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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

HBI CONSTRUCTION, INC.,

Petitioner,

v.

THE SUPERIOR COURT OF
RIVERSIDE COUNTY,

Respondent;

BANK OF AMERICA, N.A.,

Real Party in Interest.

E053977

(Super.Ct.No. RIC518756)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate. John W. Vineyard,
Judge. Petition granted in part; denied in part.

Law Offices of Ronald K. Brown, Jr., Ronald K. Brown, Jr.; Greines, Martin, Stein
& Richland, Robert A. Olson and Alana H. Rotter for Petitioner.

No appearance for Respondent.

Best, Best & Krieger, Robert J. Hanna, Shannon M. Erickson and Kira L. Klatchko
for Real Party in Interest.

The court has read and considered the record in this proceeding and has concluded that an alternative writ would add nothing to the presentation already made and would cause undue delay in resolving the action. We therefore issue a peremptory writ in the first instance. (Code Civ. Proc., § 1088; *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178-179; *Alexander v. Superior Court* (1993) 5 Cal.4th 1218, 1222-1223, disapproved on another ground in *Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 724, fn. 4.)

“ ‘If a single lien is recorded against multiple works of improvement that are owned or were contracted for by the same person, the claimant must designate the amount due on each work of improvement, or lose priority to other liens. ([Civ. Code,] § 3130.) If the claimant is to be paid a lump sum for multiple works of improvement that are owned or were contracted for by the same person, and the contract does not segregate the amount due for each work of improvement separately, the claimant ‘may estimate an equitable distribution of the sum due him over all of such works of improvement’ (*Ibid.*) Finally, ‘if there is a single structure on more than one parcel of land owned by one or more different owners, it shall not be the duty of the claimant to segregate the proportion of material or labor entering into the structure on any one of such parcels; but upon the trial thereof the court may, when it deems it equitable so to do, distribute the lien equitably as between the several parcels involved.’ (*Ibid.*)” (*T.O. IX, LLC v. Superior Court* (2008) 165 Cal.App.4th 140, 145.)

Petitioner contends first that it was not required to apportion because the contract was for a lump sum. The mechanic's lien statutes are uniformly classified as remedial legislation, to be liberally construed for the protection of laborers and material men. Generally, doubts about their meaning are resolved in favor of the contractor or laborer. (*T.O. IX, LLC v. Superior Court, supra*, 165 Cal.App.4th at p. 146.) However, enforcement of mechanic's liens is equitable in nature, and the interests of the property owner must be taken into consideration. Although petitioner's mechanic's lien no longer attaches to six of seven parcels, there is no basis in equity that the seventh parcel should be burdened with the full amount of the lien. (*Ibid.*) We note that apportionment is countenanced in Civil Code section 3130 in a related situation.

We do not believe that a full trial or a summary judgment motion are necessarily required to determine the proper amount of apportionment. In addition to considering the remedial and equitable nature of the mechanic's lien, owners are entitled to procedural due process to protect their property against unjustified liens or liens in excessive amounts. (See *Lambert v. Superior Court* (1991) 228 Cal.App.3d 383, 386.) As a result, *Lambert* recognized that an owner may bring a nonstatutory motion to remove an improper lien. In that case, the trial court would be limited to the probable validity of the lien. (*Id.* at p. 387.)

By applying these same principles here, the trial court acted properly in considering and ruling on this request to apportion the lien. Nonetheless, the trial court abused its discretion in declining to hold an evidentiary hearing to determine the value of the labor and materials attributable to the 2071 property.

The petition for writ of mandate is granted in part and denied in part. The trial court properly exercised its equitable powers in concluding that apportionment of the lien was required under the circumstances of this case. We must also conclude that the trial court abused its discretion in refusing to conduct an evidentiary hearing on the issue of the amount of apportionment.

DISPOSITION

Let a writ of mandate issue directing the Superior Court of Riverside County to set aside its order apportioning the lien and to conduct an evidentiary hearing to further consider the proper amount of apportionment. We note the trial court is not precluded from reaching the same result after further considering the issue of the amount of apportionment.

Petitioner is directed to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties.

Petitioner to recover its costs.

The request for judicial notice is denied.

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CODRINGTON
Acting P. J.

We concur:

HOLLENHORST
J.

RICHLI
J.