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**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

MAROC PAINTING, INC.,
Plaintiff and Appellant,
v.
ANAND GOHEL et al.,
Defendants and Respondents.

A172722

(San Francisco City & County Super. Ct. No. CGC-24-613210)

Maroc Painting, Inc. (Contractor), appeals from the trial court's order expunging Contractor's mechanics lien as untimely. We affirm.

BACKGROUND

In March 2024, Contractor filed the underlying lawsuit against respondents (hereafter Owners), alleging that it contracted with Owners to perform interior painting work on certain real property (Property) and did perform the work, but Owners did not fully pay Contractor. Contractor sought, among other claims, to foreclose on a mechanics lien recorded against the Property.

Owners filed a motion to expunge the mechanics lien on the ground that it was not timely recorded. The trial court granted the motion and Contractor appealed. (See *Howard S. Wright Construction Co. v. Superior*

*Court* (2003) 106 Cal.App.4th 314, 318 (*Howard S. Wright*) ["the grant of a motion to remove a mechanic's lien is essentially a judgment on the underlying foreclosure action that no lien exists" and "is a final, appealable judgment"].)

DISCUSSION

I. *Legal Background*

As relevant here, "[a] direct contractor may not enforce a lien unless the contractor records a claim of lien . . . before" "[n]inety days after completion of the work of improvement." (Civ. Code, § 8412.)[1] "The lien claimant has the burden of establishing the validity of the lien [citation], including . . . the date of completion or cessation of work." (*Basic Modular Facilities, Inc. v. Ehsanipour* (1999) 70 Cal.App.4th 1480, 1485.) "The determination of the date of completion of a work of improvement is a question of fact." (*Picerne Construction Corp. v. Castellino Villas* (2016) 244 Cal.App.4th 1201, 1208 (*Picerne*).)

In a motion to expunge, "[u]nlike other motions, the burden is on the party opposing the motion to expunge—i.e., the claimant-plaintiff—to establish the probable validity of the underlying claim. [Citation.] The claimant-plaintiff must establish the probable validity of the claim by a preponderance of the evidence." (*Howard S. Wright*, *supra*, 106 Cal.App.4th at p. 319, fn. omitted.) In other words, "the plaintiff must 'at least establish a prima facie case. If the defendant makes an appearance, the court must then consider the relative merits of the positions of the respective parties and make a determination of the probable outcome of the litigation.' " (*Ibid.*)

[1] All undesignated statutory references are to the Civil Code.

"On review of the trial court's ruling, the appellate court does not reweigh conflicting evidence or determine the credibility of witnesses. The reviewing court's task is simply to ensure that the trial court's factual determinations are supported by substantial evidence. [Citations.] If, however, the material facts are not disputed, then the issue becomes a question of law for our de novo review." (*Howard S. Wright*, *supra*, 106 Cal.App.4th at p. 320.)

II. *Analysis*

It is undisputed that Contractor finished its work at the Property in July 2023 and recorded the mechanics lien in January 2024, well over 90 days later. Contractor argues that, even though its work on the Property was complete, the overall "work of improvement" was not complete until after the mechanics lien was recorded. Contractor relies on section 8050, subdivision (b), which provides, in relevant part, " 'work of improvement' means the entire structure or scheme of improvement as a whole."

As an initial matter, Contractor argues the trial court "apparently" ignored section 8050 and our review is therefore de novo. The trial court's written order states, as relevant here, only that Contractor "failed to carry their burden and cited no cases for the proposition that [section] 8412 requirements have been met." Contractor proceeded on appeal without a written record of the hearing and we therefore have no further explanation of the trial court's reasoning.[2] "[I]t is a fundamental principle of appellate procedure that a trial court judgment is ordinarily presumed to be correct and the burden is on an appellant to demonstrate, on the basis of the record

[2] Although the hearing was not reported, Contractor had the option to obtain an agreed or settled statement. (Cal. Rules of Court, rules 8.134 & 8.137.)

presented to the appellate court, that the trial court committed an error that justifies reversal of the judgment." (*Jameson v. Desta* (2018) 5 Cal.5th 594, 608–609.) Because the record on appeal does not demonstrate otherwise, we presume the trial court properly considered and applied all relevant statutes.

Contractor argues it submitted evidence that the work of improvement continued after Contractor's work was complete. Contractor submitted a declaration from one of its officers averring, "I drove by the Property during January 2024 and noted that construction was still ongoing. Periodically after January 2024, I drove past the property. On March 5, 2024, I drove by and observed construction work going on with workers, tool[s], materials, equipment, construction vehicles and a portable toilet[] visible from the street." Contractor also submitted a sworn report from a registered process server averring that he attempted multiple service attempts at the Property in May and June of 2024 and observed that the Property appeared unoccupied with ongoing, unspecified "construction."

In support of their motion, Owners submitted a notice of completion they filed as to a different contractor on the Property. The notice of completion was filed in July 2023, shortly before Contractor's interior painting work was completed, for work performed pursuant to a "remodel permit."

As it is Contractor's burden to establish the probable validity of the lien, it is Contractor's burden to establish the probability that any ongoing construction work at the Property was part of the same "work of improvement" as Contractor's work. Contractor argues such an inference can be drawn from its evidence that construction at the Property continued. Even so assuming, Contractor fails to establish the trial court's implicit contrary inference was unreasonable. Given the absence of any evidence

about the type of work being performed at the Property in 2024, as well as the absence of evidence that any work was performed at the Property between August 2023 and January 2024, the trial court's finding that Contractor failed to satisfy its burden is supported by substantial evidence, and our inquiry ends there.[3] (See *Picerne*, *supra*, 244 Cal.App.4th at p. 1209 ["We do not . . . resolve conflicts in the evidence or in the reasonable inferences that may be drawn therefrom. [Citation.] If substantial evidence exists, it is of no consequence that the trial court believing other evidence or drawing other reasonable inferences might have reached a contrary conclusion."].)

In sum, given Contractor's burden and our deferential standard of review, Contractor has failed to demonstrate error.

## DISPOSITION

The order is affirmed. Owners shall recover their costs on appeal.

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[3] Contractor also argues that a work of improvement includes all work performed on a single building, regardless of whether the work was conducted pursuant to the same scheme of improvement. (See § 8050, subd. (b) [" 'work of improvement' means the entire *structure* or scheme of improvement as a whole" (italics added)].) Even assuming this contention is persuasive, an issue we need not and do not decide, Contractor fails to establish the trial court erred. "[C]ompletion of a work of improvement occurs" when there is a "[c]essation of labor for a continuous period of 60 days." (§ 8180, subd. (a)(3).) Contractor submitted no evidence of any work between July 2023 and January 2024. Therefore, the trial court could reasonably find Contractor failed to establish a probability that work on the Property had not ceased for a continuous period of 60 days during this time (and ending more than 90 days before the mechanics lien was recorded).

SIMONS, Acting P. J.

We concur.

BURNS, J.
CHOU, J.

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