

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 CA 1378

SPECIALTY CONSTRUCTION, LLC

VERSUS

JIM MEYERS CONSTRUCTION COMPANY, LLP

Judgment Rendered: February 11, 2011

Appealed from the
Twenty-First Judicial District Court
In and for the Parish of Tangipahoa, Louisiana
Trial Court Number 2009-0001910

Honorable Elizabeth P. Wolfe, Judge

Christopher Rutzen
Baton Rouge, LA

Attorney for
Plaintiff – Appellant
Specialty Construction, LLC

Rodney Cashe
Hammond, LA

Attorney for
Defendants – Appellees
Jim Meyers Construction
Company LLP and IMC Land
Company, LLC

BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

WELCH, J.

Specialty Construction, LLC appeals a judgment sustaining a peremptory exception raising the objection of prescription filed by defendants, Jim Meyers Construction Company, LLP (Meyers) and IMC Land Company, LLC (IMC), dismissing that portion of the lawsuit seeking to enforce a claim and privilege granted by the Private Works Act. We reverse and remand.

BACKGROUND

On May 20, 2009, Specialty Construction filed this lawsuit by facsimile transmission against Meyers, the general contractor on a private works project to construct a medical clinic, and the owner of the project, IMC. In the petition, Specialty Construction made the following allegations: Specialty Construction entered into a subcontract with Meyers to provide labor, equipment, materials, and other services in connection with the application of drywall finish and paint for the project. Specialty Construction installed a “Level 4” drywall finish, but its work was rejected by the contractor and it was ordered to perform remedial work, which was again rejected by the contractor. Thereafter, Meyers contracted with a third party to install a “Level 5” drywall finish. Upon completion of the remedial work, in April of 2008, Specialty Construction submitted invoices for unpaid labor and materials in the amount of \$42,192.25. Meyers refused to pay the balance, and on May 20, 2008, Specialty Construction filed a statement of claim and privilege on IMC’s immovable property on which the work had been performed in the Tangipahoa Parish mortgage records pursuant to the Louisiana Private Works Act, La. R.S. 9:4801, *et seq.* The statement of claim and privilege also referenced Meyers as the general contractor on the project. In this lawsuit, Specialty Construction sought to recover the sum of \$42,192.25 from Meyers and IMC, along with penalties and attorney fees pursuant to La. R.S. 9:2784 and La. R.S. 9:4814.

The original petition was filed into the record on May 29, 2009. Also on that day, a notice of *lis pendens* was filed into the record, in which Specialty Construction identified the object of its lawsuit as a judgment recognizing a claim and privilege in its favor over IMC's immovable property.

Meyers and IMC filed an exception of prescription, arguing that any rights granted to Specialty Construction by the filing of the statement of claim and privilege into the mortgage records were extinguished because the lawsuit seeking to enforce those rights had been filed more than one year from the date on which Specialty Construction filed the document into the mortgage records. Defendants relied on La. R.S. 9:4823(A)(2), which provides that a claim against the owner and the privilege securing it or a claim against the contractor granted by the Private Works Act is extinguished if "[t]he claimant or holder of the privilege does not institute an action against the owner for the enforcement of the claim or privilege within one year after the expiration of the time given by R.S. 9:4822 for filing the statement of claim or privilege to preserve it." Defendants argued that the facsimile filing on May 20, 2009, did not interrupt La. R.S. 9:4823(A)(2)'s one-year period and the filing of the original document on May 29, 2009, more than one year after the date on which the statement of claim and privilege was filed, was untimely.

In opposition to the prescription exception, Specialty Construction argued that under the clear language of La. R.S. 9:4823(A)(2), a lawsuit seeking to enforce its claim and privilege had to be filed within one year of the expiration of the "lien filing period" set forth in La. R.S. 9:4822. It submitted that because the petition was not prescribed on its face, and because defendants offered no evidence as to date on which the lien filing period expired, the exception should not be maintained.

The trial court sustained the exception of prescription, finding that all of

Specialty Construction's claims arising from the statement of claim and privilege had prescribed because this lawsuit had been filed more than one year from the date on which Specialty Construction filed the document in the mortgage records. The court ordered that the document be stricken from the mortgage records and entered judgment dismissing IMC from the lawsuit, but specifically preserved Specialty Construction's contractual claims against Meyers.

DISCUSSION

The only issue in this appeal is whether the trial court erred in finding that the one-year period set forth in La. R.S. 9:4823(A)(2) for filing a lawsuit to enforce a claim and privilege granted by the Private Works Act begins to run on the date a statement of claim and privilege is filed into the mortgage records. For the reasons that follow, we conclude the that trial court erred in its construction of La. R.S. 9:4823(A)(2).

The starting point for the interpretation of any statute is the language of the statute itself. When a statute is clear and unambiguous and its application does not lead to absurd consequences, the provision is applied as written with no further interpretation made in search of the legislature's intent. **Hays v. Louisiana State Board of Elementary and Secondary Education**, 2009-1386, p. 8 (La. App. 1st Cir. 6/11/10), 39 So.3d 818, 823, writ denied, 2010-1640 (La. 10/8/10), 46 So.3d 1272. Moreover, statutes that extinguish rights are strictly construed in favor of the claim that is to be extinguished. See Vaughn v. City of Baton Rouge, 2009-0930, p. 6 (La. App. 1st Cir. 5/26/10), 39 So.3d 799, 802, writ denied, 2010-1511 (La. 10/1/10), 45 So.3d 1105; **Ristroph v. Louisiana Public Facilities Authority**, 2006-1669, p. 9 (La. App. 1st Cir. 9/14/06), 943 So.2d 492, 497.

The legislative intent and fundamental purpose of the Private Works Act is to protect laborers and subcontractors who engage in construction and repair projects by creating a lien for unpaid work. **First Thrift and Loan, L.L.C. v.**

Griffin, 41,666, p. 6 (La. App. 2nd Cir. 3/14/07), 954 So.2d 269, 271; **Burdette v. Drushell**, 2001-2494, p. 18 (La. App. 1st Cir. 12/20/02), 837 So.2d 54, 68, writ denied, 2003-0682 (La. 5/16/03), 843 So.2d 1132. To that end, La. R.S. 9:4802 grants the subcontractor a claim against the owner and contractor to secure payment of the price of its work, and further grants the subcontractor the right to secure its claims against the owner by a privilege on the immovable on which the work is performed. La. R.S. 9:4802(A)(1) and (B). Louisiana Revised Statutes 9:4822 sets forth certain time periods for the preservation of claims and privileges granted pursuant to La. R.S. 9:4802 depending on whether there is a timely-filed notice of a contract and whether the claimant is a general contractor. If a notice of contract is timely filed, laborers and subcontractors must file a statement of their claims or privileges within thirty days after the filing of a notice of termination of the work. La. R.S. 9:4822 (A)(1). If there is no notice of contract filed, persons granted a privilege for work arising out of a general contract and other persons granted a privilege by the Private Works Act have sixty days to file their respective claims and privileges, measured from the notice of termination of the work or substantial completion or abandonment of the work, if notice of termination of the work is not filed. La. R.S. 9:4822(C)(1) & (2).

Louisiana Revised Statutes 9:4823 provides for the manner in which a claim against the owner and the privilege securing it granted by La. R.S. 9:4802, or a claim against the contractor granted by La. R.S. 9:4802, may be extinguished. Specifically, those claims and privileges may be extinguished under the following circumstances:

(1) The claimant or holder of the privilege does not preserve it as required by R.S. 9:4822; or

(2) The claimant or holder of the privilege does not institute an action against the owner for the enforcement of the claim or privilege within one year after the expiration of the time given by R.S. 9:4822 for filing the statement of claim or privilege to preserve it; or

(3) The obligation which it secures is extinguished.

Louisiana Revised Statutes 9:4823 does not state, as the trial court found, that a claim or privilege granted by the Private Works Act is extinguished if the enforcement action is not filed within one year of the filing of the statement of claim or privilege in the mortgage records. Rather, it plainly provides that such a claim or privilege is extinguished if the enforcement action is not filed within one year of the expiration of time given by La. R.S. 9:4822 for the filing of the statement of claim or privilege.

Thus, in order to determine whether a claim or privilege granted by the Public Works Act has been extinguished, the duration of the period for filing a statement of claim and privilege set forth in La. R.S. 9:4822 must first be determined. That duration depends on whether notice of a contract has been filed. If notice has been filed, subcontractors have thirty days after the filing of notice of termination of the work to file a statement of their claim or privilege. La. R.S. 9:4822(A). Where no notice of contract is filed, subcontractors have sixty days from the filing of the notice of termination of the work, or substantial completion or abandonment of the work, to file their claims and privileges. La. R.S. 9:4822(C). The one-year period set forth in La. R.S. 9:4823(A)(2) expires not one year from the date a particular statement of claim and privilege is filed, but rather, one year from the date any person falling into that claimant's category could have filed a statement of claim and privilege under La. R.S. 9:4822. Michael H. Rubin, "Ruminations on the Louisiana Private Works Act," 58 La. L. Rev 569, 612 (1998). Accordingly, if La. R.S. 9:4822(C) provides the method by which Specialty Construction's claim and privilege must be preserved, the one-year period set forth in La. R.S. 9:4823(A)(2) would not begin to run until the time period set forth in La. R.S. 9:4822(C) for the filing of a statement of claim and

privilege expired sixty days from the filing of notice of termination of the work, substantial completion of the project, or abandonment of the work. In this case, there has been no evidence offered to establish a date on which any of these events occurred. In the absence of such evidence, it cannot be determined when the one-year time period set forth in La. R.S. 9:4823(A)(2) began to run, and we hold that the trial court committed legal error in granting the exception of prescription.

CONCLUSION

For the foregoing reasons and considering the present record before us, the judgment granting the peremptory exception raising the objection of prescription is reversed. The case is remanded to the trial court for proceedings consistent with this opinion.

REVERSED AND REMANDED.