

82 Mass.App.Ct. 1111
Unpublished Disposition
NOTICE: THIS IS AN UNPUBLISHED OPINION.
Appeals Court of Massachusetts.

TOWNEHOUSE OF AMHERST
CONDOMINIUM ASSOCIATION

v.

U.S. BANK NATIONAL ASSOCIATION, trustee.¹

¹ OF HARBORVIEW 2005-13 TRUST FUND.

No. 11-P-2025.

|
Aug. 24, 2012.

the Court (GRAINGER, BROWN & SULLIVAN, JJ.).

MEMORANDUM AND ORDER
PURSUANT TO RULE 1:28

*1 This is an appeal from a judgment for the defendant, U.S. Bank National Association, as trustee of Harborview 2005-13 Trust Fund (bank). A judge of the Superior Court ruled that Townhouse of Amherst Condominium Association's (Townhouse) lien on a condominium unit had been dissolved and denied Townhouse's motion for summary judgment. Upon motion, the judge then entered judgment for the defendant, dismissing Townhouse's complaint. We affirm.

The sole issue in this case is whether Townhouse's lien on a condominium unit has priority over the bank's to the extent permitted by G.L. c. 183A, § 6(c), and G.L. c. 254, §§ 5 and 5A. The facts are undisputed. Accordingly, we review questions of law de novo. See *Miller v. Mooney*, 431 Mass. 57, 60 (2000), citing *Augat, Inc. v. Liberty Mut. Ins. Co.*, 410 Mass. 117, 120 (1991). By statute, a condominium association's lien for delinquent common expenses on a condominium unit may enjoy a limited priority over a first mortgage on the unit: “[a] lien under this section shall be enforced in the manner provided in sections five and five A of chapter two hundred and fifty four.” G.L. c. 183A, § 6(c), as amended by St.1992, c. 400, § 8. The statute contains numerous detailed requirements, including a requirement that a condominium association seeking to enforce a lien for unpaid common area fees file and record

a copy of the complaint with the registry of deeds within thirty days of the commencement of the action.² The facts are undisputed that Townhouse did not file or record its complaint with the registry of deeds within the requisite thirty days. Townhouse argues, however, that its noncompliance should be overlooked in the interests of equity.

² “A lien upon land for the erection, alteration, repair or removal of a building or other structure or other improvement of real property [i.e., a mechanic's lien] or a lien established under [G.L. c. 63, § 76], [or] [G.L. c. 183A, § 6,] shall be enforced by a civil action brought in the superior court for the county where such land lies.... An attested copy of the complaint ... and a statement of the amount due, shall be filed in the registry of deeds and recorded as provided in section nine within thirty days of the commencement of the action, or such lien shall be dissolved.” G.L. c. 254, § 5, as amended through St.1996, c. 364, § 7.

“[S]tatutory language should be given effect consistent with its plain meaning and in light of the aim of the Legislature unless to do so would achieve an illogical result.” *Sullivan v. Brookline*, 435 Mass. 353, 360 (2001). General Laws c. 254, § 5, provides the sole mechanism for enforcing condominium association liens. The same mechanism is used to enforce mechanic's liens and liens established under G.L. c. 63, § 76. Because a “condominium lien is enforced in the manner provided for enforcing mechanic's liens,” *Eno and Hovey, Real Estate Law* § 11.15 (4th ed.2004), we look to the cases decided under the mechanic's lien statute in reviewing the sufficiency of condominium liens under the condominium statute.

A mechanic's lien is a creation of statute and is perfected only by strict compliance with the statutory requirements. See *East Coast Steel Erectors, Inc. v. Ciolfi*, 417 Mass. 602, 605 (1994); *National Lumber Co. v. Lombardi*, 64 Mass.App.Ct. 490, 492-493 (2005). “[W]e have consistently required exact compliance with the statute in order to create, perfect, and enforce [a mechanic's] lien.” *Golden v. General Builders Supply LLC*, 441 Mass. 652, 654 (2004). Further, “[t]he [enforcement] statute is strictly construed against the party claiming the lien.” *Ng Bros. Constr., Inc. v. Cranney*, 436 Mass. 638, 644 (2002). A failure to comply with the procedural requirements described in the statute will result, as stated in G.L. c. 254, § 5, in the dissolution of the lien. See *Mullen Lumber Co. v. Lore*, 404 Mass. 750, 752-753 (1989). Whether the party filing the complaint has complied with the statutory requirements is dispositive. *National Lumber Co. v.*

Lombardi, supra at 492–493 (holding that where party had properly filed within thirty days, but registry itself failed to record it, lien was still viable). In this case, the failure to file resulted in the dissolution of the lien.

*2 Equity has no role in the analysis. Whatever errors the bank may or may not have made as it participated (or did not) in these proceedings, any error is ultimately irrelevant to the question of priority. “[T]he legal realities are that the mechanic’s lien statute remains subject to strict construction—‘[t]here are no equities to be invoked in aid of it.’ “ *Mammoet USA, Inc. v. Entergy Nuclear Generation Co.*, 64 Mass.App.Ct. 37, 50 (2005), quoting from *International Heating & Air Conditioning Corp. v.*

Rich Constr. Co., 372 Mass. 134, 138 (1977). Likewise, Townhouse’s argument that the underlying purpose of the statute, i.e., notice, was fulfilled when the executions of judgment were filed with the registry of deeds, giving the bank actual notice, is unavailing. Actual notice is not the statutory criterion, timely filing at the registry is.

Judgment affirmed.

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