



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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November 19, 2020

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Re: *The Barber of Seville, Inc. v. Bironco, Inc.*, Case No. CL-2019-10320

Dear Counsel:

FACTS

This case arises pursuant to the renovations Bironco, Inc. dba We Design Build (“Bironco”) performed on units #L-100 and L-100A of the Fair Oaks Mall (the “Property”). On May 16, 2018, Mustafa Ertunc and Ayfer Ertunc entered into a construction contract (“Contract”) with Bironco to complete design-build work on the Property. The Ertuncs are the owners and registered agents of The Barber of Seville, Inc. (“Barber of Seville”), a barber shop in Fairfax, Virginia. The Barber of Seville has a leasehold interest in the Property pursuant to a lease agreement with the owner, Fairfax Company of Virginia, LLC (“FCVA”).

Although Bironco completed the renovation work contracted for, it did not receive full payment for its services. After making repeated demands for payment, Bironco recorded a Memorandum of Mechanic’s Lien in the land records of Fairfax County on May 21, 2019. On

OPINION LETTER

July 29, 2019, The Barber of Seville filed a Complaint with this Court requesting an order declaring the Memorandum for Mechanic's Lien void.

The Barber of Seville now contends the Mechanic's Lien must be released because Bironco has privity of contract with the Entruncs, not the barber shop itself, and Bironco is not a general contractor.

ANALYSIS

A mechanic's lien is purely a creature of statute; it must have its foundation in contract. *Rosser v. Cole*, 237 Va. 572, 576, 379 S.E.2d 323, 325 (1989); *Wallace v. Brumback*, 177 Va. 36, 40, 12 S.E.2d 801, 802 (1941) (citing *Cain v. Rea*, 159 Va. 446, 452, 166 S.E. 478 (1932)). The existence of a mechanic's lien rests upon strict compliance with the statutory scheme. *Id.* If the lien is properly perfected in the manner prescribed by statute, it is enforceable. *Id.* On the other hand, if the lien is improperly perfected, the claimant lacks standing. *Id.* Virginia Code § 43-3(A) provides:

All persons performing labor or furnishing materials of the value of \$150 or more, including the reasonable rental or use value of equipment, for the construction, removal, repair or improvement of any building or structure permanently annexed to the freehold, and all persons performing any labor or furnishing materials of like value for the construction of any railroad, shall have a lien, if perfected as hereinafter provided, upon such building or structure, and so much land therewith as shall be necessary for the convenient use and enjoyment thereof, and upon such railroad and franchises for the work done and materials furnished, subject to the provisions of § 43-20. But when the claim is for repairs or improvements to existing structures only, no lien shall attach to the property repaired or improved unless such repairs or improvements were ordered or authorized by the owner, or his agent.

Va. Code Ann. § 43-3(A) (2019).

The Barber of Seville asks this Court to determine whether privity of contract is required under the mechanic's lien statutory framework. It contends Bironco's mechanic's lien is unenforceable because it does not have privity of contract with The Barber of Seville. This argument lacks merit because Virginia Code § 43-3 does not articulate a privity requirement. If such were the case, corporate entities could evade paying for services by having their agents enter written work contracts on their behalf.

The only reason The Barber of Seville insists privity is required is because it erroneously asserts Bironco is a subcontractor. Under such circumstances, Bironco would

only be able to enforce its lien if it had privity of contract with the general contractor on the project or with the owner. However, the facts here indicate Bironco is a general contractor. A general contractor is one “who contracts directly with the owner...” Va. Code Ann. § 43-1 (2010). Here, Bironco contracted with the owners of the Barber of Seville for the services rendered, thus making it a general contractor.

Furthermore, Va. Code Ann. § 43-3 notes “no lien shall attach...unless such repairs or improvements were ordered or authorized by the owner or his agent.” The Ertuncs identify and signed the contract as the owners of The Barber of Seville. In this role, the Ertuncs authorized the agreement for the work that is the subject of the lien, thus satisfying statutory requirements.

This Court finds the Barber of Seville failed to demonstrate Bironco needed privity of contract with the barber shop itself. Bironco’s mechanic’s lien is valid because it complied with the mechanic’s lien statutory requirements. It is undisputed Bironco completed the agreed upon renovations and properly perfected its mechanic’s lien. The renovations at issue were authorized by The Barber of Seville’s owners and were worth more than the requisite value required under Va. Code Ann. § 43-3. Therefore, Bironco’s mechanic’s lien is enforceable.

Conclusion

For the foregoing reasons, this Court finds in favor of the Defendant.

An order is attached.

Sincerely,



Robert J. Smyth
Judge, Fairfax County Circuit Court

Enclosure

VIRGINIA :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

THE BARBER OF SEVILLE, INC.,)
)
 Plaintiff,)
 v.)
 BIRONCO, INC.,)
)
 Defendant.)
)

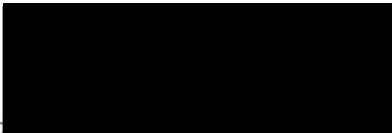
CL-2019-10320

ORDER

After reviewing the pleadings and considering the arguments of counsel, the Court finds Bironco, Inc.'s Mechanic's Lien is valid and enforceable. The Mechanic's Lien is not released.

THIS CAUSE IS FINAL.

ENTERED this 19 day of November 2020.


The Honorable Robert J. Smith
Circuit Court Judge

**ENDORSEMENT OF THIS ORDER BY COUNSEL OF RECORD FOR THE PARTIES IS
WAIVED IN THE DISCRETION OF THE COURT PURSUANT TO RULE 1:13 OF THE
SUPREME COURT OF VIRGINIA.**