district court entered judgment for Owen Lumber for the lien principal and prejudgment interest.

PROCEDURAL HISTORY

The district court initially granted summary judgment for the Chartrands, concluding that Owen Lumber had not complied with statutory notice requirements. The Court of Appeals reversed, and the Supreme Court affirmed in Chartrand I. On remand, the district court applied statutory amendments retrospectively and again ruled against Owen Lumber; in Chartrand II, the Supreme Court held that retrospective application without a reasonable compliance period violated due process and granted Owen Lumber 60 days after the mandate to serve the lien statement. After a remand trial, the district court found that the statutory savings provision applied, entered judgment for Owen Lumber, awarded prejudgment interest, and rejected the Chartrands' equitable-estoppel and fair-trial arguments. The Supreme Court affirmed and remanded for foreclosure of the lien and enforcement of the principal and interest award.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The judgment of the district court is affirmed, and the case is remanded for foreclosure of the mechanic's lien and for awarding the principal and interest as calculated by the district court.

CASES CITED

- Owen Lumber Co. v. Chartrand, 270 Kan. 215, 14 P.3d 395 (2000)
- Owen Lumber Co. v. Chartrand, 276 Kan. 218, 73 P.3d 753 (2003)
- Resolution Trust Corp. v. Fleischer, 257 Kan. 360, 369, 892 P.2d 497 (1995)
- Scott v. Strickland, 10 Kan. App. 2d 14, 20, 691 P.2d 45 (1984)
- Foster v. Kansas Department of Revenue, 281 Kan. 368, 374, 130 P.3d 560 (2006)
- U.S.D. No. 233 v. Kansas Association of American Educators, 275 Kan. 313, 318, 64 P.3d 372 (2003)
- Nicholas v. Nicholas, 277 Kan. 171, 177, 83 P.3d 214 (2004)
- Shriver v. National Bank, 117 Kan. 638, 649, 232 P. 1062 (1925)
- State v. Thrash, 267 Kan. 715, Syl. ¶ 4, 987 P.2d 345 (1999)
- Kopp's Rug Co. v. Talbot, 5 Kan. App. 2d 565, 567, 620 P.2d 1167 (1980)
- Estate of Norris v. Hastings, 36 Kan. App. 2d 479, 141 P.3d 511 (2006)
- Schwalm v. Deanhardt, 21 Kan. App. 2d 667, 906 P.2d 167 (1995)
- Schwaller Lumber Co., Inc. v. Watson, 211 Kan. 141, 145, 505 P.2d 640 (1973)

- *Dick v. LaVilla Inns, Inc.*, 212 Kan. 101, 102, 510 P.2d 188 (1973)
- *Blair Construction, Inc. v. McBeth*, 273 Kan. 679, 689, 44 P.3d 1244 (2002)
- *Vernon v. Commerce Financial Corp.*, 32 Kan. App. 2d 506, 511, 85 P.3d 211 (2004)
- *Phelps Dodge Copper Products Corp. v. Alpha Construction Co.*, 203 Kan. 591, 595-97, 455 P.2d 555 (1969)
- *Miller v. Botwin*, 258 Kan. 108, 119, 899 P.2d 1004 (1995)
- *Crawford v. Prudential Insurance Co.*, 245 Kan. 724, 783 P.2d 900 (1989)
- *J. Walters Construction Co. v. Greystone South Partnership*, 15 Kan. App. 2d 689, 699, 817 P.2d 201 (1991)
- *Fletcher v. Nelson*, 253 Kan. 389, 392, 855 P.2d 940 (1993)
- *Gillespie v. Seymour*, 250 Kan. 123, 129, 823 P.2d 782 (1991)
- *In re Estate of Haneberg*, 270 Kan. 365, 374, 14 P.3d 1088 (2000)