IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
July 29, 2014 Session

TWB ARCHITECTS, INC. v. THE BRAXTON, LLC, ET AL.

Appeal from the Chancery Court for Cheatham County
No. 14181 Robert E. Burch, Judge

No. M2013-02740-COA-R3-CV - Filed October 30, 2014

This appeal arises from a suit to enforce a mechanic's lien. An architectural firm entered into an agreement with the developer of a condominium project to provide architectural and design services. The agreement stated that the firm would be paid a fee of two percent of construction costs if the condominiums were constructed. Later, the architect signed a contract to receive a penthouse as "consideration of design fees owed" on the first contract. The condominiums were constructed according to the plans drawn by the architectural firm. The developer was unable to deed the penthouse to the architect because it was encumbered by a security interest. The architect was never compensated. The architect filed suit to enforce a mechanic's lien for the amount he was owed under the first contract. The trial court held the second contract was a novation, completely extinguishing the rights and obligations under the first contract. Finding there was a lack of intent for the second contract to completely extinguish the first contract and any lien rights arising from it, we reverse the trial court. We also find the suit was timely filed under the terms of the contract and remand the case to the trial court for further proceedings.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed and Remanded

ANDY D. BENNETT, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and RICHARD H. DINKINS, J., joined.

Donald Capparella, Nashville, Tennessee, for the appellant, TWB Architects, Inc.

William R. O'Bryan, Jr. and Kevin C. Baltz, Nashville, Tennessee, for the appellees, The Braxton, LLC and Fidelity and Deposit Company of Maryland.

OPINION

FACTS AND PROCEDURAL HISTORY

On February 17, 2005, Progress Capital Partners, LLC ("Progress Capital") and TWB Architects, Inc. ("TWB") entered into a contract entitled "AIA[1] Document B151-1997, Abbreviated Standard Form of Agreement Between Owner and Architect" (hereinafter "Architect Agreement") for TWB to provide architectural and design services for a mid-rise condominium project in Ashland City known as "The Braxton." The Architect Agreement was signed by John Rankin, Chief Manager of Progress Capital, and by Timothy Burrow, President of TWB. The fifteen-page Architect Agreement outlined, *inter alia*, the architect's responsibilities, the scope of the services, the owner's responsibilities, and the terms of compensation. Pursuant to the Architect Agreement, TWB would be paid a fee of two percent of construction costs or, if the project was not constructed, TWB would be paid by the hour, plus expenses.

On February 9, 2006, The Braxton, LLC was formed with Mr. Rankin as its Chief Manager. On February 16, 2006, Mr. Burrow and The Braxton, LLC entered into a contract entitled "Agreement for Sale of Residence the Braxton Condominiums at Harpeth Shoals" (hereinafter "Purchase Agreement"). In the Purchase Agreement, The Braxton, LLC agreed to sell Mr. Burrow Penthouse P6 in the Braxton Condominiums for "$0 in consideration of design fees owed in the Contract for architectural design between Progress Capital Partners, LLC and TWB Architects, Inc. dated 2/17/05."[2] The Purchase Agreement was signed by Mr. Burrow individually and by Mr. Rankin on behalf of The Braxton, LLC. Construction began on the project in the summer of 2006, and the condominiums were built according to the architectural plans drawn by TWB. As construction progressed, Mr. Burrow invested $39,343.84 of his own money in upgrades to Penthouse P6.

On January 8, 2007, Charles Elcan became a member of The Braxton, LLC. On September 26, 2008, Mr. Rankin surrendered his membership interest in The Braxton, LLC leaving Mr. Elcan as the only member. On October 28, 2008, Mr. Rankin filed a voluntary petition for Chapter 7 bankruptcy. Thereafter, Mr. Burrow requested that The Braxton, LLC convey Penthouse P6 to him. The Braxton, LLC filed a Notice of Completion of the project on December 5, 2008 stating that the "[d]ate of completion of the improvement" was "October 21, 2008." In December 2008, Mr. Burrow moved into the penthouse.

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[1] "AIA" stands for the American Institute of Architects.

[2] The quoted language was handwritten on the contract.

In early 2009, TWB learned that the penthouse was encumbered by a security interest held by Bank of America and that The Braxton, LLC was unable to transfer it to Mr. Burrow free and clear of the encumbrance. On May 8, 2009, the Chancery Court of Davidson County gave a receiver the right of possession to every condominium at the Braxton. Mr. Burrow moved out of the penthouse in late 2009.

It is undisputed that The Braxton, LLC never deeded the penthouse condominium to Mr. Burrow or paid anything to TWB for its architectural services. On February 26, 2009, TWB filed a mechanic's lien in the Register of Deeds Office for Cheatham County. The Notice of Lien Claim stated:

> Timothy W. Burrow, being first duly sworn, says that TWB Architects, Inc., the Lien Claimant, performed certain work or labor in furtherance of improvements to the real property herein described, in pursuance of certain contract with Owners, which owes Lien Claimant $882,526.14 (which is over and above all legal setoffs), for which amount Lien Claimant claims a lien under T.C.A. §§ 66-11-101, *et seq.* on the real property.

On March 11, 2009, TWB filed a Complaint for Foreclosure of Mechanic's Lien against The Braxton, LLC.[3] The complaint alleged a single cause of action to enforce its mechanic's lien and sought to "be awarded a judgment for the amount stated in its Notice of Lien Claim . . . ." On May 6, 2009, The Braxton, LLC filed a counterclaim and argued that the Purchase Agreement served as a novation of the Architect Agreement, extinguishing TWB's right to assert any claims or remedies arising under the Architect Agreement.

The Braxton, LLC filed a motion for summary judgment on January 4, 2013, asserting that the Purchase Agreement replaced or extinguished the Architect Agreement.[4] On April 19, 2013, TWB filed its own motion for summary judgment. TWB argued that it earned the two percent fee contemplated in the Architect Agreement because The Braxton, LLC used the architectural plans designed by TWB and failed to pay TWB as required under the

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[3] The complaint was later amended to include Fidelity and Deposit Company of Maryland ("Fidelity") as a defendant. Fidelity is a surety of The Braxton, LLC.

[4] In support of its motion, The Braxton, LLC submitted the following documents: 1) excerpts from Mr. Burrow's deposition testimony; 2) a warranty deed conveying the Braxton condominium project from Progress Capital to The Braxton, LLC; 3) excerpts from Mr. Rankin's deposition testimony; 4) excerpts from the transcript of evidentiary hearing proceedings dated August 13 and 16, 2010; 5) the affidavit of Mr. Elcan; 6) Mr. Rankin's Voluntary Petition for Bankruptcy filed in the United States Bankruptcy Court for the Middle District of Tennessee; 7) five letters from Mr. Burrow; 8) letter from counsel for The Braxton, LLC to counsel for TWB; 9) the affidavit of Mr. Rankin; and 10) a statement of undisputed facts.

contract.[5]

On July 11, 2013, the trial court held a hearing on the motion, and by order entered November 18, 2014, the trial court granted The Braxton, LLC's motion for summary judgment. The court made the following pertinent findings:

> (3) At the time of the Architect Agreement and the Purchase Agreement, [Progress Capital], The Braxton and John Rankin were in privity with and alter-egos of one another. Similarly, TWB and Mr. Burrow were in privity with and alter-egos of one another;
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> . . .
>
> (5) When interpreting the Purchase Agreement, the Court must determine the intentions of the parties from the four corners of the agreement, interpreting and enforcing it as written;
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> (6) The parol evidence rule restricts the Court from considering prior oral agreement and/or communications that contradict the unambiguous language of the Purchase Agreement;
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> (7) If the language is unambiguous, the contract must be interpreted as written, and the words expressing the parties' intentions should be given the usual, natural, and ordinary meaning;
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> (8) The Purchase Agreement is clear and unambiguous;
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> (9) The Purchase Agreement expressly referenced the Architect Agreement;
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> (10) The undisputed facts show that the Architect Agreement had become unworkable and a substitute agreement was necessary for the project to continue;
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> (11) The Purchase Agreement was entered into by the parties to salvage a contract that was soon to be breached;

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[5] In support of its motion, TWB submitted the following documents: 1) statement of undisputed facts; 2) Warranty Deed; 3) excerpts from Mr. Rankin's deposition testimony; 4) Progress Capital Secretary of State filings; 5) The Braxton, LLC Secretary of State filings; 6) Mr. Burrow's affidavit; 7) Mr. Rankin's affidavit; 8) affidavit of Dell Hickman; 9) The Braxton, LLC's Notice of Completion; and 10) Certification of Lien Claim.

> (12) At the time the Purchase Agreement was executed, the parties were aware that [Progress Capital] could not pay the architect fees owed under the Architect Agreement in cash;
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> (13) Accordingly, the Purchase Agreement was unquestionably a novation, which was substituted for the Architect Agreement and, under Tennessee law, extinguished all rights, responsibilities and obligations of the parties under the Architect Agreement.
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> . . . .
>
> Accordingly, as a result of these undisputed, material facts, TWB has no rights under the Architect Agreement, and therefore its Complaint, as amended, to Enforce a Mechanic's Lien must be dismissed with prejudice. Furthermore, in light of the foregoing findings, TWB's motion for summary judgment seeking relief under the Architect Agreement must be denied.

TWB appeals.

STANDARD OF REVIEW

TWB appeals the trial court's grant of The Braxton, LLC's motion for summary judgment. We review a trial court's decision on a motion for summary judgment de novo, with no presumption of correctness. *Thompson v. Memphis City Schs. Bd. of Educ.*, 395 S.W.3d 616, 622 (Tenn. 2012). When reviewing the evidence presented in support of, and in opposition to, a motion for summary judgment, we view "the evidence and all reasonable inferences therefrom in the light most favorable to the non-moving party." *Giggers v. Memphis Hous. Auth.*, 277 S.W.3d 359, 364 (Tenn. 2009).

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Tenn. R. Civ. P. 56.04. To obtain summary judgment, the moving party must negate an essential element of the non-moving party's claim or show by undisputed evidence that the non-moving party cannot prove an essential element of the claim at trial. *Hannan v. Alltel Publ'g Co.*, 270 S.W.3d 1, 8-9 (Tenn. 2008).[6] If there are disputed facts, we must determine whether the facts are material to the claim or defense upon which the summary judgment is predicated and whether

[6] Tennessee Code Annotated section 20-16-101 (2011), a provision that is intended to replace the summary judgment standard adopted in *Hannan,* is inapplicable to this case. *See Sykes v. Chattanooga Hous. Auth.*, 343 S.W.3d 18, 25 n.2 (Tenn. 2011) (noting that Tenn. Code Ann. § 20-16-101 is only applicable to actions filed on or after July 1, 2011). TWB initiated this action in 2009.

the disputed facts create a genuine issue for trial. *Byrd v. Hall*, 847 S.W.2d 208, 211 (Tenn. 1993); *Rutherford v. Polar Tank Trailer, Inc.*, 978 S.W.2d 102, 104 (Tenn. Ct. App. 1998). "'A disputed fact is material if it must be decided in order to resolve the substantive claim or defense at which the motion is directed.'" *Parker v. Holiday Hospitality Franchising, Inc.*, No. E2013-00727-SC-R11-CV, 2014 WL 4494265, at *4 (Tenn. Sept. 12, 2014) (quoting *Byrd*, 847 S.W.2d at 215)). The trial court should grant summary judgment only when a reasonable person could reach but one conclusion based on the undisputed facts and the inferences drawn from those facts. *Gossett v. Tractor Supply Co., Inc.*, 320 S.W.3d 777, 784 (Tenn. 2010) (citing *Staples v. CBL & Assocs., Inc.*, 15 S.W.3d 83, 89 (Tenn. 2000)).

ANALYSIS

I. Novation

TWB asserts the trial court erred in finding a novation occurred when Mr. Burrow and The Braxton, LLC executed the Purchase Agreement. "A novation is a contract substituting a new obligation for an old one[,]" thereby extinguishing the existing contract. *Blaylock v. Stephens*, 258 S.W.2d 779, 781 (Tenn. Ct. App. 1953); *see also Pac. E. Corp. v. Gulf Life Holding Co.*, 902 S.W.2d 946, 958-59 (Tenn. Ct. App. 1995). The four essential elements of a novation are: "(1) a prior valid obligation, (2) an agreement supported by evidence of intention, (3) the extinguishment of the old contract, and (4) a valid new contract." *Brown v. Columbia Precast, LLC*, No. M2010-00971-COA-R3-CV, 2011 WL 2976891, at *7 (Tenn. Ct. App. July 21, 2011) (citing *Burchell Ins. Servs., Inc. v. W. Sizzlin Steakhouse of Dyersburg*, No. E2003-01001-COA-R3-CV, 2004 WL 1459398, at *3 (Tenn. Ct. App. June 29, 2004)). A novation is never presumed; rather, it must be established by a "'clear and definite intention on the part of all concerned . . . .'" *Johnson City Elec. Supply Co., Inc. v. Elec. Inc.*, CA No. 81, 1986 WL 3885, at *3 (Tenn. Ct. App. Apr. 1, 1986) (quoting *Jetton v. Nichols*, 8 Tenn. App. 567, 574 (Tenn. Ct. App. 1928)). A novation need not be shown by express words, because the evidence supporting the parties' intent to agree on a novation "may be implied from the facts and circumstances attending the transaction and the parties' subsequent conduct." *Cumberland Cnty. Bank v. Eastman*, No. E2005-00220-COA-R3-CV, 2005 WL 2043518, at *4 (Tenn. Ct. App. Aug. 25, 2005) (citing *In re Edward M. Johnson & Assoc.*, 61 B.R. 801, 806 (Bankr. E. D. Tenn. 1986)). The party asserting the novation has the burden of proving a novation is intended. *Rhea v. Marko Constr. Co.*, 652 S.W.2d 332, 334 (Tenn. 1983).

TWB agrees that the Architect Agreement represents a "prior valid obligation" and that the Purchase Agreement is a "valid new contract;" however, TWB argues that the second and third elements of a novation are not met in this case. Specifically, TWB asserts that there was no intention to extinguish the Architect Agreement or TWB's lien rights. To resolve this

issue, we will examine the four-corners of the documents as well as the facts and circumstances surrounding the parties' transaction and their subsequent conduct. *See Cumberland Cnty. Bank*, 2005 WL 2043518, at *4.

First, we examine the Purchase Agreement itself for evidence of the parties' intent. It is undisputed that the Purchase Agreement does not directly express an intent to extinguish the entire Architect Agreement. The Purchase Agreement discusses the means of acceptable payment to Mr. Burrow, but it is silent regarding whether the execution of the agreement is intended to supercede and completely extinguish the rights and obligations outlined in the Architect Agreement. For example, the Architect Agreement includes "Article 6," which is entitled "Use of Architect's Instruments of Service." Article 6.2 states as follows:

> Upon the execution of this Agreement, the Architect grants to the Owner a nonexclusive license to reproduce the Architect's Instruments of Service solely for the purposes of constructing, using and maintaining the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. . . . Any termination of this Agreement prior to completion of the Project shall terminate this license. Upon such termination, the Owner shall refrain from making further reproductions of Instruments of Service and shall return to the Architect within seven days of termination all originals and reproductions in the Owner's possession or control.

The Purchase Agreement makes no mention of the architect's instruments of service, the license, or whether The Braxton, LLC is required to return the originals or reproductions to TWB.

In furtherance of its argument that TWB did not intend for the Purchase Agreement to be a novation of the Architect Agreement, TWB points out that the parties that signed the Architect Agreement and Purchase Agreement were not the same. The first contract—the Architect Agreement—was signed by Mr. Rankin, as Chief Manager of Progress Capital, and by Mr. Burrow, on behalf of TWB. The second contract—the Purchase Agreement—was signed by Mr. Burrow, individually, and by John Rankin, on behalf of the Braxton, LLC.

Mr. Burrow explained why he signed the Purchase Agreement in his capacity as an individual rather than as a representative of his company in an affidavit attached to his responses to The Braxton, LLC's statement of facts. He said:

> 4. From all conversations between John Rankin and me, I understood that I would receive an unencumbered penthouse condominium P6 and boat slip, but

> if that did not occur, TWB would be paid under the Architect Agreement. From all conversations between John Rankin and me, I understood that only by deeding the condominium and boat slip would TWB's right to be paid under the Architect Agreement be extinguished.
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> 5. If The Braxton had asked TWB to release its rights under the Architect Agreement for a mere promise of a condominium and boat slip, I, on behalf of TWB, would have flatly refused. TWB did not sign the Purchase Agreement, nor was it asked to do so. Had TWB been asked to sign the Purchase Agreement, I would have refused on behalf of TWB, for I wanted TWB's Architect Agreement to stand on its own. TWB did not modify its Architect Agreement, nor was it asked to do so. TWB never gave up its lien rights and there was never any discussion about the matter.

Tennessee case-law on novation explains that *all* parties concerned with the transaction must evidence a clear and definite intent for the prior contract to be extinguished. *See Johnson City Elec. Supply Co., Inc.*, 1986 WL 3885, at *3 (noting that a novation must be clearly established by a "clear and definite intention on the part of all concerned"). The debtor's or obligor's intent alone, is not sufficient. Whereas Progress Capital and the Braxton, LLC may have been in privity, Mr. Burrow and TWB were acting independently. Here, Mr. Burrow indicated that he was not signing the contract on behalf of TWB. The fact that TWB was not a signatory to the Purchase Agreement suggests a lack of intent by Mr. Burrow that the Purchase Agreement would extinguish TWB's lien rights under the Architect Agreement.[7]

The Braxton, LLC argues that the existence of a "merger clause"[8] in the Purchase Agreement conclusively establishes a novation in this case. In support of this position, The Braxton, LLC primarily relies on a North Carolina case, *Medical Staffing Network, Inc. v.*

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[7] The trial court held that Mr. Burrow was the alter-ego of TWB. The Braxton, LLC insists that as the alter-ego of TWB, Mr. Burrow had authority to bind it, and did so by signing the Purchase Agreement. Although Mr. Burrow may have had authority to sign the Purchase Agreement on behalf of TWB if he chose to do so, "'[t]here is a presumption that a corporation is a distinct legal entity, wholly separate and apart from its shareholders, officers, directors, or affiliated corporations.'" *Boles v. Nat'l Dev. Co. Inc.*, 175 S.W.3d 226, 244 (Tenn. Ct. App. 2005) (quoting *VP Bldgs., Inc. v. Polygon Grp.*, No. M2001-00613-COA-R3-CV, 2002 WL 15634, at *4 (Tenn. Ct. App. Jan. 8, 2002)). In this scenario, we are focusing our inquiry on whether Mr. Burrow intended to extinguish the Architect Agreement rather than his authority to do so.

[8] The merger clause in the Purchase Agreement states as follows:

> Entire Agreement. This Agreement and the Exhibits and Addenda attached hereto is the entire agreement between the parties and may be amended only by an instrument in writing signed by the party against whom enforcement of any change is sought.

Ridgway, 670 S.E. 2d 321, 326 (N.C. Ct. App. 2009).[9] The Braxton, LLC specifically relies on the following passage from that case:

> The presence of a merger clause in a second contract may cause a novation in a second contract. "Merger clauses create a rebuttable presumption that the writing represents the final agreement between the parties. Generally, in order to effectively rebut the presumption, the claimant must establish the existence of fraud, bad faith, unconscionability, negligent omission or mistake in fact."

Id. (citations omitted). The case goes on to state that, "[t]he one exception to this general rule applies when giving effect to the merger clause would frustrate the parties' true intentions." *Id.* The North Carolina court ultimately held that the two agreements at issue in that case "were not intended to be substitutes, but rather, were to be construed together, the merger clause notwithstanding." *Id.* Like the court in *Medical Staffing Network*, we do not find that the existence of a merger clause in the Purchase Agreement necessitates a finding of a novation in this case. Indeed, we do not view the Purchase Agreement to be a substitute contract. Rather, we conclude that giving effect to the merger clause in this case would "frustrate the parties' true intentions."

Next, we examine the parties' "subsequent conduct" for evidence of intent. *Cumberland Cnty. Bank*, 2005 WL 2043518, at *4; *see also Jetton*, 8 Tenn. App. at 575 (stating that the "question of intention must be decided from all the circumstances"). In an e-mail exchange dated November 11, 2008, Mr. Burrow wrote the following to Mr. Rankin: "At the time Bank of America committed to make its loan, were they told that the proceeds from my unit would be $0? Was that given to them in writing?" In response, Mr. Rankin stated: "They have the contract we wrote in 2006.[10] I discussed this with [Charles Elcan's] 'auditors' yesterday when they came to get the contracts - *that you would need to be paid 2% or your unit* and that you had invested tens of thousands in it." (Emphasis added). This e-mail suggests that when he signed the Purchase Agreement, Mr. Rankin did not expect the terms of the Architect Agreement to be completely extinguished, but rather viewed the two agreements as being construed together.

Considering all of these facts, we find that a reasonable person could reach the

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[9] We note that "[a]uthorities outside Tennessee, such as . . . caselaw from our sister states, are not binding but nevertheless may be instructive." *Vivien v. Campbell*, No. W2009-01602-COA-R3-JV, 2011 WL 1837777, at *10 (Tenn. Ct. App. May 10, 2011).

[10] As previously noted, Mr. Burrow and The Braxton, LLC entered into the Purchase Agreement on February 16, 2006.

conclusion that all parties did not intend for the Purchase Agreement to extinguish the Architect Agreement or the lien rights arising under that agreement. *See Gossett*, 320 S.W.3d at 784 (holding that summary judgment is appropriate only when a reasonable person could reach but one conclusion based on the undisputed facts). Therefore, we reverse the trial court's grant of summary judgment on the issue of novation.

II. Construing the Architect Agreement

The Braxton, LLC alternatively argues that, if not extinguished by novation, TWB's mechanic's lien is time-barred because TWB failed to comply with the contractual limitations period contained in the Architect Agreement. In making this argument, The Braxton, LLC cites Article 9.3 of the Architect Agreement, which provides:

> Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Architect's services are substantially completed.

The Braxton, LLC argues that, under this provision, the statute of limitations commenced to run in 2006, the date when TWB's architectural services were completed.[11] The Braxton, LLC asserts that the relevant statute of limitations period for filing suit to enforce a lien is found at Tenn. Code Ann. § 66-11-106, which states as follows: "A prime contractor's lien shall continue for one (1) year after the date the improvement is complete or is abandoned, and until the final decision of any suit properly brought within that time for its enforcement." TWB filed suit on March 11, 2009, approximately three years from the date of substantial

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[11] In support of its contention that the "Architect's services were substantially completed" in 2006, The Braxton, LLC points to TWB's response to the following statement of fact:

> 34. TWB's architectural services on or for the Braxton Condominum Project were substantially completed in 2006.
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> **RESPONSE: Undisputed. However, this is not a material fact inasmuch as payment was not due under the Architect Agreement until it was known by TWB that the condominum would not be deeded to Mr. Burrow as The Braxton had promised.**

(Emphasis in original).

completion of its services. The Braxton, LLC argues that TWB's claim was filed outside the statute of limitations contemplated by the contract and is time-barred.

In response, TWB asserts that Article 7.1.1 of the Architect Agreement is the relevant provision and preserves its right to pursue its mechanic's lien. Article 7.1.1 states as follows:

> Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.

TWB agrees that Tenn. Code Ann. § 66-11-106 is the applicable law regarding the deadline for filing suit to enforce a lien. TWB asserts that the earliest date construction was completed was the date of the notice of completion—October 21, 2008. TWB argues that it had one year from that date to file suit and, thus, its March 11, 2009 filing of the complaint was timely.

When resolving disputes regarding the interpretation of a contract, "our task is to ascertain the intention of the parties based upon the usual, natural, and ordinary meaning of the contractual language." *Guiliano v. Cleo, Inc.*, 995 S.W.2d 88, 95 (Tenn. 1999). If the contract language is clear and unambiguous, the language must be interpreted "according to its plain terms and ordinary meaning." *BSG, LLC v. Check Velocity, Inc.*, 395 S.W.3d 90, 93 (Tenn. 2012) (citing *Maggart v. Almany Realtors, Inc.*, 259 S.W.3d 700, 704 (Tenn. 2008)). "The interpretation should be one that gives reasonable meaning to all of the provisions of the agreement, without rendering portions of it neutralized or without effect." *Maggart*, 259 S.W.3d at 704 (Tenn. 2008). Moreover, "it is well-settled that the 'particular and specific provisions of a contract prevail over general provisions.'" *Lamar Adver. Co. v. By-Pass Partners*, 313 S.W.3d 779, 794 (Tenn. Ct. App. 2009) (quoting *Precision Mech. Contractors v. Metro. Dev. & Hous. Agency*, No. M2000-02117-COA-R3-CV, 2001 WL 1285900, at *5 (Tenn. Ct. App. Oct. 25, 2001)).

We have reviewed the provisions cited by the parties, and find that Article 7.1.1, the provision specifically related to "a lien arising out of the Architect's services," provides the relevant statute of limitations under these circumstances. Article 9.3 pertains to "acts or

failures to act,"[12] not mechanic's liens specifically. We must apply the particular and specific provision over the general provision. *See Lamar Adver. Co.*, 313 S.W.3d at 794. Pursuant to Article 7.1.1, TWB was permitted to "proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration." The applicable law allows TWB to bring a lien enforcement action up to one year after the improvement was complete. *See* Tenn. Code Ann. § 66-11-106. It is undisputed that the notice of completion states that the "date of completion of the improvement" is October 21, 2008. TWB filed suit to enforce its mechanic's lien on March 11, 2009, within the one-year statute of limitations provided for in the applicable law. *See id.* As such, TWB's suit is timely and not time-barred as The Braxton, LLC argues.

CONCLUSION

For the foregoing reasons, the judgment of the trial court is reversed, and the case is remanded to the trial court for further proceedings consistent with this Court's opinion. Costs of appeal are assessed against the appellees.

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ANDY D. BENNETT, JUDGE

[12] Had TWB alleged a cause of action for breach of contract or a tort, Article 9.3 would have been the appropriate provision.