2019 IL App (1st) 182181-U

No. 1-18-2181 & 1-18-2409 (cons.)

Order filed September 12, 2019

Fourth Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

JOHN PRODROMOS,	)	
	)	
Plaintiff-Appellant and Cross-Appellee	)	Appeal from the
	)	Circuit Court of
v.	)	Cook County
	)	
DARPET, INC, d/b/a DARPET WINDOWS,	)	No. 16 CH 16614
DOORS & TRIM, and BRADLEY DANIEL BIRGÉ,	)	
	)	Honorable
Defendants-Appellees.	)	Raymond W. Mitchell,
	)	Judge Presiding.
(Darpet, Inc., d/b/a Darpet Windows, Doors & Trim	)	
	)	
Cross-Appellant).	)	

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Gordon and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the circuit court's dismissal of Counts II and III of plaintiff's complaint pursuant to section 2-615 of the Code and the court's grant of summary judgment on Count III of plaintiff's complaint. We further affirm the circuit court's denial of Darpet's motion for sanctions.

¶ 2 Plaintiff John Prodromos owned four parcels of real property in Lemont, Illinois that he obtained through a mortgage foreclosure action. The parcels were further subdivided into lots. Plaintiff built five townhomes on one of the lots of one parcels, but left the adjoining lots vacant. Plaintiff, through his agent Spencer Prodromos (Spencer), entered into a contract with defendant Darpet, Inc. (Darpet), a material supplier of windows, doors, and door and window frames and trim to supply doors and trim for the new townhomes. Spencer paid for the materials with his credit card. A dispute arose between plaintiff and Darpet regarding the delivery, quality, and return of the doors and trim. Spencer disputed the charges with his bank, stopping the payment to Darpet. Darpet's attorney, defendant Bradley Birgé, filed a mechanics lien pursuant to the Illinois Mechanics Lien Act (Act) (770 ILCS 60/0.01 *et. seq.* (West 2016)) on Darpet's behalf. On the lien claim, Birgé included not only the legal description and Property Index Number (PIN) of the lot containing the five townhomes, but also the PINs for the three adjoining vacant lots.

¶ 3 Plaintiff filed a three-count complaint in the circuit court against Darpet and Birgé. In Count I, plaintiff raised a claim for slander of title, Count II was an action for quiet title, and in Count III plaintiff asserted a claim for breach of contract. The circuit court granted defendants' motion to dismiss Counts II and III pursuant to section 2-615 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2016)). The court subsequently granted defendants' motion for summary judgment with regard to Count I. The court then denied Darpet's motion for Illinois Supreme Court Rule 137 (eff. Jan. 1, 2018) sanctions. Plaintiff now appeals the trial court's dismissal of the claims in his complaint. Darpet filed a cross-appeal for review of the trial court's denial of its motion for sanctions. The two appeals were consolidated into this appeal.

¶ 4 On appeal, plaintiff contends that the court erred in granting defendants' motion to dismiss Count II of his complaint where defendant's mechanics lien contained false statements and was therefore not a valid property interest. Plaintiff also contends that the court erred in dismissing Count III of his complaint where the court misinterpreted the terms of the parties' agreement. Finally, plaintiff contends that the court erred in granting defendants' motion for summary judgment on Count I of his complaint where defendants filed the mechanics lien with malice and reckless disregard for the truth of the statements in the lien claim. In its cross-appeal, Darpet contends that the court erred in denying its motion for Rule 137 sanctions where plaintiff brought the action without a factual or legal basis, but instead brought the action to punish Darpet for refusing to pick up the materials. For the reasons stated, we affirm the judgment of the circuit court.

¶ 5 I. BACKGROUND

¶ 6 A. The Real Estate

¶ 7 In 1996, plaintiff acquired the real property that is the subject of this action along with three other parcels of real property in Lemont, Illinois. The parcels were divided into lots commonly known as Lots 9, 10, 11, 14, 15, and 16 inclusive in Lemont Gardens, Lemont, IL. In 2001, plaintiff sold Parcel 2 (Lot 10) and in 2003, sold Parcel 3 (Lot 11). Plaintiff's remaining property at the time of the dispute at issue was Parcel 1 (Lots 9 and 14) and Parcel 4 (Lots 15 and 16). Lots 14, 15, 16 are vacant. Lot 9 has a PIN of 22-29-225-022-0000, Lot 14 has a PIN of 22-29-218-025-0000, Lot 15 has a PIN of 22-29-218-026-000, and Lot 16 has a PIN of 22-29-218-027-0000. The legal description for Parcel 1 on the 1996 judicial sale deed was:

> "LOT 14 AND LOT 9 AND THE 16 FOOT VACATED ALLEY LYING SOUTH OF AND ADJOINING LOT 9 ALL IN LEMONT GARDENS, A

SUBDIVISION OF LOTS 13 AND 14 IN COUNTY CLERK'S DIVISION OF SECTION 29, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS."

¶ 8 In 2015, plaintiff sought to build five townhomes on Lot 9. The common addresses for the Lot 9 townhomes would be 902, 904, 906, 908, and 910 East Street (902-910 East Street). As part of the development plan, plaintiff was required to submit a plat of easement for the sanitary sewer. The plat of easement, which plaintiff recorded in 2013, indicated that it was for 902-910 East Street with the PINs 22-29-225-022, 22-29-218-025, 22-29-218-026, and 22-29-218-027. Plaintiff also granted an easement to Nicor Gas. The Nicor Gas easement (Nicor Easement) identified the property as "Short St. & East St." in Lemont, with a PIN of 22-29-225-022-0000.

¶ 9 B. The Parties' Contract

¶ 10 In March and April 2016, plaintiff's general contractor, VUK Builders, Inc., contacted Darpet through Spencer for the purchase of doors and trims for the five townhomes. Spencer signed the estimates, which also included some special order items. Spencer paid Darpet for the materials with his Chase Bank credit card. Spencer initialed the estimates next to a list of terms, including verifying that the products and sizes on the estimates were correct, acknowledging that doors and special order items were not returnable, and acknowledging that backorders may occur without prior notice. The estimate also noted that further information about the return policy could be found on Darpet's website. The return terms on Darpet's website provided that Darpet offered "a courtesy one time trim return pick up at the end of every job, when our truck is in the area. Darpet reserves the right to cancel or reschedule a trim pickup at any time." The policy noted that doors and special order items were not returnable and returns would be accepted only for stock trim. The policy further stated that Darpet would not be responsible for any damage

resulting from "the improper use, incorrect installation and/or manufacturing defect of the merchandise sold." If the buyer wished to make a shortage claim, the policy mandated that the buyer must make the claim "in writing on the delivery ticket the day of the receipt of the merchandise."

¶ 11 Olga Kielek testified at her deposition that she was an office manager for Darpet and her duties included issuing invoices and managing returns from customers. Kielek testified that if the Darpet truck was not in the area at the time of the requested pickup, the customer would be charged a delivery fee. Based on exhibits presented at her deposition, Kielek testified that all of the materials, including the special order items, had been delivered to plaintiff's work site by May 5, 2016. Wojciech Wojtowicz, the sales manager for Darpet, also testified that the invoices indicated that all of the materials had been delivered by May 5, 2016. Kielek testified that in June 2016, Darpet received notice that Spencer had initiated a chargeback with his credit card company for $9,161.72. Spencer later initiated a second chargeback for "$2,000 and some change." At some point that chargeback was reversed by Chase Bank and Darpet received full payment, but did not receive any interest, attorney fees, or court costs.

¶ 12 According to plaintiff's complaint, the materials should have been delivered on April 28, 2016, but the doors and trim were not delivered until May 2, 2016. Darpet later delivered some, but not all, of the special order materials on May 5, 2016. Spencer informed Darpet about the missing materials and also informed Darpet that plaintiff had unused materials that plaintiff sought to have Darpet pick up and refund. Darpet refused to pick up the unused material. The remaining special order material arrived one week later. Before the arrival of the special order materials, Spencer disputed the charges with his credit card company and sought a charge back for the amount of the order.

¶ 13 C. The Mechanics Lien

¶ 14 In July 2016, Darpet, through Birgé, filed the mechanics lien at issue. In the claim for the lien, Birgé identified that the property was commonly known as "902, 904, 906, 908, and 910 East Street," and listed the property PINs as 22-29-225-022-0000, 22-29-218-025-0000 22-29-218-026-000, and 22-29-218-027-0000. Birgé listed the legal description of the property as:

> "LOT 14 AND LOT 9 AND THE 16 FOOT VACATED ALLEY LYING SOUTH OF AND ADJOINING LOT 9 ALL IN LEMONT GARDENS, A SUBDIVISION OF LOTS 13 AND 14 IN COUNTY CLERK'S DIVISION OF SECTION 29, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS."

The lien claim further provided that Darpet had "last delivered" materials to plaintiff on May 5, 2016, and that Darpet had delivered all of the materials in accordance with the estimates. Darpet contended that plaintiff owed a remaining $11,269.55 for the materials.

¶ 15 Two other contractors had previously filed mechanics lien relating to the same property. In November 2015, K&B Concrete Construction, Inc., one of plaintiff's subcontractors, filed a lien claim that identified the property using the same common address as Darpet's lien claim, but omitted number 906. The claim also listed only one PIN: 22-29-225-022-0000. The K&B lien claim also used a different legal description of the property describing it as:

> "LOT 9 IN LEMONT GARDENS SUBDIVISION OF LOTS 13 AND 14 IN COUNTY CLERKS DIVISION OF SECTION 29, TOWNSHIP 39, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT RECORDED APRIL 30, 1880 AS DOCUMENT NO. 269491."

Similarly, in January 2016, Monimat Construction, Inc., another of plaintiff's subcontractors, filed a lien claim using a substantially similar legal description and the same common description, but including 906, and PIN as the K&B lien claim.

¶ 16 In his deposition, Birgé testified that he did not go to the Cook County Tax Map Department to obtain a legal description for the property that was the subject of the mechanics lien, but did obtain the PIN there. Birgé testified that he would ordinarily obtain the legal description from the Cook County Recorder of Deeds office. Darpet further testified that he obtained the common addresses for the property from Darpet's invoices. Birgé obtained the four PINs he used on the mechanics lien from the 1996 judicial sale deed and the 2013 plat of easement. When Birgé was preparing the mechanics lien, it was his belief that all four PINs listed on the 2013 plat of easement applied to 902-910 East Street. In preparing the mechanics lien, Birgé reviewed the 2013 plat of easement, the two subcontractor's lien, the Nicor Easement, the grant of foreclosure, the 1996 judicial sale deed, the Darpet invoices, and two warranty deeds from plaintiff to Robert Cassano. Birgé testified that in order to determine the common address for the mechanics lien, he looked to see whether there had been any plat of subdivision recorded. He noted that none had been filed and therefore "treated this as a delivery made to the construction site, and since there wasn't any other division besides that at the time that I prepared [the lien claim], I believed that it was all one construction site."

¶ 17 In May 2016, plaintiff listed both the townhomes and the vacant lots on Parcel 1 for sale with real estate agent Corinne Botkin. In her deposition, Botkin testified that after plaintiff contacted her, she created a listing for the five townhomes and the three vacant lots located next to the townhomes. Botkin never received any offers to purchase the vacant lots. As of the date of her deposition, Botkin testified that the lots were still listed for sale. Botkin testified that she

believed the lots did not sell because the price was too high, but she was not aware of any problems with the title of the property or liens recorded against the property. Botkin also did not receive any offers to purchase the townhomes, but two of them were currently being rented. Botkin was no longer actively attempting to sell the townhomes, but was trying to rent out the three remaining townhomes.

¶ 18 D. Plaintiff's Complaint

¶ 19 On December 23, 2016, plaintiff filed the three-count complaint at bar. In Count I, plaintiff raised a claim for slander of title contending that the mechanics lien contained false information. In particular, plaintiff contended that, in contrast to the claims in the lien claim, the materials were only delivered to the five townhomes at 902-910 East Street and not to the three vacant lots. Plaintiff further contended that all of the material was not delivered by May 5, 2016, as the lien claim suggested. Plaintiff asserted that defendants knew these claims were false and acted maliciously by sending the false mechanics lien to the Village of Lemont and others in an attempt to injure plaintiff. Plaintiff contended that defendants filed the lien with malicious intent, intending that the publication of the false statements in the lien would harm plaintiff's interest in the three vacant lots. Plaintiff asserted that he suffered damages because he was unable to sell the three vacant lots and incurred attorney fees and costs in filing the action to remove the cloud on the title.

¶ 20 In Count II, plaintiff raised a claim for quiet title. Plaintiff contended that there was no legal basis for the lien because plaintiff demonstrated that Darpet had been paid the entire amount due on the contract. Plaintiff asserted that the mechanics lien was therefore an unlawful cloud on the property's title and should be removed. In Count III of his complaint, plaintiff set forth a claim of breach of contract. Plaintiff contended that after Darpet delivered the materials to

plaintiff's construction site, plaintiff contacted defendant through his agent to pick up the excess materials. Plaintiff asserted that Darpet breached the agreement between the parties by not picking up the materials and refusing to allow plaintiff to return the materials. Plaintiff further contended that Darpet was late in delivering the materials, overcharged plaintiff for unordered items, incorrectly designed and built special order items, and failed to deliver some of the materials. Plaintiff sought a judgment of $2,857.67 for Darpet's breach of contract. Plaintiff attached to his complaint the signed Darpet estimates for the materials and Darpet's return policy.

¶ 21 1. *Motion to Dismiss*

¶ 22 Defendants filed a combined motion to dismiss plaintiff's complaint pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2016)). In their motion, defendants contended that plaintiff's claim for slander of title must fail because he failed to allege malice and to plead special damages, which are necessary elements of a claim for slander of title. Defendants further contended that plaintiff's claim for quiet title must be dismissed because he failed to demonstrate that Darpet's mechanics lien was not a valid interest in the property. Defendants contended that plaintiff failed to demonstrate that he paid Darpet the entire amount due for the delivered materials. Finally, defendants contended that plaintiff's breach of contract claim was "belied by his own exhibits." Defendants asserted that its return policy, as agreed to by plaintiff, granted Darpet the right to cancel any pickup, and placed the impetus on plaintiff to notify Darpet of any missing items or excess charges, which plaintiff failed to do.

¶ 23 In ruling on defendants' motion, the trial court found that the plaintiff's allegations in Count I of his complaint raised an issue of malicious intent or reckless disregard for the truth in

contrast with Birgé's deposition testimony. The court found that this created a question of fact with regard to Count I and denied defendant's motion to dismiss that count.

¶ 24 However, the court granted defendant's motion to dismiss Counts II and III of the complaint pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2016)). With regard to Count II, the court found that although Darpet was paid the original amount of the contract when Chase released the funds, because plaintiff withheld payment for a period of time, Darpet was also due interest and possibly attorney fees under the Act. The court found that because Darpet had not received all the money to which it was entitled, the mechanics lien was a valid interest in the property and plaintiff could not maintain an action for quiet title. With regard to Count III, the court found that under Darpet's return policy, it had the unilateral right to cancel any pickup and was not required to accept the return of any materials. The court further found that plaintiff's allegations of delay, shortage, and manufacturing defect were foreclosed by Darpet's policies. Accordingly, the court found that plaintiff could not maintain a claim for breach of contract.

¶ 25 2. *Motion for Summary Judgment*

¶ 26 Defendants subsequently filed a motion for summary judgment on the remaining count for slander of title. Defendants contended that plaintiff failed to demonstrate false or malicious publication that disparaged plaintiff's title to the property or to demonstrate that defendants acted with malice in filing the lien claim. Defendants further contended that plaintiff failed to demonstrate special damages.

¶ 27 The court granted defendants' motion for summary judgment finding that although defendants were aware that the three vacant lots were not related to the construction site and that the materials were delivered only to the 902-910 East Street properties, this fact had no bearing

on defendants' recklessness in regard to the inaccuracies in the mechanics lien. The court noted that defendants believed that only the 902-910 East Street properties were covered by the lien. The court found that defendants' inclusion of the PINs of the three vacant lots in the mechanics lien failed to create a genuine issue of material fact as to whether defendants acted with the reckless disregard required to establish malice. The court also found that defendants' alleged lack of investigation alone was insufficient to establish malice. The court observed that nothing in the record showed that defendants entertained doubts that the mechanics lien covered properties other than the 902-910 East Street properties. The court noted that, in his deposition, Birgé testified that he followed his ordinary practice in investigating and recording the lien and relied on numerous materials in drafting the lien claim. The court therefore found that there was a "complete absence of evidence as to Defendants' actual malice" and granted defendants' motion for summary judgment.

¶ 28 D. Darpet's Motion for Sanctions

¶ 29 After plaintiff filed his notice of appeal, Darpet filed a motion for sanctions pursuant to Illinois Supreme Court Rule 137 (eff. Jan. 1, 2018). In the motion, Darpet contended that plaintiff brought this actions without a good faith argument for the extension, modification, or reversal of any existing law, but instead brought the action to punish Darpet for its refusal to pick up the construction materials plaintiff no longer wanted. Darpet contended that plaintiff did not have a legal or factual basis for commencing the action, but nonetheless continued to pursue the action even after defendants' motion to dismiss. Darpet therefore sought sanctions against plaintiff and his attorneys requiring them to reimburse Darpet for the fees and costs incurred in defending the action.

¶ 30 The trial court summarily denied Darpet's motion for sanctions finding that "[i]n viewing the record in its entirety, sanctions are unwarranted in this case." Darpet then filed a timely notice of appeal from the court's denial of its motion for sanctions. Both appeals were consolidated into this action.

¶ 31 II. ANALYSIS

¶ 32 A. Plaintiff's Contentions

¶ 33 We will first address the contentions in plaintiff's appeal. Plaintiff contends that the circuit court erred in granting defendants' motion to dismiss Counts II and III of the complaint and erred in granting defendants' motion for summary judgment on Count I of the complaint. Plaintiff maintains that defendants' mechanics lien undeniably contained false statements, which prevented it from being a valid interest in the property and that the court erred in interpreting defendants' return policy. Plaintiff further contends that the court erred in granting summary judgment where the evidence presented showed that defendants acted with malice in filing the mechanics lien or with reckless disregard for the truth or falsity of the statements lien claim.

¶ 34 1. *Quiet Title*

¶ 35 We will first address plaintiff's contentions that the court erred in granting defendants' motion to dismiss Count II of plaintiff's complaint, which was a claim for quiet title. Defendants brought their motion to dismiss this count pursuant to section 2-619.1 of the Code. 735 ILCS 5/2-619.1 (West 2016). Section 2-619.1 permits combined motions pursuant to sections 2-615, 2-619, and 2-1005 of the Code. Here, the trial court granted defendants' motion to dismiss this count pursuant to section 2-615. 735 ILCS 5/2-615 (West 2016). A section 2-615 motion to dismiss "challenges the legal sufficiency of the complaint based on defects apparent on its face." *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). A section 2-615 motion to dismiss

"presents the question of whether the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, and taking all well-pleaded facts and all reasonable inferences that may be drawn from those facts as true, are sufficient to state a cause of action upon which relief may be granted." *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139, ¶ 25 (citing *Doe-3 v. McLean County Unit District No. 5 Board of Directors*, 2012 IL 112479, ¶ 16). A court should dismiss a claim pursuant to section 2-615 only where it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery. *Marshall*, 222 Ill. 2d at 429. We review the court's ruling on a section 2-615 motion to dismiss *de novo*. *Doe-3*, 2012 IL 112479, ¶ 15.

¶ 36 "An action to quiet title in property is an equitable proceeding in which a party seeks to remove a cloud on his title to the property." *Gambino v. Boulevard Mortgage Corp.*, 398 Ill. App. 3d 21, 52 (2009) (citing *Stahelin v. Forest Preserve District of Du Page County*, 376 Ill. App. 3d 765, 779 (2007). "A cloud on title is the semblance of title, either legal or equitable, appearing in some legal form but which is, in fact, unfounded or which it would be inequitable to enforce." *Gambino*, 398 Ill. App. 3d at 52. A valid property interest cannot be a cloud on title. *Illinois District of American Turners, Inc. v. Rieger*, 329 Ill. App. 3d 1063, 1072 (2002). Thus, if defendants' mechanics lien is valid it cannot be a cloud on title and plaintiff's quiet title claim must fail.

¶ 37 Section 7 of the Act sets forth the prerequisites a contractor must comply with in order to state a valid lien claim under the Act. 770 ILCS 60/7 (West 2016). Under section 7, a claim for lien against a creditor must: "(1) be filed within four months after the completion of work; (2) be verified by affidavit of the claimant or an agent or employee; (3) contain a brief statement of the contract; (4) set forth the balance due; and (5) provide a sufficiently correct description of the lot,

lots or tracts of land to identify the same." *Tefco Construction Co., Inc., v. Continental Community Bank and Trust Co.*, 357 Ill. App. 3d 714, 719 (2005) (citing 770 ILCS 60/7 (West 2002); *Bale v. Barnhart*, 343 Ill. App. 3d 708, 713 (2003)).

¶ 38 In his complaint, plaintiff contended that defendants' mechanics lien was not a valid interest in the property because plaintiff demonstrated that Darpet was "paid the entire amount due and owing on the contract." However, plaintiff's complaint also acknowledged that because Spencer disputed the charges to Darpet with his credit card company, at the time defendants filed the mechanics lien, the "amount in dispute" was $2,677.67. Thus, by plaintiff's own admission, at the time defendants filed the mechanics lien, plaintiff owed defendant for materials it provided to improve or benefit plaintiff's real property. See *Cordeck Sales, Inc. v. Construction Systems, Inc.*, 382 Ill. App. 3d 334, 353 (2008) (quoting *Stafford-Smith, Inc. v. Intercontinental River East, LLC*, 378 Ill. App. 3d 236, 240 (2007) (The purpose of the Act is "to require a person with an interest in real property to pay for improvements or benefits which have been induced or encouraged by his or her own conduct." (Internal quotation marks omitted)).

¶ 39 Although the credit card company eventually released the funds to defendant after several months, this was insufficient to discharge the lien, as plaintiff suggests. Under the Act, Darpet was entitled to interest on the unpaid amount (770 ILCS 60/1(a) (West 2016)) and the possibility of attorney fees if the court entered a judgment in its favor on the lien (770 ILCS 60/17(b), (c) (West 2016)). Plaintiff does not contend or suggest that he paid Darpet any interest or attorney fees. Thus, even taking all well-pleaded facts in the complaint as true, the mechanics lien had not been fully discharged. The lien was therefore a valid interest in the property and could not constitute a cloud on the title.

¶ 40 In his brief before this court, however, plaintiff contends that the mechanics lien was invalid because it contained false statements regarding the delivery of the materials. Plaintiff asserts that despite the fact that the materials were not used on the three vacant lots, defendants nonetheless included those lots in the lien claim. Plaintiff asserts that these false statements gave the appearance that the lien covered more property than defendants were entitled to encumber. Notably, this claim is absent from Count II in plaintiff's complaint. Plaintiff identifies the discrepancy concerning the delivery of the materials in his complaint, but in Count II contends that the mechanics lien is an unlawful cloud on the title of the property *solely* because plaintiff paid Darpet the entire amount due on the contract. Nonetheless, false statements in a lien claim will serve to invalidate the lien claim only where the claimant knowingly makes a false statement. *Peter J. Hartmann Co. v. Capitol Bank & Trust Co.*, 353 Ill. App. 3d 700, 706 (2004) ("Section 7 [of the Act] is intended to protect an honest lien claimant who makes a mistake rather than a dishonest claimant who knowingly makes a false statement."). Here, plaintiff failed to plead in Count II of his complaint that defendants *knowingly* made false statements in the lien claim. Accordingly, we find that the circuit court properly dismissed plaintiff's claim for quiet title.

¶ 41 2. *Breach of Contract*

¶ 42 Plaintiff next contends that the court erred in dismissing his claim for breach of contract pursuant to section 2-615 of the Code. Plaintiff asserted in his complaint that Spencer contacted Darpet to pick up excess materials in accordance with its return policy, but Darpet refused to do so. Plaintiff further contended that Darpet breached the contract by delaying in delivering materials, overcharging plaintiff for certain materials, failing to deliver certain materials, and improperly designing and building five steel doors. On appeal, plaintiff maintains that the trial

court misinterpreted the language of Darpet's return policy finding that Darpet had a unilateral right to cancel the pickup of materials.

¶ 43 Plaintiff attached a copy of Darpet's return policy to his complaint. The policy provided that "Darpet offers a courtesy one time trim return pick up at the end of every job, when our truck is in the area. Darpet reserves the right to cancel or reschedule a trim pick up at any time." The policy further provided that Darpet would accept returns of stock trim only and that doors, windows, and special order items were not returnable. Darpet also had the right to "reject any trim that does not meet the proper return conditions." The policy also provided that Darpet would not be responsible for any manufacturing defect of merchandise sold.

¶ 44 Plaintiff asserts that although Darpet had the right to cancel or reschedule a pickup, it first had to allow a pickup to be scheduled. We disagree with plaintiff's representation of Darpet's return policy and find that the circuit court properly interpreted the policy as not obliging Darpet to accept the return of any materials. The policy expressly provides that Darpet had the right to "cancel or reschedule" a pickup at "any time" and had the right to reject "any trim that does not meet the proper return conditions." The policy further provided that Darpet would accept a return *only* for stock trim. Plaintiff fails to describe what type of materials he specifically sought to return and does not argue that those materials were encompassed in Darpet's return policy. Nonetheless, there is nothing in the policy that would require Darpet to accept plaintiff's return.

¶ 45 With regard to plaintiff's complaint that he was damaged by Darpet's delay in delivering certain materials, Darpet's policy provides that it has no "liability or responsibility" for any damage incurred by backorders. Likewise, with regard to plaintiff's complaint that the five steel doors were improperly designed and built, Darpet's policy states that it is not responsible for any manufacturing defect. Plaintiff asserts that he is not alleging a manufacturing defect, but is

instead contending that Darpet incorrectly "design[ed] and buil[t]" the five steel doors. This claim, however, is a claim that the doors were defectively manufactured; despite the different phrasing. Darpet's policy also provided that doors and special order items were not returnable. Plaintiff's claim that he was improperly charged for items he did not order is also negated by the exhibits attached to the complaint. Plaintiff attached to his complaint invoices and estimates from Darpet. Each document is signed by Spencer and initialed showing his acknowledgment that "all products and sizes are correct." Finally, plaintiff claims that Darpet failed to deliver three sets of bi-fold doorframes. Darpet's policy provides that all merchandise must be checked upon arrival and "[n]o shortage claim will be accepted unless it was made in writing on the delivery ticket the day of the receipt of the merchandise." Plaintiff does not assert that he made any such claim or otherwise notified Darpet of any shortage at the time of delivery. Accordingly, we find that the court did not err in dismissing plaintiff's claim for breach of contract.

¶ 46 3. *Slander of Title*

¶ 47 Finally, plaintiff contends that the court erred in granting defendants' motion for summary judgment on his claim for slander of title. Plaintiff asserts that he demonstrated defendants' malice in recording the claim where defendants knowingly made false representations on the lien claim and improperly clouded his title. Plaintiff asserts that defendants knew the materials had not been delivered on time and knew the lien applied only to the five townhomes on lot 9 and not the three vacant lots. Plaintiff contends that Birgé acted with reckless disregard in recording the claim and at the very least plaintiff's claims raised a question of fact as to whether defendants' actions constituted slander of title.

¶ 48 a. Summary Judgment

¶ 49 Summary judgment is appropriate where the pleadings, depositions, affidavits, and admissions on file establish that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2016); *Carney v. Union Pacific R.R. Co.*, 2016 IL 118984, ¶ 25. In determining whether a genuine issue of material fact exists, the court construes the pleadings, depositions, and affidavits against the moving party and liberally in favor of the opposing party. *Carney*, 2016 IL 118984, ¶ 25 (citing *Mashal v. City of Chicago*, 2012 IL 112341, ¶ 49). "A triable issue precluding summary judgment exists where the material facts are disputed, or where, the material facts being undisputed, reasonable persons might draw different inferences from the undisputed facts." *Adams v Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43 (2004). We review *de novo* a trial court's grant of summary judgment. *Springborn v. Village of Sugar Grove*, 2013 IL App (2d) 120861, ¶ 24.

¶ 50 b. Slander of Title

¶ 51 A plaintiff asserting slander of title bears the burden of proving that: "(1) the defendants made a false and malicious publication, either oral or written; (2) that such publication disparaged the plaintiff's title to property; and (3) damages due to such publication." *Gambino*, 398 Ill. App. 3d at 62. A plaintiff must prove that defendants also acted maliciously by showing that defendants knew the disparaging statements were false or that the statements were made with reckless disregard for their truth or falsity. *Id.* Reckless disregard is the publishing of the damaging matter despite an awareness of the probable falsity of the information or entertaining serious doubts as to its truth. *Contract Development Corp. v. Beck*, 255 Ill. App. 3d 660, 665 (1994). Maliciously recording a document which casts a cloud upon another's title to real estate is actionable as slander of title. *Whildin v. Kovacs*, 82 Ill. App. 3d 1015, 1016 (1980). "However,

if the party who records the document has reasonable grounds to believe that he has title or a claim to the property, he has not acted with malice." *Id.*

¶ 52 c. Malice and Reckless Disregard

¶ 53 Here, we find that plaintiff has failed to raise a genuine issue of material fact precluding the court's entry of summary judgment. At issue is whether defendants acted maliciously or recklessly in recording the lien claim. Plaintiff contends that defendants acted both maliciously and recklessly because although defendants knew that the lien applied only to 902-910 East Street, defendants nonetheless included the PINs for the three vacant lots in the lien claim. Defendants then published that false disparaging information by sending it to the Village of Lemont. Plaintiff also contends that Birgé's investigation before filing the lien claim was inadequate because he failed to go to the Cook County Tax Map Department to obtain a legal description of the property.

¶ 54 Contrary to plaintiff's contentions, at his deposition, Birgé testified extensively regarding his investigation and recording of the lien claim. In preparing the lien claim, Birgé testified that he obtained the legal description for the property from the office of the Cook County Recorder of Deeds and obtained the common address from Darpet's invoices, which were signed by plaintiff's agent. He also testified that he reviewed the 1996 judicial sale dead, the 2013 plat of easement, the two previous subcontractor liens, the Nicor Easement, the two warranty deeds from plaintiff to Cassano, and other documents. Birgé testified that this was his ordinary investigative procedure prior to recording a mechanics lien. Plaintiff does not contend that this investigation was improper, but merely contends that it was inadequate because Birgé should have also obtained information from the Cook County Tax Map Department. Although Birgé could have taken this additional step in investigating the lien claim, the fact that he did not does

not establish a question of fact as to whether Birgé acted with malice or acted recklessly. "Actual malice is not measured by what a reasonably prudent person would have published or should have investigated before publishing. [Citation.] Failure to investigate does not itself establish actual malice if the defendants did not seriously doubt the truth of their assertions." *Costello v. Capital Cities Communications, Inc.*, 125 Ill. 2d 402, 421 (1988). Here, Birgé testified that based on his investigation, he believed that the lien claim properly described the property that was the subject of the mechanics lien. Thus, Birgé's unrebutted deposition testimony demonstrates the extensive investigative procedure he conducted prior to recording the lien claim and suggests no implication of malice or reckless disregard.

¶ 55 Plaintiff also failed to raise a genuine issue of material fact that defendants acted with malice or reckless disregard in recording the lien claim. As noted, "a party who records a lien having reasonable grounds to believe that he has title or a claim to the property has not acted with malice." *Contract Development Corp.*, 255 Ill. App. 3d at 671. Here, as established above with regard to plaintiff's claim for quiet title, defendants had a valid claim for a mechanics lien. It is also well-established that defendants were aware that the materials were delivered to only 902-910 East Street. As the trial court found, however, "[t]he fact that Defendants were aware that the three vacant lots were unrelated to the construction project has no bearing on Defendants' recklessness in regard to the inaccuracies recorded in the mechanic's lien." Rather, in filing the lien, defendants believed that only the addresses that were part of the construction site, 902-910 East Street, were encumbered by the lien. However, the somewhat inconsistent description of plaintiff's property in the documents Birgé reviewed and the documents that were submitted to the trial court, demonstrate that although defendants may have mistakenly included the three vacant lots in the lien claim, they did not do so with malice or with reckless disregard.

¶ 56 For instance, the 2013 plat of easement for the sanitary sewer purports to apply to only 902-910 East Street, but lists the same four PINs Birgé used in the lien claim. Similarly, the 1996 judicial sale deed lists all four parcels of real estate that plaintiff originally owned and then lists six PINs without designating which PIN applies to which parcel or lot. The judicial sale deed identifies Parcel 1, where the townhomes were located, as:

> "LOT 14 AND LOT 9 AND THE 16 FOOT VACATED ALLEY LYING SOUTH OF AND ADJOINING LOT 9 ALL IN LEMONT GARDENS, A SUBDIVISION OF LOTS 13 AND 14 IN COUNTY CLERK'S DIVISION OF SECTION 29, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS."

However, the two previous subcontractors liens used different legal descriptions than either the 1996 judicial sale deed or the 2013 plat of easement. Both of these liens included a legal description that included only lot 9 as a "subdivision of lots 13 and 14." The Nicor Easement, on the other hand, lists the legal description for the common address of "Short St. & East St." as "Lot 14 and Lot 9," despite using the same PIN as the two mechanics liens. The record thus suggests that Birgé's investigation revealed several different legal descriptions and PINs for the liened property and, in drafting the lien claim, Birgé attempted to sufficiently describe the lots or tracts of land encompassed by the lien. 770 ILCS 60/7(a) (West 2016).

¶ 57 Birgé believed that the two documents that best described the property were the 1996 judicial deed and the 2013 plat of easement. Both of these documents used the same legal description for the parcel where the townhomes were located, and both used the same four

PINs.[1] Birgé testified that since he did not find a plat of subdivision for Parcel 1, which included both lots 14 and 9, he had no reason to believe that the parcel was subdivided or that Lot 9 had its own distinct PIN. Birgé testified that he believed the lien claim adequately described the construction site where Darpet had delivered the materials. As such, we cannot say that plaintiff raised a genuine issue of material fact that defendants acted with malice or with reckless disregard for the truth or falsity of the statements in recording the lien claim. Accordingly, we find that the court did not err in granting defendant's motion for summary judgment on Count I of plaintiff's complaint.

¶ 58 B. Defendants' Cross-Appeal

¶ 59 Finally, we will address Darpet's contentions on cross-appeal. Darpet contends that the trial court erred in failing to consider and refusing to grant its motion for Rule 137 sanctions. Darpet asserts that it established that plaintiff and his attorneys violated Rule 137 in filing and maintaining the underlying action because the action was brought without factual or legal basis, but was instead brought with the intention of punishing Darpet and Birgé for Darpet's refusal to pick up the materials.

¶ 60 1. *Jurisdiction*

¶ 61 We must first address whether we have jurisdiction to review the trial court's ruling on Darpet's motion for sanctions. Plaintiff contends that we lack jurisdiction to review the trial court's ruling on the motion because it was not filed with the circuit court within the time provided by the rule. Darpet contends, however, that plaintiff forfeited this argument by not raising it in the circuit court. Although we agree with Darpet that plaintiff did not raise this

[1] As noted, the 1996 judicial deed actually listed six PINs, but Birgé was able to eliminate two of the PINs because they were the subject of the two warranty deeds from plaintiff to Cassano.

argument in the circuit court, we have an independent duty to determine whether we have jurisdiction to consider Darpet's contentions on cross-appeal. *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213 (2009).

¶ 62 Here, the trial court entered the order granting defendants' motion for summary judgment on September 18, 2018. Plaintiff filed his notice of appeal on October 10, 2018. Darpet then filed its motion for sanctions, which was file stamped on October 18, 2018. Generally, once a notice of appeal is filed, the appellate court's jurisdiction attaches *instanter* and the circuit court is divested of jurisdiction. *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 173 (2011). The circuit court retains jurisdiction, however, even after a notice of appeal is filed in order to determine matters collateral or incidental to the judgment. *Id.* at 173-74. This includes motions for sanctions because they are "inextricably interwoven with the case in which they arise." *John G. Phillips & Associates v. Brown*, 197 Ill. 2d 337, 344-45 (2001). As such, a motion for sanctions filed after judgment and the notice of appeal, but within 30 days of the judgment, renders the notice of appeal premature and precludes appellate jurisdiction. *Id.* at 340 (citing *Niccum v. Botti, Marinaccio, DeSalvo & Tameling, Ltd.*, 182 Ill. 2d 6, 7 (1998)). Once the court disposes of the motion, plaintiff's previously filed notice of appeal becomes effective. *Hollywood Boulevard Cinema, LLC v. FPC Funding II, LLC*, 2014 IL App (2d) 131165, ¶ 21 (citing Ill. S. Ct. R. 303, Committee Comments (adopted Mar. 16, 2007)).

¶ 63 Here, Darpet's motion for sanctions was filed within 30 days of the judgment and, thus, the trial court retained jurisdiction to consider it. Plaintiff contends, however, that Darpet's motion for sanctions was untimely because it was not electronically filed until November 2, 2018, well outside the 30-day time limitation. The record shows that the motion for sanctions was file stamped on October 18, 2018. The motion also bears an electronic file stamp that

indicates that it was filed on November 2, 2018. The trial court took the motion under advisement on October 30, 2018, and denied it that same day. Plaintiff contends that under Illinois Supreme Court Rule 9(a) (eff. Dec. 13, 2017) all documents in civil cases must be electronically filed with the circuit court. Plaintiff contends that Darpet's motion is therefore untimely because it was not electronically filed until 45 days after the circuit court's judgment.

¶ 64 It is well-settled, however, that "[t]he file mark on a paper constitutes *prima facie* evidence that it was delivered to the proper officer for filing on the date indicated by the file mark." *Ayala v. Goad*, 176 Ill. App. 3d 1091, 1094 (1988). As such, the filing date of a petition is when it is received and stamped by the circuit clerk's office. *Id.* Although Rule 9(a) sets forth that electronic filing is required, it does not suggest that traditional paper filing is insufficient for purposes of timeliness. Indeed, Cook County Circuit Court General Administrative Order 2014-02 (eff. June 13, 2016), which addresses the electronic filing of court documents, provides that "[n]othing in this order is intended to alter the right of a person to file or serve process or other paper documents in the conventional manner pursuant to law and rules." Thus, while Rule 9 mandates the electronic filing of documents, nothing in the rule suggests that filings will be considered timely filed only once they are electronically filed.

¶ 65 We further find plaintiff's reliance on *Peraino v. County of Winnebago* unpersuasive. In *Peraino*, the plaintiff was required to file his motion for reconsideration by January 3, 2017, but did not have it electronically file stamped until January 4, 2017, and did file a paper copy. *Peraino v. County of Winnebago*, 2018 IL App (2d) 170368, ¶¶ 4-6. Plaintiff contended that the e-filing system malfunctioned and that he was unable to timely file the motion. *Id.* ¶ 6. Plaintiff therefore filed a motion to backdate the motion for reconsideration so that it would be considered timely filed, but the trial court denied the motion. *Id.* ¶¶ 6, 8. On appeal, this court found that

plaintiff's failure to timely file the motion for reconsideration was due to his attorney's decision to wait until less than two minutes before the deadline to electronically file the motion, rather than due to a technical system technical failure as contemplated by Rule 9(d)(1). *Id.* ¶¶ 22, 24. The court therefore found that plaintiff's motion for reconsideration was untimely, that the circuit court lacked jurisdiction to consider plaintiff's motion to backdate the motion for reconsideration, and that the appellate court lacked jurisdiction to consider the merits of the case. *Id.*

¶ 66 The situation before us is thus distinct from that in *Peraino* where Darpet clearly did file its motion for sanctions within the 30-day limitations period, but did not electronically file the motion until after that period. As noted, we find no support for plaintiff's contention that Darpet's motion was untimely filed because it was electronically filed outside of the 30-day limitation period despite being paper-filed within that period. Accordingly, we find that we have jurisdiction to address the merits of Darpet's cross-appeal.

¶ 67 2. *Rule 137 Sanctions*

¶ 68 Illinois Supreme Court Rule 137 (eff. Jan. 1, 2018) authorizes the trial court to impose sanctions against a party or its attorney when a motion or pleading is "not well grounded in fact, not supported by existing law, or lacks a good-faith basis for modification, reversal, or extension of the law, or is interposed for any improper purpose." *Whitmer v. Munson*, 335 Ill. App. 3d 501, 513-14 (2002). "The rule is designed to prohibit the abuse of the judicial process by claimants who make vexatious and harassing claims based upon unsupported allegations of fact or law" (*Peterson v. Randhava*, 313 Ill. App. 3d 1, 7 (2000)), but it is not "intended to penalize litigants and their attorneys because they were zealous but unsuccessful in pursuing an action" (*Yunker v. Farmers Automobile Management Corp.*, 404 Ill. App. 3d 816, 824 (2010)). A trial court's

decision to grant Rule 137 sanctions is accorded significant deference and will not be reversed absent an abuse of discretion. *Morris B. Chapman & Associates, Ltd. v. Kitzman*, 193 Ill. 2d 560, 579 (2000). This court will find that the trial court abused its discretion when no reasonable person could have taken the view adopted by the trial court. *Nelson v. Chicago Park District*, 408 Ill. App. 3d 53, 67-68 (2011).

¶ 69 Here, Darpet contends that the court erred in denying its motion for sanctions because Darpet demonstrated that plaintiff initiated this action in order to punish Darpet for refusing to pick up the materials rather for a legitimate legal purpose. Darpet's contentions in its motion and before this court essentially amount to an argument that plaintiff's action was brought without a factual or legal basis because plaintiff's claims were ultimately unsuccessful. However, Rule 137 sanctions are not intended to punish litigants merely because they were unsuccessful in pursuing the action. *Yunker*, 404 Ill. App. 3d at 824. Although we find that the circuit court correctly granted defendants' motion to dismiss Counts II and III of plaintiff's complaint and correctly granted summary judgment on the remaining count, "Rule 137 serves as a bulwark against truly frivolous litigation, not as a penalty against unsuccessful litigants." *Mandziara v. Canulli*, 299 Ill. App. 3d 593, 601 (1998). In deciding whether the imposition of sanctions is appropriate, the court must determine what was reasonable for the attorney to believe at the time of filing, rather than engaging in hindsight. *Lewy v. Koeckritz International, Inc.*, 211 Ill. App. 3d 330, 334 (1991). Plaintiff's complaint, and his arguments before this court, demonstrate that plaintiff and his attorneys presented an objectively reasonable argument for his views. Although plaintiff's attorneys were ultimately incorrect in their application of the law, Rule 137 was not intended to sanction such behavior. *Shea, Rogal & Associates, Ltd. v. Leslie Volkswagen, Inc.*, 250 Ill. App. 3d 149, 154 (1993) ("Rule 137 is intended to provide a sanction when a party or an attorney

asserts a proposition of law which is contrary to established precedent. However, it was not intended as a vehicle to punish those who might misapply the law."). Rather, sanctions are reserved for the most egregious cases. *Webber v. Wight & Co.*, 368 Ill. App. 3d 1007, 1032 (2006). We do not find this to be such an egregious case where sanctions are warranted and, as such, we cannot say that the trial court abused its discretion in denying Darpet's motion for sanctions.

¶ 70 Darpet contends, however, that the trial court's denial of sanctions should not be afforded deference in this case because the court did not allow any briefing on the matter and did not hold an evidentiary hearing. We observe that a hearing is necessary only where the court's determination cannot be made on the basis of the pleadings or trial evidence. *Hess v. Loyd*, 2012 IL App (5th) 090059, ¶ 26; see also *Olsen v. Staniak*, 260 Ill. App. 3d 856, 862 (1994) (holding that an evidentiary hearing is not necessary if the requirements of Rule 137 can be satisfied by examining the pleadings, trial evidence, or other matters of record). Here, Darpet's arguments in its motion for sanctions were based entirely on the pleadings and other evidence presented at trial and thus an evidentiary hearing was not required in order for this court to accord deference to the trial court's ruling. Accordingly, we find that the circuit court's ruling on Darpet's motion should be accorded deference and that the court did not abuse its discretion in denying the motion.

¶ 71 III. CONCLUSION

¶ 72 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 73 Affirmed.