

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JM PROPERTIES OF W. PALM BEACH, INC.,
Appellant,

v.

FORT DALLAS TRUSS COMPANY, LLC,
Appellee.

No. 4D2024-1593

[February 18, 2026]

Appeal from the County Court for the Fifteenth Judicial Circuit, Palm Beach County; Danielle A. Sherriff, Judge; L.T. Case No. 502023CC003897.

Victor K. Ronces of the Law Offices of Victor K. Ronces, P.A., North Miami Beach, for appellant.

Keith J. Merrill of Keith J. Merrill, P.A., Jensen Beach, for appellee.

KLINGENSMITH, J.

Appellant, JM Properties of W. Palm Beach, Inc., appeals the trial court's final judgment in favor of appellee, Fort Dallas Truss Company, LLC, and the trial court's order denying the motion for rehearing. Though appellant raises several issues, we write only to address whether competent, substantial evidence supported the trial court's ruling that appellee was a materialman for the construction project in question, and whether appellee was permitted to record a lien following an alleged breach of contract by appellant. We find no error in the trial court's determination that appellee was a materialman providing building materials for the project, but find that appellee was not permitted to file a lien against appellant. Therefore, we reverse on that ground.

The property owners originally hired a contractor for a project, and that contractor hired appellee. The original contractor ceased work on the property, leading the owners to hire appellant as their new contractor. Appellant and appellee entered into a contract where appellee was to design, manufacture, and deliver trusses to appellant. Pursuant to the contract, appellant was to pay fifty percent of the contract price upon

completion of the shop drawings. The trial court made the specific finding of fact that appellant's representative was advised the shop drawings had been prepared and payment was due, but appellant did not make the payment and avoided contact with appellee.

When payment was not made, appellee filed a construction lien against the property owner for fifty percent of the contract price plus sales tax, as well as a two-count complaint for breach of contract and foreclosure of the construction lien. Appellant answered and counter-claimed, alleging in relevant part that appellee was not a licensed contractor or engineer and was not entitled to enforce the contract. Appellant moved the lien off the owner's property by posting a cash bond with the court in the amount of \$40,215.07, which represented the \$28,408.50 demanded in the claim of lien, plus \$4,704.45 of interest at a rate of 5.52% for three years, plus \$7,102.13 for any attorney's fees and court costs that might be taxed to enforce the lien.

Appellee moved for summary judgment in its favor on appellant's unlicensed contracting counter-claim, supported by unrebutted testimony that appellee had not worked at the construction site. The trial court entered summary judgment in appellee's favor, finding appellee was not a contractor and only a materialman for the job.

At the nonjury trial's conclusion, the trial court entered an order in appellee's favor. The order directed the clerk of the court to release the final judgment amount of \$28,408.50 from the \$40,215.07 lien transfer bond. Appellant moved for rehearing, which the trial court denied. This appeal follows.

On the first issue, appellant argues the trial erred in finding that appellee had acted as a materialman. We disagree with appellant. A trial court's factual findings in a non-jury trial are reviewed on appeal to determine whether those findings are supported by competent, substantial evidence. See *Acoustic Innovations, Inc. v. Schafer*, 976 So. 2d 1139, 1143 (Fla. 4th DCA 2008).

Section 713.01(20), Florida Statutes (2022), defines a "materialman" as:

[A]ny person who furnishes materials under contract to the owner, contractor, subcontractor, or sub-subcontractor on the site of the improvement or for direct delivery to the site of the improvement or, for specially fabricated materials, off the

site of the improvement for the particular improvement, and who performs no labor in the installation thereof.

Here, the contract between appellee and appellant required appellee to manufacture and deliver the trusses to the job site. No conflicting evidence was presented at trial. Accordingly, we affirm the trial court's finding that appellee was a materialman. *See Mowder v. Smith*, 390 So. 3d 106, 109 (Fla. 3d DCA 2024) (“[I]t is not our role to reweigh the evidence. Instead, it is our duty to affirm those factual findings that are supported by substantial, competent evidence.”).

On the second issue, appellant argues the construction lien was improper because no evidence of any permanent benefit to the property was presented. We agree with appellant on this point.

Section 713.01(15), Florida Statutes (2022), defines “improvement” as “any building, structure, construction, demolition, excavation, solid-waste removal, landscaping, or any part thereof existing, built, erected, placed, made, or done on land or other real property for its permanent benefit.” Here, no permanent benefit occurred upon the property in this case because the trusses were never delivered. Thus, appellee was not entitled to a lien on the property. *See Palm Beach Mall, Inc. v. Se. Millwork, Inc.*, 593 So. 2d 1121, 1122 (Fla. 4th DCA 1992) (“[T]he lienor is not entitled to a lien on the mall property where the court has found that the structure was not of permanent benefit to the mall.”). Though the imposition of the lien was improper, appellee may still recover damages under the trial court's finding that appellant had breached its contract.

Accordingly, we reverse the order to transfer \$28,408.50 to appellee from the lien, but remand for the trial court to determine the appropriate measure of damages under appellee's breach of contract claim.

Affirmed in part, reversed in part and remanded.

GERBER and LEVINE, JJ., concur.

* * *

Not final until disposition of timely-filed motion for rehearing.