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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A18-1823**

Axia Contracting, LLC,  
Respondent,

vs.

Jon Grefsrud, et al.,  
Defendants,

Minnesota National Bank,  
Appellant.

**Filed June 24, 2019  
Affirmed  
Jesson, Judge**

Otter Tail County District Court  
File No. 56-CV-17-2819

Michael L. Gust, Anderson, Bottrell, Sanden & Thompson, Fargo, North Dakota (for respondent)

Roger C. Justin, Rinke Noonan, St. Cloud, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Jesson, Judge; and Florey, Judge.

**UNPUBLISHED OPINION**

**JESSON, Judge**

After financing for a hotel construction project fell through, respondent Axia Contracting, LLC asserted a mechanic's lien on the property for the outstanding amount

owed for the work performed. But Axia did not provide notice to the property owners before filing the lien. Appellant Minnesota National Bank contends that because Axia failed to provide pre-lien notice, the district court improperly granted summary judgment in Axia's favor. Because we conclude that the property in question was not in agricultural use when the lien attached—meaning that Axia was not required to provide pre-lien notice—we affirm.

## FACTS

In October 2014, Jon and Linda Grefsrud purchased a piece of property previously used for farming.<sup>1</sup> The Grefsruds intended to build a hotel. In pursuit of constructing the hotel, the Grefsruds began consulting with respondent Axia Contracting, LLC (Axia).

While the Grefsruds sought financing for the hotel in 2015, they asked the previous owner of the land to plant soybeans on the property so that they would not have to pursue weed control options. The previous owner did so. The last crop was harvested on September 23, 2015.

About one month later, Axia began construction of the hotel. The Grefsruds personally funded the first two payments to Axia for this work. In February 2016, appellant Minnesota National Bank made a third payment to Axia, and obtained a mortgage on the property.<sup>2</sup> But Minnesota National Bank made no additional payments. And when construction of the hotel was complete approximately eleven months later, Axia was still

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<sup>1</sup> The Grefsruds are not parties to this appeal.

<sup>2</sup> Financing from Minnesota National Bank subsequently fell through after a dispute between the Grefsruds and the bank.

owed a substantial amount of money. Because payments had not been made, Axia filed a mechanic's lien.<sup>3</sup> Axia then commenced this lien foreclosure action.

In district court, Axia and Minnesota National Bank filed cross-motions for summary judgment. The court granted Axia's motion for summary judgment, concluding that Axia had an enforceable mechanic's lien in the amount of \$510,591. In reaching this conclusion, the district court determined that Axia was not required to give pre-lien notice because the property met one of the statutorily-outlined exceptions to the notice requirement. Minnesota National Bank appeals.

## DECISION

Minnesota National Bank asserts that the district court erred by granting summary judgment in favor of Axia, contending that Axia's mechanic's lien is invalid because pre-lien notice was not provided. We review a district court's grant of summary judgment de novo, evaluating whether the district court properly applied the law and whether genuine issues of material fact exist. *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017). In doing so, we "view the evidence in the light most favorable to the party against whom summary judgment was granted." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

A mechanic's lien—a remedy created by statute—grants a security interest in an improved property to those who provided labor or materials during the improvement

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<sup>3</sup> A mechanic's lien grants those who provide labor or materials during the improvement of real property with a security interest in the improved property. *Ryan Contracting Co. v. O'Neill & Murphy, LLP*, 883 N.W.2d 236, 243 (Minn. 2016).

process. *Ryan Contracting Co.*, 883 N.W.2d at 243; *see also* Minn. Stat. § 514.01 (2018) (describing a mechanic's lien). In general, laws governing mechanic's liens are strictly construed regarding the question of whether a lien attaches but are liberally construed after the lien has been created. *S.M. Hentges & Sons, Inc. v. Mensing*, 777 N.W.2d 228, 230 (Minn. 2010).

While the statute provides a remedy for those who labor to improve property, it also requires notice of the potential lien to property owners in most circumstances. Minn. Stat. § 514.011 (2018). In fact, anyone who enters into a contract with an owner for the improvement of real property and “who has contracted or will contract with any subcontractors or material suppliers to provide labor, skill or materials for the improvement” must provide pre-lien notice to the owner. *Id.*, subd. 1. And that notice must convey to property owners that any person or company providing labor or materials can file a lien against the property if they are not paid for their contribution. *Id.* The statute requires that the provided notice state as follows:

“(a) Any person or company supplying labor or materials for this improvement to your property may file a lien against your property if that person or company is not paid for the contributions.

(b) Under Minnesota law, you have the right to pay persons who supplied labor or materials for this improvement directly and deduct this amount from our contract price, or withhold the amounts due them from us until 120 days after completion of the improvement unless we give you a lien waiver signed by persons who supplied any labor or material for the improvement and who gave you timely notice.”

*Id.* This required notice can be in a written contract, a copy of which is provided to the owner, or other written notice as provided by the statute. *Id.*

But the statute provides three exceptions to the pre-lien notice requirement.

*Id.*, subds. 4a-4c. The exception at issue here states:

The notice required by this section shall not be required to be given in connection with an improvement to real property *which is not in agricultural use* and which is wholly or partially nonresidential *in use* if the work or improvement:

. . . .

(c) is an improvement to real property which contains more than 5,000 square feet and does not involve the construction of a new building or an addition to or the improvement of an existing building.

*Id.*, subd. 4c(c) (emphasis added).<sup>4</sup>

The Minnesota Supreme Court’s recent interpretation of this very law—Minnesota Statutes section 514.011, subdivision 4c—in *Ryan Contracting Co.* dictates the result in this case. In interpreting the provision, the supreme court determined that the language is “clear and unambiguous” and that “the phrase ‘in use’ in subdivision 4c refers to land use at the time the lien attaches and takes effect.” *Ryan Contracting Co.*, 883 N.W.2d at 245. Further, the supreme court discerned that the phrase “in use” “refers to both active and passive uses of land in existence at the time the mechanic’s lien attaches.” *Id.*

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<sup>4</sup> And the statute adopts the definition of “[a]gricultural use” found in Minnesota Statutes section 473H.02, subdivision 3 (2018), which states: “‘Agricultural use’ means the production for sale of livestock, dairy animals, dairy products, poultry or poultry products, fur-bearing animals, horticultural or nursery stock, fruit, vegetables, forage, grains, or bees and apiary products.”

Here, it is undisputed that Axia did not provide pre-lien notice. Accordingly, the central question is whether the property was in agricultural use at the time the lien attached and thus subject to the exception to the pre-lien notice requirement. The district court concluded that when the lien attached, the land was not being actively used for agricultural purposes and that the land was passively vacant, so no pre-lien notice was required.

We agree that no genuine issue of material fact exists regarding whether the land was in agricultural use when the lien attached. Axia began construction—and the lien attached—on October 26, 2015. See Minn. Stat. § 514.05, subd. 1 (2018) (providing that a lien attaches and takes effect when “the first item of material or labor is furnished upon the premises for the beginning of the improvement”). Harvesting of soybeans planted on the land concluded on September 23, 2015.<sup>5</sup> Therefore, after September 23, 2015, the land was no longer actively being used for agricultural purposes. In terms of the land’s passive use, the land was vacant between September 23, 2015 and October 26, 2015. And vacant land does not qualify as an agricultural use of land. *Ryan Contracting Co.*, 883 N.W.2d at 245. As a result, because the land was not in agricultural use on October 26, 2015, Axia was not required to provide pre-lien notice. Minn. Stat. § 514.011, subd. 4c.

Still, Minnesota National Bank contends that the property *was* in agricultural use, asserting that the *Ryan Contracting Co.* definition of “in use” refers to the actual use of the

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<sup>5</sup> There is some contention that some straw or byproduct from the soybean crop remained on the property because a neighbor who intended to purchase it never picked it up. But the fact that some byproduct from harvesting may have remained on the land does not create a genuine issue of material fact about whether the property was in agricultural use on the date the lien attached.

property immediately before improvements were commenced. But this argument is contrary to the supreme court's interpretation that land use is determined *at the time the lien attaches*. *Ryan Contracting Co.*, 883 N.W.2d at 245. And even if we evaluated the use of the land immediately before construction began, the land was vacant between the harvest of the soybeans on September 23, 2015 and the start of construction. Vacant land is not considered to be in agricultural use. *Id.* Minnesota National Bank further suggests that "when a crop has been planted, cared for, and harvested in the same year, it continues to carry its purpose for 'agricultural use' throughout that year." But again, this is contrary to the supreme court's mandate in *Ryan Contracting Co.* that the use of land is evaluated when the lien attaches.<sup>6</sup>

Because the property in question was not in agricultural use when the lien attached, Axia was not required to give pre-lien notice. Accordingly, the district court properly granted summary judgment in favor of Axia.<sup>7</sup>

**Affirmed.**

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<sup>6</sup> Minnesota National Bank also contends that the district court improperly considered the zoning classification of the property and the intention of the landowner when evaluating whether the property was in agricultural use. Even if we adopted this reasoning and concluded that the district court should not have considered those factors, it does not change the outcome of the case. Although the district court did note that the property was zoned for commercial use and that the Grefsruds intended to build a hotel on the property, the district court still properly examined the use of the property on October 26, 2015 when the lien attached following the supreme court's mandate in *Ryan Contracting Co.*

<sup>7</sup> Additionally, Minnesota National Bank raises a policy argument that agricultural use does not end when a crop is harvested. But here, it is not necessary to consider this question because it is clear that the property in question was not in agricultural use on October 26, 2015 when the lien attached.