

1018-111-481
STATE OF ILLINOIS

SS

COUNTY OF LAKE

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

WERD CONSTRUCTION CO.

Plaintiff,

v.

LEON A. LEKAI, JENNIFER L. LEKAI, et. al.

Defendants.

No. 06 CH 872

LEON A. LEKAI and JENNIFER L. LEKAI,

Counter-Plaintiffs,

v.

WERD CONSTRUCTION CO.,

Counter-Defendant.

**WERD CONSTRUCTION CO.
MOTION TO DISMISS COUNT III of
SECOND AMENDED COUNTERCLAIM**

NOW COMES Counter-Defendant, WERD CONSTRUCTION CO. by its counsel, SHIPLEY LAW GROUP, LTD., and moves this Honorable Court pursuant to 735 ILCS 5/2-619 to dismiss Count III of Counter-Plaintiffs' Second Amended Counter-Claim, with prejudice, and in support thereof states:

1. The counterclaim alleges damages sustained by counter-plaintiffs arising from the construction of an addition to their single family home. As to moving counter-defendant, Count III pleads Slander of Title. (Exhibit 1)¹

¹ For purposes of economy, only that portion of the Second Amended Counterclaim pertaining to Werd Construction Co. is appended as an exhibit.

2. Count III, which is based upon the Original Contractors Lien recorded by Werd prior to suit, a condition precedent to the filing of the foreclosure action, fails to state a cause of action as a matter of law.

3. The issue presented by the slander of title claim is whether the statements set forth in Werd's lien are protected. An action for slander of title requires: a) a false and malicious publication b) of an oral or written statement which disparages the subject property c) damages due to the publication. **Chicago Title & Trust Company v. Levine**, 333 Ill.App.3d 420, 789 N.E.2d 769 (3rd Dist. 2002); **American National Bank and Trust Company**, 308 Ill.App.3d 246, 719 N.E.2d 360 (2nd Dist. 1999).

4. It is well settled in Illinois, pursuant to 770 ILCS 60/1, et. seq., that the recording of a mechanics lien is a condition precedent to the filing of a foreclosure action. Accordingly, by statute, Lekais' failure to pay the balance of the contract required Werd, as general contractor for the project, to record its Original Contractors Lien prior to commencing the instant suit. Failure to comply with the statutory requirements would have resulted in a waiver of its lien claim.

5. The issue of privilege in relation to publication, via recording, of a document in relation to real property has been considered in Illinois. **Ringier America, Inc. v. Enviro-Technics, Ltd.**, 284 Ill.App.3d 1102, 673 N.E.2d 444 (1st Dist. 1996), is dispositive of the issue. In rejecting a slander of title claim presented in relation to a Lis Pendens, the Court recognized an absolute privilege in statements made in a judicial proceeding or in conjunction with documents which must be recorded as a condition precedent to the filing of such a claim. The **Ringier** Court noted, quoting with approval from **Parrillo, Weiss & Moss v. Cashion**, 181 Ill.App.3d 920, 537 N.E.2d 851 (1st Dist. 1989), 'the privilege embraces actions required or permitted by law in the course of judicial or quasi-judicial proceedings, as well as actions 'necessarily preliminary' to judicial or quasi-judicial proceedings. **Ringier** at 673 N.E.2d 446.

6. Clearly, the filing of the Original Contractors Lien, which relates solely to the property at issue and sets forth the claim being prosecuted, was necessarily preliminary to the instant proceeding.

7. The factual statements set forth in the Original Contractors Lien, filed by Werd, prior to commencing the instant action, are protected by the absolute privilege. As a matter of law, the Lekais cannot maintain an action for Slander of Title.

WHEREFORE, Counter-Defendant, WERD CONSTRUCTION CO., prays this Honorable Court enter an order dismissing Count III of Counter-Plaintiffs' Second Amended Counterclaim, with prejudice.

SHIPLEY LAW GROUP, LTD.

BY:



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