2019 IL App (2d) 180370-U
No. 2-18-0370
Order filed April 16, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

SALCE, INC.,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 14-CH-799
	)	
DOWNERS GROVE, IL (1149 OGDEN), LLC; INSITE REAL ESTATE, LLC; GERARDI G. CONTRACTORS, INC.; FRANK GERARDI, Individually; STARBUCKS COFFEE COMPANY; MB FINANCIAL BANK, N.A.; NORR ILLINOIS; ROOF PROS CORPORATION; HARMON ELECTRICAL SYSTEMS, INC; K HOVING COMPANIES; ENTERPRISE PLUMBING, INC.; R.A. HEATH CONSTRUCTION, INC; and UNKOWN CLAIMANTS,	)	
	)	
Defendants	)	
	)	
(Downers Grove, IL (1149 Ogden), LLC; InSite Real Estate, LLC; Starbucks Coffee Company; and MB Financial Bank, N.A., Defendants-Appellees).	)	Honorable James D. Orel, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Birkett and Justice Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in finding for defendants in a mechanic's lien foreclosure claim action where plaintiff-subcontractor did not present evidence establishing defendants were served according to section 24 of the Mechanic's Lien Act. Affirmed.

¶ 2 Plaintiff, Salce, Inc. (Salce), directly appeals the trial court's ruling in favor of defendants, Downers Grove, Illinois (1149 Ogden), LLC (Downers Grove), InSite Real Estate, LLC (InSite), Starbucks Coffee Company (Starbucks), and MB Financial Bank, N.A. (MB Financial) (collectively, "defendants"), in its mechanic's lien foreclosure claim. Salce contends that the trial court erred in finding for defendants because it properly served the notice of intent to lien pursuant to the Mechanics Lien Act (the Act) (770 ILCS 60/0.01 *et seq.* (West 2014)), defendants were provided with notice of Salce's work and claim for payment through sworn statements, and defendants did not produce any evidence in their case-in-chief that notice was improper. We hold that the trial court did not err and affirm its judgment.

¶ 3 I. BACKGROUND

¶ 4 Like many people's days, this case begins with coffee. In 2013, Downers Grove, the record owner of the property at issue, set out to improve its property with a Starbucks Coffee café. It contracted with InSite to be the property developer, which hired a general contractor, Gerardi G. Contractors (Gerardi).[1] Salce was subcontracted by Gerardi to perform the earthwork services necessary to erect a single-tenant retail property at 1149 Ogden Avenue, in Downers Grove (the project). Salce was not paid for its work and filed a complaint to foreclose on a mechanic's lien. On May 10, 2018, following a four-day trial, the trial court entered a judgment in favor of defendants. The following facts are derived from the testimony and evidence

[1] Gerardi was initially a co-defendant in the foreclosure of mechanics lien claim, but was dismissed when it and its owner, Frank Gerardi, filed for bankruptcy.

introduced at trial. We limit our recitation of the facts to those that are relevant to the issues raised in this appeal.

¶ 5 On October 21, 2013, Salce and Gerardi entered into a contract by which Salce was to excavate 600 cubic yards of clean clay for the project's foundation for $27,800. Salce began excavating for the project. However, due to unknown underground conditions, such as a buried foundation and the discovery of unsuitable and contaminated soil,[2] the project was immediately stalled. Gerardi and Salce negotiated and executed two "change orders," dated November 5, 2013, and November 29, 2013. These change orders provided that Salce was to remove the buried foundation, haul away the unsuitable and contaminated soil, and import stone backfill so that the property could be left at "finished grade."

¶ 6 Salce fulfilled its portion of the contract and change orders. It excavated the land, hired and paid for its equipment operators' time, removed the unwanted material to various dumpsites, and imported stone backfill. Throughout work on the project, Salce's operators submitted tickets for its work to Gerardi. Gerardi made no complaints about the quality of Salce's work or the quantity of trucks hauling the material away from the project. As of December 23, 2013, Salce's operators were still excavating portions of the site and removing loads of debris. On December 26, at Gerardi's request, Salce stopped excavating and removed its trucks from the worksite to allow for concrete workers to begin their portion of the project.

¶ 7 Following the completion of Salce's work, Paul Salce (Paul), the owner and Vice President of Salce, met with the general contractor to discuss Salce's invoices. They created a

[2] Unsuitable soil cannot be built upon because it is weak and unable to bear the pressure of a building. Contaminated soil cannot be built upon because it contains foreign substances, which make it toxic.

spreadsheet to submit to InSite, which listed the cost of the work Salce performed, and attached all of Salce's invoices to the spreadsheet. In total, Salce billed Gerardi $179,206.51 for the work it completed on the project. However, it was never paid.

¶ 8 On March 14, 2014, Salce sent a notice of intent to file a mechanics lien (notice) against the property to the legal department of MB Financial. According to the document entered into evidence as plaintiff's exhibit 16, the notice was sent by both U.S. mail and certified mail, and the notice contained a certified number on its face. The notice claimed that Gerardi still owed $185,743.02[3] to Salce, and that Salce would file a lien on the property on March 21, 2014. Attached to the notice was a proof of service affidavit from Philip Towbridge (Towbridge), a representative of Salce. In the affidavit, he averred that

> "I declare that I served a copy of the above document, and any related documents, by first-class, certified or registered mail, postage prepaid, addressed to the above named parties, at the address listed above, on March 14, 2014. I declare under penalty of perjury that the foregoing is true and correct."

Below the affidavit, the notice listed three parties under the letters "CC:" Gerardi, InSite, and Downers Grove.

¶ 9 On March 27, 2014, Salce filed a contractor's mechanics lien claim (lien) with the Du Page County Recorder, in which it averred that a written contract was entered into, it performed the work pursuant to the contract, the last date of work was December 26, 2013, and the balance due to Salce was $185,743.02. According to that document, entered into evidence as plaintiff's exhibit 17, Towbridge averred that he "served this Claim for Mechanics Lien by mailing a copy

[3] There is nothing in the record to show why the lien has a different amount that the submitted invoices.

by certified mail, return receipt requested and restricted delivery to the below-named individuals ***." InSite, Downers Grove, Starbucks, MB Financial, Gerardi, and Waste Management of Illinois were all listed below the proof of service.

¶ 10 Salce filed a six-count complaint against defendants in April 2014; included as count I in the complaint, Salce sought to foreclose on the mechanic's lien. Of the six claims, five were disposed of before the trial began on April 16, 2018, leaving only the mechanics lien foreclosure to be disposed of at trial. Salce began its case-in-chief by calling the project's general contractor, Frank Gerardi, as its first witness. He testified that he submitted the spreadsheet and the attached invoices to InSite, but Salce was never paid for its work.

¶ 11 Salce's case continued with Paul testifying. He testified that he and Salce's other equipment operators demobilized on December 26, 2013, by removing the trucks and equipment from the worksite. Salce introduced into evidence an e-mail from Paul to Frank Gerardi detailing the demobilization that occurred on December 26. Paul also testified regarding the notice, plaintiff's exhibit 16:

"Q: Did you send this out?

A: Yes.

Q: When did you send it out?

A: It is dated March 14th, 2014.

Q: In looking at the second page, was this document sent to Frank [Gerardi] and InSite at [*sic*] Downers Grove, LLC?

A: Yes.

Q: Did you receive a response after you sent this notice of intent to filing?

A: No, not that I recall."

Salce finally called its two equipment operators who testified as to the work that they performed on the project. Salce rested its case on April 17.

¶ 12 Defendants then filed a "Motion for Directed Finding," arguing that the lien was void because it failed to follow two of the strict notice requirements in section 24 of the Act. 770 ILCS 60/24(a) (West 2018). First, defendants argued, Salce failed to prove that the notice was sent within 90 days of the last day of work because it did not prove the last day of billable work, and second, Salce failed to prove that the notice was delivered properly to defendants because notice was not sent in the prescribed statutory manner. In response to the second argument, Salce produced three green cards, attached as "Exhibit A" in its response to the motion, showing that something was sent via certified mail to InSite, Downers Grove, and MB Financial. These green cards were never authenticated, introduced as evidence by Salce, or admitted into evidence by the court.

¶ 13 On April 23, 2013, after hearing argument on the matter and reviewing the parties' submitted motions and case law, the trial court denied defendants' motion for directed finding. The court began its ruling by addressing the two-step process in ruling on a motion for directed finding per section 2-1110 of the Illinois Code of Civil Procedure (the Code). 735 ILCS 5/2-1110 (West 2018). "First, I have, as a matter of law, did the plaintiff bring a prima facie case for this mechanics lien claim; and then, secondly, was the evidence sufficient to sustain the burden of proof by a preponderance of the evidence."

¶ 14 The trial court noted that it heard testimony and looked at the exhibits admitted into evidence that showed the last day of work was December 26, 2013. The court also noted that it heard testimony that the notice was sent on March 14, 2014, putting notice at 83 days, within the 90-day requirement. The court continued that even if the last day of work was the last billed date,

that would be December 23, 2013, putting the notice at 87 days, still within the 90-day threshold. The court also noted that Paul testified that he sent the notice to both InSite and Downers Grove and that plaintiff's exhibit 16 was sent to the lender "in this process" and listed the other defendants after Towbridge's affidavit. It determined that the first step was satisfied. "So I believe that both steps [of the Act] as a matter of law based on the statute and the case law that's been presented, at least for this motion, has been fulfilled."

¶ 15 Turning to the sufficiency of the evidence, the trial court stated:

> "THE COURT: And secondly, was the evidence sufficient? Based on what was admitted into evidence -- and I have to consider both Exhibit 16 and 17 as evidence, along with Mr. Salce's testimony that he sent these notices, that the gentleman who mailed these sent it to the three parties and also to the company -- the mortgagee. So based on that, I am going to deny the motion."

¶ 16 Defendants then presented their case-in-chief. Included in its case was the testimony of Michael Larsen (Larsen), the managing director of development for InSite, who testified regarding InSite's theory that Salce deliberately overcharged for its work. On cross-examination, Larsen was asked about contractor's sworn statements that InSite received in connection with the project:

> "Q: InSite had some sworn statements in its possession?
>
> A: Yes.
>
> Q: And have you reviewed those before today?
>
> A: No.
>
> Q: Is anyone at InSite responsible for reviewing sworn statements?
>
> A: The construction manager is.

Q: Who is that? Only for this job, or generally, if you can remember.

A: I believe Rob Johnson.

* * *

Q: And does Rob or InSite review those sworn statements in making payments to the general contractor?

A: Yes.

Q: And Salce was listed on those sworn statements?

A: I would presume.

Q: Do you know when InSite received those sworn statements?

A: We typically receive pay applications that include sworn statements monthly.

Q: Monthly?

A: Typically.

Q: Do you know if that was the case for this project?

A: I don't."

Defendants' case ended on April 25, 2018, with an expert testifying as to the defense's theory that Salce overcharged for its work.

¶ 17 Counsel for both Salce and defendants then gave oral closing arguments and submitted written closing arguments to the trial court. In Salce's oral closing argument, counsel argued that Salce performed the work pursuant to the contract and change orders satisfactorily, no complaints were made as to the quality of the work it did, and that it had still not been paid. Counsel argued that that it had not overcharged InSite for its work, and even if it did, that the Act is designed to protect honest lien claimants who have made an accounting error. In the written closing argument, counsel argued that plaintiff's exhibit 16 showed that all defendants were

properly served per Towbridge's affidavit and that InSite had notice of the sworn statements per Larsen's testimony. Counsel also argued that the last date of work was proved by Paul's testimony and that the notice was sent timely.

¶ 18 Defendants' counsel argued that in order to foreclose on a mechanics lien, the lien must first be valid. Counsel argued that notice was improper because Salce did not provide any evidence to the court that established notice was served on defendants. Counsel also argued that there was no evidence that December 26, 2013, was the last day of work. Finally, counsel argued that defendants had established that Salce overstated its lien and therefore engaged in constructive fraud. In its written closing statement, counsel argued that when there is evidence that the notice was not sent properly, that can only be excused when actual service is shown, which Salce failed to do.

¶ 19 On May 10, 2018, the trial court announced its decision. The court began by discussing that the only claim before it was the mechanics lien foreclosure and that, in order to address the issue of any damages, it must first determine if there was a valid mechanics lien. The court then discussed plaintiff's exhibit 16, the notice sent to MB Financial, noting that it was admitted into evidence by the agreement of the parties and contained a certified number. The court noted that the second page of the exhibit contained a "mail affidavit" signed by Towbridge and that "there are CCs to Frank Gerardi, Gerarld Kostelny for InSite Realty and Downers Grove ***." The court then noted the statutory requirements of notice including notice be sent by "registered or certified mail, with return receipt requested, and delivery limited to addressee only ***." This exhibit troubled the court because it "heard no testimony who the MB Financial was the lending institution to," and it questioned whether the denotation of "CCs" to InSite and Downers Grove on the exhibit were "sufficient under the statute and case law[.]"

¶ 20 The trial court continued that, despite Larsen and Frank Gerardi testifying, Salce did not elicit any testimony that either party received the notice. The court then cited several cases holding that notice can be effective, even if it does not comply with the statute, if "the owner received actual notice." The court explained that it was troubled by the lack of evidence that defendants received the notice:

> "[T]he only person that was served based on the exhibits and the evidence was a bank of which there is no testimony who that bank provided funds for.
>
> Secondly, the notice has a certified number to the bank. The CCs, there is no indication what was enclosed with those. The proof in the mail affidavit talks about only sending the above document *** to the above-named parties listed above.
>
> The only above-named parties is, again, the legal department of MB Financial. There is no testimony whatsoever of any defendant acknowledging *** receipt or acknowledgment of the lien.
>
> The three CCs also do not include certified numbers that would have to be listed, I believe, or should be listed on certified or US mail return receipt requested certified number. Neither one of these documents indicate any certified number as required by the statute.
>
> Mr. Larsen did not testify as to any acknowledgment of receipt of lien, nor was he questioned on same.
>
> So in summation, as to the lien, Exhibit 16, it was not sent according to Section 24."

¶ 21 The trial court again discussed the requirements delineated in section 24 of the Act, and explained that no evidence was introduced showing that Salce complied with the requirements in

providing notice to the defendants. "Here we have none of that. There was not green cards admitted, there were not envelopes admitted. Again, there were no registrations of certified or regular [*sic*] mail." The court then turned to the issue of whether defendants had notice from another source. "[T]he statute makes no exceptions unless the owner has actual notice of a subcontractor's claim from some other source. And there has been no evidence presented to this Court that that was the case."

¶ 22 The trial court then found for the defendants. In so finding, the court stated:

> "It is a harsh result, and I did not take this lightly. I've spent much time thinking, researching this issue. Very harsh result, but *** I had to determine the validity of the lien.
>
> Based on Exhibit 16, I want to make it very clear for your appellate record, there was no testimony whatsoever what was sent to the defendants in this case.
>
> There is no registration or certificate number, certified number. There is no testimony of acknowledgment of the lien. For that reason, I find for the defendants."

Salce timely appealed.

¶ 23 II. ANALYSIS

¶ 24 Salce brings forward three issues with the trial court's rulings on appeal: first, whether the notice was properly sent to defendants; second, whether notice was needed because of sworn statements submitted to InSite; and third, whether the trial court erred in granting judgment for defendants after denying their motion to suppress when defendants put on no additional information regarding Salce's notice. Salce contends that the trial court erred in all three circumstances. Defendants maintain that, based on the evidence admitted in trial, Salce failed to establish that notice was properly sent and that Salce was included on sworn statements provided

to InSite. Defendants additionally assert that the trial court did not err in entering a judgment in their favor after ruling against their motion for directed finding. We hold that the trial court did not err.

¶ 25 The above recitation of facts is uncontested by either party. The first two matters to be resolved in this case involve whether, given the facts of the case, the trial court correctly applied the Act. Where a case does not involve administrative review, a trier of fact's determination of whether a statute was complied with is reviewed *de novo*. *Samour, Inc. v. Board of Election Commissioners of the City of Chicago*, 224 Ill. 2d 530, 542 (2007).

¶ 26 Before addressing the merits, we must first address the Act itself. The purpose of the Act is to permit a contractor a lien upon the property where a benefit has been received by the owner and the value of the property has been increased or improved by the furnishing of labor or materials. *Weydert Homes, Inc. v. Kammes*, 395 Ill. App. 3d 512, 516 (2009). Under the Act, a subcontractor may obtain a lien upon real property for the amount due for its services to improve the land. 770 ILCS 60/21(a) (West 2018). If the subcontractor is not paid by virtue of the lien, then the subcontractor may sue to enforce the lien. 770 ILCS 60/28 (West 2018). The legal capacity to foreclose on a mechanic's lien depends on its validity. *G.M. Fedorchak & Associates, Inc. v. Chicago Title Land Trust Co.*, 355 Ill. App. 3d 428, 433 (2005).

¶ 27 Relevant to this appeal, section 24 of the Act requires that a subcontractor seeking to establish and enforce a mechanic's lien to serve notice of his claim to the property owner within 90 days after completing the contracted work on the property. 770 ILCS 60/24(a) (West 2018). Section 24 provides, in part:

> "Sub-contractors, or parties furnishing labor, materials, fixtures, machinery, or services *** shall within 90 days after the completion thereof *** cause a written notice

> of his or her claim and the amount due or to become due thereunder, to be sent by registered or certified mail, with return receipt requested, and delivery limited to addressee only, to or personally served on the owner of record *** and to the lending agency, if known; and such notice shall not be necessary when the sworn statement of the contractor or subcontractor provided for herein shall serve to give the owner notice of the amount due and to whom due ***. For purposes of this Section, notice by registered or certified mail is considered served at the time of its mailing."

Id. Once a plaintiff has complied with the Act's requirements, the Act should be liberally construed to accomplish its remedial purpose. *North Shore Community Bank & Trust Co. v. Sheffield Wellington LLC*, 2014 IL App (1st) 123784, ¶ 86.

¶ 28 We now turn to the first issue that Salce raises: the trial court erred in finding that Salce did not send the notice of lien pursuant to section 24 of the Act. The question of whether a lien exists is not a matter within the discretion of the trial court. See *Westcon/Dillingham Microtunneling v. Walsh Construction Co. of Illinois*, 319 Ill. App. 3d 870, 876-77 (2001). Because the rights created under the Act are statutory and in derogation of the common law, the technical and procedural requirements necessary for a party to invoke the benefits of the Act must be strictly construed. *Cityline Construction Fire and Water Restoration, Inc. v. Roberts*, 2014 IL App (1st) 130730, ¶ 10. The burden of proving that each requirement of the Act has been satisfied is on the party seeking to enforce the lien. *Mostardi-Platt Associates, Inc. v. Czerniejewski*, 399 Ill. App. 3d 1205, 1209 (2010). However, when there is no dispute that an owner actually received notice, courts have been willing to overlook technical deficiencies. *Cordeck Sales, Inc. v. Construction Systems, Inc.*, 382 Ill. App. 3d 334, 398 (2008).

¶ 29 The trial court found that Salce did not send its notice of lien pursuant to the section 24 requirements. In so ruling, the court discussed plaintiff's exhibit 16, the notice to MB Financial. It identified that the exhibit contained proof of service only to MB Financial; there was no indication of what was included in any carbon copied notice sent to InSite or Downers Grove, and there were no certified numbers associated with the notice purportedly sent to defendants. Finally, the court noted that Salce did not elicit any testimony through Larsen that defendants actually received notice.

¶ 30 Salce argues that this ruling was in error because Towbridge's affidavit and the "CCs" on page two of plaintiff's exhibit 16 "clearly show[]" that notice was sent to defendants via certified mail. Here, according to the exhibit, the notice was undisputedly sent to MB Financial via certified mail, as the letter contains the certified number. Courts have held that if an owner was provided notice pursuant to the Act but a lender was not, it was a technical deficiency that could be overcome because the owner's rights were not prejudiced and there would be no fear that the owner will have to pay twice. See, *e.g.*, *Petroline Co. v. Advanced Environmental Contractors, Inc.*, 305 Ill. App. 3d 234, 240 (1999). We do not hold that the opposite is true. Here, the evidence establishes that a lender has been notified correctly, but it fails to establish that the notice was properly given to owner, Downers Grove, which is a strict requirement of the Act. Because notice to the owner is the "very substance of the basis on which a mechanic's lien may be predicated" (*Roth v. Lehman*, 1 Ill. App. 2d 94, 97 (1953)), we will not hold that notice to a lender is sufficient to put owners on notice.

¶ 31 Furthermore, Towbridge's affidavit on plaintiff's exhibit 16 stands in direct opposition to Paul's testimony regarding the notice. Towbridge's affidavit avers that *he* "served a copy of the above document, and any related documents, by first-class, certified or registered mail, postage

prepaid, addressed to the above named parties, at the address listed above, on March 14, 2014." However, during his direct examination, Paul was asked, "Did you send [the notice] out?" to which he answered, "Yes." Due to the lack of certified numbers on exhibit 16 to Downers Grove and InSite as well as the conflicting evidence and testimony regarding who sent what out, the affidavit and "ccs" alone do not establish that letters were sent certified mail.

¶ 32 Salce further argues that the green cards attached to its response to defendants' motion for directed finding show that notice was actually delivered to each defendant. Salce contends that this is analogous to *Watson v. Auburn Iron Works, Inc.*, 23 Ill. App. 3d 265 (1974), in which a subcontractor's notice of lien was not sent with "delivery limited to addressee only," to a bank pursuant to section 24 of the Act. The court held that the "omission of the limited delivery language [on the notice] did not result in a lack of notification" and thus was an insufficient basis for invalidating the subcontractor's claim. *Watson*, 23 Ill. App. 3d at 272. The court reasoned that although providing notice pursuant to the Act was a requirement, the owner had actual knowledge of the notice under the circumstances because an employee testified that the bank had received notice and return receipts indicated that the bank received notice. *Id.* at 273.

¶ 33 Defendants agree with the rationale of *Watson* but assert that it actually supports their contention that notice was not proper because the green cards were never admitted into evidence. In *Watson*, the court noted that "[u]pon the record before us it seems apparent that the omission of the limited delivery language did not result in a lack of notification and should not be the basis for invalidating plaintiff's claim." *Watson*, 23 Ill. App. at 272-73. Here, we cannot hold that defendants actually had knowledge of the notice, as Salce did not introduce evidence that the notice was received by defendants. Salce fails to address in either of its briefs submitted to this Court that "[t]he appellate court cannot consider documents that were not admitted into evidence

at trial." *Jill Knowles Enterprises, Inc. v. Dunkin*, 2017 IL App (2d) 160811, ¶ 24; see also *People v. Blankenship*, 406 Ill. App. 3d 578, 590 (2010). Because neither the green cards nor envelopes attached to Salce's response to defendants' motion for directed finding were authenticated, introduced, or admitted into evidence, we will not consider them as evidence before us. Salce elicited no testimony by either Frank Gerardi or Michael Larsen that either party actually received the notice, nor produced any other document in its case-in-chief that notice was given to defendants within 90 days of it completing its work on the project. Thus, Salce's argument that defendants actually had notice is not supported by anything in the record.

¶ 34 Salce also argues that defendants had actual knowledge of its work because InSite knew that Salce was performing excavating work, that it owed money to Salce, that Salce provided monthly invoices to InSite, and that Salce and Frank prepared the spreadsheet detailing its work on the project. However, none of those facts establish whether defendants had knowledge that Salce was imposing a lien on the property. "The mere presence or knowledge of a contractor's workman on a job will not constitute notice to satisfy the statute." *Season Comfort Corp. v. Ben A. Borenstein Co.*, 281 Ill. App. 3d 648, 655 (1995). We have found no case establishing that general knowledge of work being performed by a subcontractor or that money may be due to a subcontractor is sufficient to provide notice of a lien claim to an owner, and we do not hold so in this case.

¶ 35 We acknowledge that had the green cards been admitted into evidence or testimony given by a defendant that notice had been received, there may have been a different result here, as it has in past cases where evidence was presented that defendant-owners actually received notice. See *Watson*, 23 Ill. App. 3d 265; *Matthews Roofing Co. v. Community Bank & Trust Co. of Edgewater*, 194 Ill. App. 3d 200 (1990); *A.Y. McDonald Manufacturing Co. v. State Farm*

Mutual Automobile Insurance Co., 225 Ill. App. 3d 851 (1992). However, as the trial court pointed out, there were no green cards, envelopes, or certified numbers demonstrating Salce complied with the notice provision of the Act entered into evidence and no testimony was elicited that defendants received notice. We thus hold that the trial court did not err in finding that notice was improper under the Act.

¶ 36 Salce next maintains that even if it did not fully perfect notice pursuant to section 24, the trial court ignored that defendants had notice of its claims through Gerardi's sworn statements. Salce relies on Michael Larsen's uncontroverted testimony to assert that InSite received sworn statements for the project, the project's construction manager reviewed the sworn statements, and that Salce was listed on those sworn statements. Defendants maintain that Larsen did not testify as such and that no other evidence was introduced regarding sworn statements.

¶ 37 Under the Act, a general contractor's sworn statement to the owner listing the subcontractor's amount due to him satisfies the notice requirement; "such notice shall not be necessary when the sworn statement of the contractor or subcontractor provided for herein shall serve to give the owner notice of the amount due and to whom due ***." 770 ILCS 60/24(a) (West 2018); see also *Hill Behan Lumber Co. v. Irving Federal Savings & Loan Ass'n*, 121 Ill. App. 3d 511, 515 (1984). When subcontractors are included on a contractor's sworn statements, courts have upheld a subcontractor's lien despite the lack of notice. See *Hamilton, for Use of Steinborn v. Thayers Eating Houses, Inc.*, 264 Ill. App. 88 (1931); see also *Krack Corp. v. Sky Val. Foods, Inc*, 133 Ill. App. 2d 469 (1971).

¶ 38 Although it is true that uncontroverted testimony cannot be disregarded, *Szafranski v. Dunston*, 2015 IL App (1st) 122975-B, ¶ 80, the testimony here does not establish that Larsen had any personal knowledge of the sworn statements. In fact, Larsen's testimony regarding the

sworn statements revealed very little. The record demonstrates that Larsen did not affirmatively testify that InSite received sworn statements that included Salce and any amount due to it. While he did admit that InSite had sworn statements from the project in its possession, he had not reviewed them. He was unaware of when sworn statements were submitted for the project and could only "presume" that Salce was listed on the sworn statements. He did however testify that the construction manager, Rob Johnson, is the responsible party for reviewing the sworn statements for the project; however, Salce never called Rob Johnson as a witness to testify regarding the sworn statements and whether Salce was included on them. We also cannot find in the record, nor in any of the exhibits admitted into evidence, a copy of any sworn statement that Gerardi submitted to InSite. Salce argues that Paul testified as to the amount due to it, but Paul did not testify that Salce was listed on sworn statements submitted to InSite.

¶ 39 Thus the only evidence before us regarding the sworn statements, and whether Salce was included in them and what funds were due to it, comes from Larsen's testimony, which was made without personal knowledge of them. We note that "[a] witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." Illinois Rule of Evidence 602 (eff. Jan. 1, 2011). We therefore hold that the trial court did not err by not discussing whether the "sworn statement" provision of the Act applied to the case at hand.

¶ 40 Finally, Salce argues that the trial court erred in entering a judgment for defendant after denying defendants' motion for directed finding because defendants did not put on any evidence regarding notice in their case-in-chief. Defendants maintain that the court did not err in ruling in their favor because the burden remained with Salce to prove each element of their claim and did not shift to them to produce any evidence during their case-in-chief regarding notice. Salce

identifies the court's ultimate ruling as a legal error and asserts that our review of it should be *de novo*. See *Milligan v. Gorman*, 348 Ill. App. 3d 411, 416 (2004).

¶ 41 In a non-jury civil trial, defendants may motion the trial court to find in their favor at the close of the plaintiff's evidence. 735 ILCS 5/2-1110 (West 2018). In ruling on such a motion, the court engages in a two-prong analysis. *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 275 (2003). "First, the court must determine, as matter of law, whether the plaintiff has presented a *prima facie* case, which the plaintiff established by proffering at least some evidence on every element essential to the cause of action." (Internal quotation marks and brackets omitted) *Direct Auto Insurance Co. v. Reed*, 2017 IL App (1st) 162263, ¶ 23. If the court determines that the plaintiff failed to make out a *prima facie* case, defendants are entitled to judgment in their favor as a matter of law. *Id.* We review these decisions *de novo*. *Id.*

¶ 42 If, however, the plaintiff established at least some evidence essential to its cause of action, the plaintiff has succeeded in making a *prima facie* case, and the judge, as the trier of fact, must proceed to the second prong of the analysis. *Kokinis v. Kotrich*, 81 Ill. 2d 151, 155 (1980). The trial court must then weigh the evidence, assess the credibility of the witnesses, and determine what reasonable inferences may be drawn from the evidence as a whole. *Direct Auto Insurance Co.*, 2017 IL App (1st) 162263, ¶ 24. If sufficient evidence necessary to establish the plaintiff's *prima facie* case remains following the weighing process, the court should deny the defendants' motion and proceed as if the motion had not been made. *Kokinis*, 81 Ill. 2d at 155. When the analysis has progressed to this point, we afford deference to the trial court and will not reverse its decision unless it is against the manifest weight of the evidence. *Walsh/II in One Joint Venture III v. Metropolitan Water Reclamation District of Greater Chicago*, 389 Ill. App. 3d 138, 146 (2009).

¶ 43 Salce argues that this case is analogous to *Geske v. Geske*, 343 Ill. App. 3d 881 (2003). However, in its brief, Salce rests its argument on a block quote from the case's first appeal, an unpublished Rule 23 *Geske v. Geske*, No. 1-01-2512 (2002), for the proposition that the trial court erred when it ultimately ruled in favor of a defendant after initially denying defendant's motion for directed finding and defendant rested without putting on any evidence because the initial determination that plaintiff satisfied its burden of proof went unchallenged. *Geske*, 343 Ill. App. 3d at 883. On remand, the trial court noted that it applied the incorrect standard in ruling on defendant's motion, applied the correct standard, and ruled in favor of defendant's motion for directed finding. *Id.* The actual holding in *Geske* was the trial court had the authority to re-open the motion for directed finding and find for defendant by applying the correct standard and that that ruling was not against the manifest weight of the evidence. *Id.* at 886-887.

¶ 44 In the present case, the trial did not abruptly end but rather continued after the trial court's denial of defendants' motion for directed finding. Defendants put on evidence, including both Larsen's testimony and an expert's testimony regarding their theory of the case. They introduced thirteen pieces of evidence into the record. After the presentation of evidence, the trial court determined that the lien was not valid. "I've spent much time thinking, researching this issue. *** I had to determine the validity of the lien." Given the court's recognition at the close of trial, after hearing all of the evidence, that it had the responsibility to first determine the validity of the lien pursuant to the Act, we cannot find that it incorrectly applied the law. Because the trial court has the inherent authority to reconsider and correct its rulings, see *People v. Warren*, 2016 IL App (1st) 090884-C, ¶ 64, we cannot hold that it erred in ultimately finding for defendants when Salce failed to present evidence establishing that notice was provided to defendants pursuant to section 24 of the Act.

¶ 45 III. CONCLUSION

¶ 46 For the reasons stated, we affirm the trial court's judgment in favor of defendants.

¶ 47 Affirmed.