

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

File No. 19HA-CV-08-608

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McCarron's Building Center, Inc.,

Plaintiff,

vs.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
ORDER FOR JUDGMENT

Titus Construction, Inc., Early Lake  
Office Park, LLC, Equity Properties,  
LLC, Wells Federal Bank, FSB,  
Professional Finance Inc., Bank  
Cherokee, Sela New Construction,  
Installed Building Solutions,

Defendants.  
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The above-entitled matter came before Rex D. Stacey, Judge of District Court, on December 10, 2008, at the Dakota County Judicial Center, 1560 Highway 55, Hastings, Minnesota.

James K. Sander appeared for Plaintiff McCarron's Buildings Center.

Bradley N. Beissel appeared for Defendants Equity Properties, Wells Federal Bank, Professional Finance and Bank Cherokee.

Michael Broback appeared for Defendant Installed Building Solutions.

Titus Construction did not appear for trial and is in default.

Prior to trial, the Court was informed that Installed Building Solutions settled with other Defendants.

FILED DAKOTA COUNTY  
CAROLYN M. RENN, Court Administrator

APR 07 2009

BY P.K.  
DEPUTY

Plaintiff McCarron's Building Center, Inc., is a Minnesota corporation doing business in Forest Lake, Minnesota, engaged in selling lumber and building materials for construction.

Earley Lake Office Park, LLC is a Minnesota limited liability company formed to purchase land in Burnsville, Minnesota, and develop it as eight office condominiums.

Titus Construction, Inc. is an entity sharing common ownership with Earley Lake Office Park, LLC engaged to construct the eight office condominiums on the site.

Equity Properties, LLC is an entity which owned the underlying land for Earley Lake Office Park, sold that land to Earley Lake Office Park, LLC, and negotiated for a favorable purchase price for a condominium unit in the project.

Based on the all the files, records and proceedings, the Court makes the following:

#### **FINDINGS OF FACT**

1. This Mechanic's Lien case involves eight separately described condominium units comprising CIC No. 558, Earley Lake Office Park Condominiums. The plat was recorded in April of 2007. Exhibit 25.

2. This is Torrens property. The eight units comprising CIC 558 and their corresponding certificate of title numbers are as follows:

Unit 101	CT #145114	Exhibit 16
Unit 102	CT #145115	Exhibit 17
Unit 103	CT #145116	Exhibit 18
Unit 104	CT #145117	Exhibit 19
Unit 105	CT #145118	Exhibit 20

Unit 106	CT #145119	Exhibit 21
Unit 107	CT #145120	Exhibit 22
Unit 108	CT #145121	Exhibit 23

3. The units comprising CIC 558 are located in a separate building that was built on what had previously been platted as Lot 1, Block 1 Earley Lake Office Park.

4. Prior to December 22, 2005, the unplatted and undeveloped property was owned by Equity Properties, LLC. A warranty deed dated December 22, 2005, conveyed the property to Early Lake Office Park, LLC. Exhibit 3.

5. Earley Lake LLC planned to develop the property, plat it into lots in Earley Lake Office Park, and sell the lots to a builder. The builder would then erect buildings on the lots.

6. On January 20, 2006, Earley Lake LLC mortgaged the undeveloped land to Wells Federal for \$1,987,500.00. The mortgage was closed by First American Title Insurance Company (Exhibit 40) and recorded on January 24, 2006. Exhibit 2.

7. The proceeds from the Wells Federal loan were used to develop the land into buildable lots for others to build on. To this end, Earley Lake LLC hired a general contractor, Titus Construction, Inc. For installation of sub-division utilities, including water, and sanitary sewer, Titus Construction hired G.F. Jedlicki, Inc. Jedlicki took out a permit for the interior utility work on April 7, 2006. Exhibit 31.

8. Jedlicki then installed sanitary sewer cleanout pipes for later hook-up to the buildings to be built on the lots. The cleanout pipe that would ultimately hook into the building to be built on Lot 1 was installed in late April of 2006. Exhibits 31, 37. This pipe was visible on April 26, 2006. Exhibit 34.

9. Jedlicki was paid for the work from the proceeds of the Wells Federal loan and gave a mechanic's lien waiver on June 6, 2006. Exhibits 38, 39.

10. Jedlicki was not involved in the construction of any buildings in the Earley Lake Office Park.

11. Lot 1, Block 1, Earley Lake Office Park was released from the Wells Federal loan on June 20, 2006, in connection with the sale of the lot from Earley Lake LLC to Titus Construction .

12. On June 21, 2006, Titus Construction gave four construction mortgages to Professional Finance, Inc., to secure a construction loan. All of these mortgages encumbered Lot 1, Block 1, Earley Lake Office Park. These mortgages were recorded on June 23, 2006, and were later assigned to Bank Cherokee. Exhibits 9, 10 & 11.

13. One of the Bank Cherokee construction mortgages has been released. The three others still encumber all of Units 103, 104, 105, 106, 107 and 108 of CIC 558 as follows:

(a) Mortgage given by Titus Construction, Inc. to Professional Finance Incorporated, in the original principal amount of \$425,000.00, dated June 21, 2006, and filed June 23, 2006, with the Dakota County Registrar of Titles as Document Number 592638, which mortgage was subsequently assigned to Bank Cherokee under the assignment of mortgage filed November 15, 2007, with the Dakota County Registrar of Titles as Document Number 620189.

(b) Mortgage given by Titus Construction, Inc., to Professional Finance Incorporated, in the original principal amount of \$425,000.00, dated June 21, 2006 and filed June 23, 2006 with the Dakota County Registrar of Titles as Document Number 592642, which mortgage was subsequently assigned to Bank Cherokee under the assignment of mortgage filed November 15, 2007 with the Dakota County Registrar of Titles as Document Number 620190.

(c) Mortgage given by Titus Construction, Inc., to Professional Finance Incorporated, in the original principal amount of \$425,000.00, dated June 21, 2006 and filed June 23, 2006 with the Dakota County Registrar of Titles as Document Number 592644, which mortgage was subsequently assigned to Bank Cherokee under the

assignment of mortgage filed November 15, 2007 with the Dakota County registrar of Titles as Document Number 620191.

14. The purpose of the Bank Cherokee construction mortgages was to finance the construction of a building on Lot 1.

15. The Bank Cherokee construction mortgages were closed by First American. First American hired Access Information Systems, Inc., to perform an inspection of Lot 1 to ensure that construction of the building had not commenced.

16. Access Information sent Robert Tjorhorn, an experienced property inspector, to inspect the lot. He did his inspection on June 27, 2006, and found no visible commencement of construction of a building on Lot 1. Exhibit 41.

17. The building permit for the construction of the building on Lot 1 was issued to Titus Construction on July 21, 2006. Exhibit 32. The first inspection done under the permit was the footings inspection on August 9, 2006.

18. Two of the units, 101 and 102, have been sold and were released from the Bank Cherokee construction mortgages. Those units are now encumbered by mortgages given by Wells Federal as follows:

**Unit 101 CT #145114**

Mortgage given by Titus Construction, Inc. to Wells Federal, in the original principal amount of \$162,400.00 dated April 27, 2007, and filed May 11, 2007, with Dakota County Registrar of Titles as Document Number 610458. Exhibit 12.

**Unit 102 CT #145115**

Mortgage given by Equity Properties, to Wells Federal, in the original principal amount of \$398,400.00, dated April 27, 2007, And filed March 11, 2008, with Dakota County Registrar of Titles as Document Number 624883. Exhibit 13.

19. McCarron's was hired by Titus Construction to provide building materials used in the construction of the building that on Lot 1. The first date of delivery by McCarron's was August 8, 2006, and the last date was April 19, 2007. Exhibit 28.

20. The materials that were supplied by McCarron's were supplied for the construction of the building as a whole. It is unknown how much material went into any particular unit of the eight liened.

21. July 26, 2007, McCarron's filed a Mechanic's Lien Statement naming all eight of the units comprising CIC 558 as the property that it improved. The amount of the lien is \$257,000 together with interest at the statutory rate set forth in Minn. Stat. 514.135, its costs and disbursements, plus reasonable attorney's fees to be submitted to the Court for further Order.

22. The materials supplied by McCarron's were part of a separate improvement and not part of one continuous improvement.

23. The subdivision project was conducted by Earley Lake and financed by Wells Federal. The building construction project was conducted by Titus Construction and financed by Professional Finance.

24. The purposes of the two projects were distinct and different. The subdivision project was intended to turn undeveloped land into platted, buildable lots. The building construction project was to erect a building on one of the lots.

25. There was a lapse of time between the two projects. Jedlicki was paid in full by June 6, 2006, and construction of the building began after July 21, 2006.

#### **CONCLUSIONS OF LAW**

1. Bank Cherokee and Wells Federal are bona fide mortgages holding mortgages against the eight lots in CIC 558 Earley Lake Office Park Condominiums as follows:

Unit 101: Mortgage given by Titus Construction, Inc. to Wells Federal, in the original principal amount of \$162,400.00, dated April 27, 2007, and filed May 11, 2007, with Dakota County Registrar of Titles as Document Number 610458.

Unit 102: Mortgage given by Equity Properties to Wells Federal, in the original Principal amount of \$398,400.00, dated April 27, 2007, and filed March 11, 2008, with Dakota County Registrar of Titles as Document Number 624883.

Units 103, 104, 105, 106, 107 and 108:

(a) Mortgage given by Titus Construction, Inc. to Professional Finance Inc., in the original principal amount of \$425,000.00, dated June 21, 2006, and filed June 23, 2006, with the Dakota County Registrar of Titles as Document Number 592638, which mortgage was subsequently assigned to Bank Cherokee under the assignment of mortgage filed November 15, 2007, with the Dakota County Registrar of Titles as Document Number 620189.

(b) Mortgage given by Titus Construction, Inc., to Professional Finance Inc., in the original principal amount of \$425,000.00, dated June 21, 2006, and filed June 23, 2006, with the Dakota County Registrar of Titles as Document Number 592642, which mortgage was subsequently assigned to Bank Cherokee under the assignment of mortgage filed November 15, 2007, with the Dakota County Registrar of Titles as Document Number 620190.

(c) Mortgage given by Titus Construction, Inc., to Professional Finance Inc., in the original principal amount of \$425,000.00, dated June 21, 2006, and filed June 23, 2006, with the Dakota County Registrar of Titles as Document Number 592644, which mortgage was subsequently assigned to Bank Cherokee under the assignment of mortgage filed November 15, 2007, with the Dakota County registrar of Titles as Document Number 620191.

2. The improvement to which McCarron's supplied its material to was the construction of the building located on Lot 1 that was later platted into CIC 585 Earley Lake Office Park Condominiums.

3. The visible commencement of the improvement McCarron's contributed its labor and material to took place after June 23, 2006, the date that the Bank Cherokee

mortgages were recorded, but before the two Wells Federal mortgages were recorded. Accordingly, pursuant to Minn. Stat. 514.05, McCarron's Mechanics Lien has priority over the mortgages of Wells Federal against Units 101 and 102 but is junior in priority to the mortgages of Bank Cherokee against Units 103, 104, 105, 106, 107 and 108. The amount of the lien is \$208,015.73 plus interest at the statutory rate set forth in Minn. Stat. 514.135, its costs and disbursements and reasonable attorney's fees to be submitted.

4. Because the ownership of the eight units that McCarron's placed its Mechanic's Lien against is held by different owners and lenders, the Mechanic's Lien must be apportioned between the eight units that are described in the Mechanic's Lien Statement.

5. Since McCarron's supplied its material for the construction of the building as a whole and cannot determine which of the units that the specific items of material were placed into the appropriate basis of apportionment of its Mechanic's Lien is one-eighth to each of the eight units named in the Mechanic's Lien Statement.

6. Wells Federal and Bank Cherokee are entitled under Minn. Stat. 515B.3-117 to have any particular unit they have an interest in to be released from the McCarron's lien by paying the apportioned amount of the Mechanic's Lien.

7. McCarron's is entitled to default judgment against Titus Construction, Inc., in the amount of \$257,000 with interest at the statutory rate set forth in Minn. Stat. 514.135, its costs and disbursements.

Based upon the foregoing Conclusions of Law, the court makes the following:

**ORDER FOR JUDGMENT**

There being no just reason for delay, let Judgment be entered accordingly.

Dated: April 3, 2009

**BY THE COURT:**



Rex D. Stacey  
Judge of District Court