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STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Supreme Court Case No. 20220212
Williams County District Court No. 53-2019-CV-01515

Henry Hill Oil Services, LLC,
Plaintiff and Appellee,
v.
Abner C. Tufto, Eric Ted Tufto, Darla Tufto a/k/a Darla O'Donnell, Kris Bradley Tufto,
Defendants
and
RWS Holdings, LLC, and Regional Water Service, LLC
Defendants and Appellees,
and
Lane A. Knudsen, Marcia K. Talley and David H. Talley, Trustees of the Marcia K. Talley Living Trust, Ann E. Gochnour,
Defendants and Appellants.

Regional Water Service, LLC,
Plaintiff and Appellee,
v.
Henry Hill Oil Services, LLC,
Defendant and Appellee,

APPEAL OF ORDER GRANTING HENRY HILL OIL SERVICE LLC'S MOTION FOR SUMMARY JUDGMENT AGAINST LANE A. KNUDSEN AND DENYING LANE A. KNUDSEN'S CROSS-MOTION FOR SUMMARY JUDGMENT DATED DECEMBER 16, 2021, FROM THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR JUDGMENT DATED MAY 5, 2022, AND FROM THE JUDGMENT ENTERED THEREON DATED MAY 19, 2022, IN THE DISTRICT COURT, NORTHWEST JUDICIAL DISTRICT, WILLIAMS COUNTY, STATE OF NORTH DAKOTA

THE HONORABLE JOSHUA RUSTAD, DISTRICT JUDGE

REPLY BRIEF OF DEFENDANT AND APPELLANT LANE A. KNUDSEN

ORAL ARGUMENT REQUESTED

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LAW AND ARGUMENT

I. The easements granted by Lane Knudsen to RWS Holdings, LLC are limited by their plain terms and on their face. They do not grant rights to RWS Holdings, LLC to construct water reservoirs outside the defined boundaries of the easements.

[¶1.] For its construction lien over the Knudsen Property to be valid, Henry Hill must prove that it improved the Knudsen Property "under contract with the owner of such real estate or under contract with any agent, trustee, contractor, or subcontractor of the owner…" N.D.C.C. § 35-27-02.

[¶2.] Henry Hill concedes that it did not perform its work directly under contract with Knudsen. Instead, Henry Hill argues that RWS Holdings, LLC was an agent or contractor of Knudsen because the RWS Holdings Water Agreement and Water Pipeline Easements granted to RWS by Knudsen allow the water reservoirs to be constructed. (Knudsen Aff., Exs. 1-4, R81-R84). See Appellee's Brief ¶¶ 51-55. This argument is faulty because neither the Water Agreement or Water Pipeline Easements actually allow for the construction of the Henry Hill reservoirs.

[¶3.] Henry Hill's argument relies on the inclusion of the word "appurtenances" within the description of allowable purposes of the Water Pipeline Easements. Knudsen Aff., Exs.2-4, R82-84. Henry Hill's proposed definition of "appurtenance" is broad enough to encompass virtually anything so long as it is attached to the water pipeline in some manner. Allowing such a limitless bound on the pipeline easement is plain error. The pipeline easements, read in their entire context, have limits and boundaries. They provide for a permanent easement and right of way only thirty (30) feet in width, for the purposes of "laying, constructing, maintaining, operating, inspecting, repairing, replacing, protecting, changing the size of and removing the subject pipeline and [RWS's] Facilities, for the

transportation of water, upon and along a route to be selected by [RWS] in consultation with [Lane Knudsen]." R82-84.

[¶4.] The District Court erred when it failed to engage in meaningful fact finding of the intended boundaries and scope of the Pipeline Easements. The Henry Hill reservoirs are together approximately 15 acres in size. Even if the Court adopts the expansive definition of "appurtenance" that Henry Hill advocates for, the appurtenances are still restricted to the geographic boundaries of the water pipeline easements. The reservoirs are well beyond the thirty (30) foot wide grant of the easements. For this reason, the District Court's finding that RWS Holdings is the agent or contractor or Knudsen – for work that he did not authorize – should be reversed. The limits of the Water Pipeline Easements are defined and do not allow RWS to construct the approximately 15-acre water reservoirs well outside the boundaries of the easements, nor for a purpose unintended by the easements.

[¶5.] Of note, the Talley/Gouchnour defendants actually executed an Easement/Surface Use and Appurtenance Agreement that allows for construction of a freshwater reservoir and ancillary facilities on their properties. (R19). Knudsen did not execute a similar surface use agreement. It stands to reason that RWS would not acquire the surface use agreement from Talley/Gouchnour if RWS actually believed that the water pipeline easements already granted by Talley/Gouchnour allowed for construction of the large Henry Hill reservoirs.

[¶6.] Henry Hill's reservoirs are beyond the scope and limit of the Knudsen Water Agreement and Water Pipeline Easements. Henry Hill cannot, therefore, rely on those agreements to designate RWS Holdings as an agent or contractor of Knudsen for their reservoir work. Since RWS is not an agent or contractor of Knudsen, the Henry Hill lien against the Knudsen Property is invalid under N.D.C.C. § 35-27-02.

[¶7.] Alternatively, at minimum, there are material fact questions that must be addressed regarding the intended limits and scope of the Water Agreement and Water Pipeline Easements.

II. If the water reservoirs are held to be an authorized extension of the Water Pipeline Easements, then Henry Hill's lien interest is limited in scope to the easement interest only.

[¶8.] Based on arguments presented above, Knudsen disputes that Henry Hill is entitled to any construction lien at all. However, if the Court determines otherwise and finds that Henry Hill is entitled to a construction lien, then the scope and breadth of the construction lien is limited to the easement interest only.

[¶9.] Henry Hill relies upon the Water Pipeline Easements to justify its designation of RWS Holdings as the agent or contractor of Lane Knudsen. Appellee's Brief ¶¶ 51-55. It argues extensively that its reservoirs are an "appurtenance" of the RWS Holdings Water Pipeline Easements. If that is held to be the case, then the real estate interest actually improved by Henry Hill is the Water Pipeline Easement, and not the entire 80-acre Knudsen Property.

[¶10.] Under N.D.C.C. § 35-27-02, a person entitled to a construction lien is only entitled to a lien "upon the improvement and upon the land on which the improvement is situated or to which the improvement may be for the price or value of such contribution." Henry Hill cannot have it both ways. Their improvement is either an appurtenance to the Water Pipeline Easements or it is not. If it is, then the real interest actually improved by their work is the interest of the easements. If the easement interest is not the "land on which the improvement is situated," then the argument that RWS Holdings is an agent or contractor

of Knudsen through the Water Pipeline Easements fails and Henry Hill is not entitled to any lien at all.

[¶11.] The question of constructions lien claims against improvements within an easement interest does not appear to have been previously addressed by the North Dakota Supreme Court. However, a similar set of circumstances was presented to the Court of Appeals of the State of Illinois. In the case of Matanky Realty Grp., Inc. v. Katris, 367 Ill. App. 3d 839, 856 N.E.2d 579 (2006), defendants purchased a price of property in a shopping center. Id. at 840. The property was located in an outlot of the shopping center, such that the property lacked its own street access for traffic. Id. To allow ingress and egress to the outlot, the shopping center owners granted the outlot owners an easement through the shopping center parking lot. Id. The plaintiff in the case was hired by the owner of the shopping mall to maintain and repair the parking lot. When the plaintiff was not paid for its work, it recorded mechanic's liens against both the defendant's parking lot easement and the defendant's outlot.

[¶12.] Illinois Mechanic Lien Act contains similar provisions to Chapter 35-27 of the North Dakota Century Code. 770 ILCS 60/1. It provides a method of recovery where a landowner receives beneficial improvements to his property because of a contractor's labor and materials. Matanky Realty Grp., Inc. 367 Ill. App. 3d at 842. The Illinois Court of Appeals was confronted with the question of whether the outlot property was properly subject to the mechanic's lien due to the improvements made to the parking lot easement alone.

[¶13.] The Illinois Court of Appeals held that it was not. They noted that, although a lien may extend to an estate in fee, improvements made solely to an adjoining easement and

not in connection with any improvements to the principal property are not valid against the principal property. Id. at 843. The construction lien was therefore ineffective against the outlot. Id.

[¶14.] Although not binding North Dakota precedent, the Mantanky Realty Grp, Inc. case is persuasive and helpful in that it delineates between the improvements made merely to an easement, and improvements to a fee simple interest. It provides that the two interests are distinguishable when assessing the proper scope and breadth of a construction lien.

[¶15.] In this case, the Henry Hill lien may only extend against the "the improvement and upon the land on which the improvement is situated." N.D.C.C. § 35-27-02. Henry Hill itself argues that its improvements are within the scope of the Water Pipeline Easements. Accordingly, their construction lien, if allowed, must be limited to the easement alone.

CONCLUSION

[¶16.] For the reasons set forth herein, Knudsen respectfully requests that the Court reverse the District Court's Order Granting Henry Hill's Motion for Summary Judgment Against Knudsen and Denying Lane A. Knudsen's Cross-Motion for Summary Judgment Against Henry Hill, that it orders the resulting Judgment vacated, and that it orders the case remanded to District Court with instructions to enter summary judgment in favor of Lane Knudsen.

DATED this 18th day of November, 2022. MCGEE, HANKLA & BACKES, P.C.

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CERTIFICATE OF COMPLIANCE

[¶17.] The undersigned attorney for Appellant Lane A. Knudsen certifies that the attached brief complies with the page limitation stated in North Dakota Rule of Appellate Procedure 32(1)(8)(A). The page count of the filed electronic document is 8 pages, exclusive of this Certificate of Compliance.

DATED this 18th day of November, 2022. MCGEE, HANKLA & BACKES, P.C.

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CERTIFICATE OF SERVICE

[¶18.] I hereby certify that, on November 18, 2022, I served the foregoing document on the following by electronic mail transmission, through the filing portal, and that notice of the filing and the documents will be sent to the following:

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I also hereby certify that a true and correct copy of the foregoing document was mailed to:

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To the best of your affiant's knowledge, information, and belief, such addresses as given above are the addresses of the parties intended to be so served.

/s/ Erich M. Grant
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