

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Moorhead Construction, Inc., Craft Construction Company, Inc., and Miller Construction Company, LLC,
Respondents,

v.

Enterprise Bank of South Carolina, Pendleton Station, LLC, and Angelo Penza, Defendants,

Of whom Enterprise Bank of South Carolina is the Appellant.

Appellate Case No. 2012-213318

Appeal From Anderson County
Ellis B. Drew, Jr., Master-in-Equity

Opinion No. 5219
Heard April 11, 2014 – Filed April 16, 2014

VACATED AND REMANDED

Thomas Elihue Dudley, III and M. Stokely Holder, Kenison, Dudley & Crawford, LLC, both of Greenville, for Appellant.

David James Brousseau, McIntosh, Sherard, Sullivan & Brousseau, of Anderson, for Respondents.

FEW, C.J.: The respondents—Moorhead Construction, Inc., Miller Construction Company, LLC, and Craft Construction Company, Inc.—sought foreclosure of

their mechanic's liens against Enterprise Bank of South Carolina, and the master awarded them money judgments. Enterprise Bank appeals, arguing the master had no legal basis for entering money judgments against it. We vacate the judgments and remand for foreclosure proceedings.

Pendleton Station, LLC ("PSL") hired Moorhead to be the general contractor for a development project involving two tracts of land owned by PSL—the "2-Acre Tract" and "Tract A"—and another tract owned by an individual investor—"Tract B." Moorhead subcontracted with Miller and Craft to perform work on the project. Enterprise Bank served as the construction lender for the project.

Two years into the project, PSL stopped paying Moorhead and its subcontractors and defaulted under the loan agreements with Enterprise Bank. PSL executed a deed-in-lieu of foreclosure to Enterprise Bank that conveyed title to Tract A, and Enterprise Bank subsequently obtained title to the 2-Acre Tract and Tract B. The respondents each filed mechanic's liens on all three tracts. They then brought suit for breach of contract against PSL and foreclosure against Enterprise Bank. The master did not rule on the claims against PSL but entered money judgments against Enterprise Bank.

We hold the master had no authority to enter money judgments in the respondents' foreclosure actions against Enterprise Bank. The procedures for enforcing a mechanic's lien are provided by statute, *see* S.C. Code Ann. §§ 29-5-10 to -440 (2007 & Supp. 2013), and "must be strictly followed." *Cohen's Drywall Co. v. Sea Spray Homes, LLC*, 374 S.C. 195, 199, 648 S.E.2d 598, 600 (2007). A court cannot depart from the plain language of the statute when enforcing a mechanic's lien. *See Zepso Constr., Inc v. Randazzo*, 357 S.C. 32, 38, 591 S.E.2d 29, 32 (Ct. App. 2004) (holding a party was "limited to recovery provided for by the strict terms of the mechanic's lien statute"); *Shelley Constr. Co. v. Sea Garden Homes, Inc.*, 287 S.C. 24, 27, 336 S.E.2d 488, 490 (Ct. App. 1985) (stating mechanic's liens can only be "enforced in accordance with the conditions of the statute creating them"); *Clo-Car Trucking Co. v. Cliffure Estates of S.C., Inc.*, 282 S.C. 573, 576, 320 S.E.2d 51, 53 (Ct. App. 1984) (stating the court is "not at liberty to depart from the plain meaning of [the] language" contained in the mechanic's lien statute).

As a matter of law, Enterprise Bank cannot be liable for money judgments because the respondents had no contractual relationship with Enterprise Bank or any other right to recover damages. *See Arnet Lewis Constr. Co., Inc. v. Smith-Williams & Assocs., Inc.*, 269 S.C. 143, 151, 236 S.E.2d 742, 746 (1977) (allowing a party that

brought an action to foreclose a mechanic's lien to recover a judgment based upon a contract cause of action because the complaint stated "facts sufficient to constitute a [contract] cause of action"). Rather, the exclusive remedy available to the respondents against Enterprise Bank is foreclosure of their mechanic's liens. *See* S.C. Code Ann. § 29-5-260 (2007) (stating when the master determines a valid and enforceable mechanic's lien exists, it "shall order a sale of the property"); *Sentry Eng'g & Constr., Inc. v. Mariner's Cay Dev. Corp.*, 287 S.C. 346, 353, 338 S.E.2d 631, 635 (1985) (stating "the mechanic's lien statute may not be used as a vehicle for collecting damages for breach of contract"). We find the master erred by awarding money judgments instead of ordering foreclosure.

Furthermore, it is the function of the master, not the appellate courts, to determine whether foreclosure is appropriate and, if so, to order it. Enterprise Bank raises eleven issues on appeal with multiple subparts, each containing separate arguments that the master committed error. We find it appropriate to remand for the master to reconsider the parties' arguments as to all disputed issues and make the necessary findings of fact and conclusions of law on the record before deciding whether to order foreclosure.

We find the master erred in awarding money judgments on the respondents' foreclosure claims. Thus, the order of the master is

VACATED and REMANDED.

GEATHERS, J., concurs.

SHORT, J., concurring in part and dissenting in part:

I concur in part and dissent in part. I agree with the majority that as a matter of law, Enterprise Bank cannot be liable for a money judgment because the Respondents had no contractual relationship with Enterprise Bank or any other right to recover damages. I also agree the exclusive remedy available to the Respondents against Enterprise Bank is foreclosure of their mechanic's liens. Therefore, the master erred by awarding money judgments instead of ordering foreclosure.

I further find the master correctly determined the Respondents' mechanic's liens were filed in accordance with South Carolina law, and the master correctly determined the amounts due to Respondents at that time under the mechanic's liens. At oral argument, both parties conceded the bank bonded off the property;

therefore, there is no longer a claim for foreclosure. As a result, I would remand the case for the master to determine the amounts now due to Respondents.