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No. 14-113037-A

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

WAGNER INTERIOR SUPPLY OF WICHITA, INC.
Plaintiffs-Appellants

v.

DYNAMIC DRYWALL, INC., PUETZ CORPORATION AND UNITED FIRE AND CASUALTY CO.
Defendant/Appellee.

BRIEF OF APPELLEES

Appeal from the District Court of Sedgwick County, Kansas
The Honorable Mark Vining, District Court Judge
District Court Case No. 14 CV 0475

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I. NATURE OF THE CASE

The facts of this case are undisputed. This case involves the construction of the Holiday Inn Express & Suites Hotel (the "Hotel") in Northeast Wichita. Puetz Corporation ("Puetz") was the general contractor on the project. Puetz subcontracted a portion of the work on the Hotel to Dynamic Drywall, Inc. ("Dynamic"). Puetz then paid Dynamic $271,270.78 for materials and services under the subcontracts.

Wagner Interior Supply of Wichita, Inc. ("Wagner") furnished materials to Dynamic, which were used on the project. Wagner claims there is an outstanding balance of $108,162.97 owed by Dynamic for the materials. On November 26, 2013, Wagner filed a lien statement claiming a mechanic's lien on the Hotel. No extension of time was sought.

Because the Owner of the Hotel was refinancing the Hotel property when Wagner filed its lien statement and in order to quiet title to allow the property to be refinanced, Puetz filed a Release of Lien Bond on January 13, 2014 pursuant to K.S.A. §60-1110. United Fire & Casualty Company ("United Fire") is the surety on the Release of Lien Bond.

Dynamic has filed for bankruptcy protection and is in the process of winding up and liquidating its affairs, so Wagner seeks to recover payment from the general contractor, Puetz, and from the Release of Lien Bond to discharge the disputed mechanic's lien that Wagner filed against the Hotel. As such, Wagner has asserted claims against Puetz and United Fire on the Release of Lien Bond.

Wagner's claims fail as a matter of law. Wagner did not and could not have perfected a lien on the hotel property if the bond had not been filed. Wagner attempted to

perfect a lien on the hotel property, but its lien statement was fatally defective and, by the time the bond was filed, the time for amending or filing a new lien statement had already expired. The filing of the bond did not revive Wagner's already expired ability to perfect a lien on the property. Such a result would effectively render the Legislature's revisions to K.S.A. § 60-1110 meaningless. As a result, Wagner's claim on the bond fails as a matter of law.

Because Wagner's claims were fatally flawed, the trial court did not err. Wagner's Motion for Summary Judgment was properly denied in its entirety and summary judgment was properly entered in favor of Puetz and United Fire on all claims. Therefore, the judgment of the trial court should be affirmed.

II. STATEMENT OF THE ISSUES ON APPEAL

A. Whether summary judgment was properly awarded to Puetz and United Fire when it is uncontroverted that Wagner failed to comply with the strict statutory requirements of K.S.A. §§ 60-1102 and 60-1103 for perfecting a lien.

B. Whether the trial court erred in denying Wagner's Motion for Summary Judgment because Wagner failed to comply with the strict statutory requirements under K.S.A. §§ 60-1102 and 60-1103 for perfecting a lien, and as such, could not establish that it was entitled to judgment as a matter of law.

III. STANDARD OF REVIEW

The "standards for reviewing on appeal an order granting summary judgment are the same standards the district court must apply in the first instance in considering a

summary judgment motion." *Gold Mine Investments, Inc. v. Mount Vernon Fire Ins. Co.*, 48 Kan. App. 2d 818, 823, 300 P.3d 1113, 1116-17 (2013).

Kansas law governing summary judgment is well established. When the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law, summary judgment is appropriate. *Nelson v. Nelson*, 288 Kan. 570, 578, 205 P.3d 715 (2009) (citing *Miller v. Westport Ins. Corp.*, 288 Kan. 27, Syl. P 1, 27, 200 P.3d 419 (2009). The burden is on the moving party to demonstrate that no genuine issue of material fact exists when the record is viewed in a light most favorable to the nonmoving party. *Crooks v. Greene,* 12 Kan.App.2d 62, 64, 736 P.2d 78 (1987).

When opposing a motion for summary judgment, an adverse party must come forward with evidence to establish a dispute as to a material fact. To preclude summary judgment, the facts subject to the dispute must be material to the conclusive issues in the case. Summary judgment must be denied if reasonable minds could differ as to the conclusions drawn from the evidence. *O'Brien v. Leegin Creative Leather Products, Inc.*, 294 Kan. 318, 330, 277 P.3d 1062 (2012). "A plaintiff opposing a motion for summary judgment therefore must provide evidence to go forward on each element of the claims presented" to prevent summary judgment on that claim. *Osage Capital, LLC v. Bentley Investments of Nevada III, LLC*, 319 P.3d 595 (Kan. Ct. App. 2014).

This Court's review of the trial court's order on summary judgment is de novo. *Adams v. Board of Sedgwick County Comm'rs,* 289 Kan. 577, 584, 214 P.3d 1173 (2009). Here, the uncontroverted facts demonstrate that Puetz and UFCC were entitled to

judgment as a matter of law as to all claims, theories and remedies asserted against them by Wagner in this case. For the same reasons, Wagner's motion for summary judgment was properly denied.

IV. STATEMENT OF FACTS

The following facts are undisputed:

1. This matter arises from the construction of the Holiday Inn Express & Suites Hotel (the "Hotel") located at 2340 N. Greenwich Road, Wichita, Kansas 67226. [*See* Rec. V. 3, pp. 21-31 (Agreed Joint Pretrial Conference Order) at Sec. 4, Stip. c.]

2. The Hotel has been owned and operated by the Wichita Hospitality Group, LLC (the "Owner") at all relevant times. [*See id.*, at Sec. 4, Stip. d.]

3. Pursuant to an Agreement, dated September 20, 2012, Wichita Hospitality Group, LLC hired Puetz to be the general contractor to design and build the Hotel. [*See id.*, at Sec. 4, Stip. e.; *see also* Rec. V. 3, pp. 32-46 (Standard Form Agreement Between Owner and Design-Builder).]

4. Puetz subcontracted a portion of the work on the Hotel, including drywall work, to Dynamic pursuant to separate Subcontracts for Building Construction, dated January 18, 2013 and May 3, 2013, respectively (collectively referred to as the "Subcontracts"). [*See* Rec. V. 3, pp. 21-31 (Agreed Joint Pretrial Conference Order) at Sec. 4, Stip. f.; *see also* Rec. V. 3, pp. 47-66 (Subcontract for Building Construction, dated January 18, 2013), and Rec. V. 3, pp. 67-86 (Subcontract for Building Construction, dated May 3, 2013).]

5. Wichita Hospitality Group, LLC was not a party to the Subcontracts between Puetz and Dynamic. [*See* Rec. V. 3, pp. 21-31 (Agreed Joint Pretrial Conference Order) at Sec. 4, Stip. h.; *see generally* Rec. V. 3, pp. 47-86.]

6. Puetz made payments to Dynamic totaling $271,270.78 for materials and services provided under the Subcontracts. [*See* Rec. V. 3, pp. 21-31 (Agreed Joint Pretrial Conference Order) at Sec. 4, Stip. i.; *see also* Rec. V. 3, pp. 87-97 (copies of checks from Puetz to Dynamic for work performed on the Hotel project).]

7. Wagner furnished drywall materials to Dynamic, which Dynamic used in performing under its Subcontracts for the construction of the Hotel. The materials were last furnished on September 10, 2013. [*See* Rec. V. 3, pp. 21-31 (Agreed Joint Pretrial Conference Order) at Sec. 4, Stip. j.; *see also* Rec. V. 3, pp. 98-100 and Rec. V. 4, pp. 1-89 (Lien Statement filed by Wagner on November 26, 2013).]

8. There is an outstanding balance of $108,162.97 owed by Dynamic to Wagner for the drywall materials. [*See* Rec. V. 3, pp. 21-31 (Agreed Joint Pretrial Conference Order) at Sec. 4, Stip. m.]

9. On November 26, 2013, Wagner filed a lien statement in the Sedgwick County, Kansas District Court claiming a mechanic's lien on the Hotel in the amount of $108,162.97 for drywall materials it supplied to Dynamic. [*See* Rec. V. 3, pp. 21-31 (Agreed Joint Pretrial Conference Order) at Sec. 4, Stip. p., and Rec. V. 3, pp. 98-100 and Rec. V. 4, pp. 1-89.]

10. Wagner's lien statement identified "Holiday Inn Express & Suites" – not Wichita Hospitality Group, LLC – as the owner of the Hotel. [*See* Rec. V. 3, pp. 98-100 and Rec. V. 4, pp. 1-89 (Lien Statement filed by Wagner on November 26, 2013).]

11. Wagner's lien statement also identified "Wagner Interior Supply of Wichita, Inc." – not Puetz – as the general contractor for the Hotel. [*See id.*]

12. Wagner did not file a notice of extension of time to file its lien statement. [*See* Rec. V. 3, pp. 21-31 (Agreed Joint Pretrial Conference Order) at Sec. 4, Stip. q.]

13. The Owner was in the process of refinancing the Hotel property at the time the lien statement was filed. [*See* Rec. V. 4, pp. 90-92 (Declaration of Jon Schmitz).]

14. In order to quiet title to the Hotel property to allow it to be refinanced and to free up the property from future litigation arising from the validity of Wagner's claimed lien, Puetz Corporation filed a Release of Lien Bond on January 13, 2014 pursuant to K.S.A. § 60-1110. [*See* Rec. V. 3, pp. 21-31 (Agreed Joint Pretrial Conference Order) at Sec. 4, Stip. r.; *see also* Rec. V. 4 pp. 93-97 and Rec. V. 3, pp 90-92 (Release of Lien Bond).]

15. The Release of Lien Bond was approved by the District Court. [*See* Rec V. 4, pp. 93-97.]

16. United Fire is the surety on the Release of Lien Bond. [*Id.*]

V. ARGUMENTS AND AUTHORITIES

Wagner asserts various arguments on appeal in an attempt to bolster an interpretation of the relevant statute which would render the 2005 statutory amendments to K.S.A. § 60-1110 meaningless. Wagner's arguments with regard to both issues on appeal are largely duplicative. This Court must simply apply the plain language of the statute in effect at the time the dispute arose. Wagner failed to perfect its lien. Puetz—with United Fire as surety—posted a Release of Lien Bond to free up the property while

the lien was disputed. Wagner's lien remains unperfected and the time to amend it has long since expired. As such, the judgment of the trial court must be affirmed.

A. Summary judgment was properly awarded to Defendants Puetz and United Fire because it is uncontroverted that Wagner failed to comply with the strict statutory requirements of K.S.A. §§ 60-1102 and 60-1103 for perfecting a lien, and as such, Defendants were entitled to judgment as a matter of law.

i. It is undisputed that Wagner did not perfect a lien on the Hotel property because it failed to comply with the strict statutory requirements of K.S.A. §§ 60-1102 and 60-1103.

A mechanic's lien is intended to "provide effective security to any persons or entities furnishing labor, equipment, materials or supplies used or consumed for the improvement of real property under a contract with the owner or the owner's general contractor." *Alliance Steel, Inc. v. Piland*, 39 Kan.App.2d 972, 187 P.3d 111 (Kan.App. 2009). It is a statutory creation, so while the mechanic's lien statutory provisions are liberally construed once a lien attaches, a lien does not arise unless the claimant has strictly complied with all of the provisions of the statutes authorizing the lien. *Haz-Mat Response, Inc. v. Certified Waste Services Ltd.*, 259 Kan. 166, 170, 910 P.2d 839 (1996). To create an enforceable mechanic's lien, K.S.A. § 60-1102 requires the filing of a verified lien statement. The lien statement does not have to follow a particular form, but it must include all of the information required by K.S.A. § 60-1102(a). *Buchanan v. Overley*, 39 Kan.App.2d 171, 178 P.3d 53 (Kan.App. 2008). Suppliers and subcontractors also must comply with K.S.A. § 60-1103(a), which requires a lien statement to "state the name of the contractor and be filed within three months after the date supplies, material or equipment was last furnished or labor performed by the claimant."

In this case, Wagner does not dispute that its lien statement was defective. First, the lien statement failed to properly identify the owner of the Hotel property. *Compare* Rec. Vol. 3, at pp. 98-100 and Rec. Vol. 4, at pp.1-89 *with* K.S.A. § 60-1102(a) (1) (requiring a lien statement to show the "name of the owner"). Wagner's lien statement identified the owner as "Holiday Inn Express & Suites," but there is no such owner. The owner of the property at all relevant times has been the Wichita Hospitality Group, LLC, which Wagner knew or could have easily ascertained by a simple search of the property title records.

Next, the lien statement failed to identify the contractor, as required by K.S.A. § 60-1103(a)(1). "A contractor is one who furnishes labor or materials under a contract directly with the owner for the improvement of the property." *Stewart v. Cunningham*, 219 Kan. 374, Syl. ¶1, 548 P.2d 740 (1976). The Kansas Court of Appeals has held that "[t]he critical fact making one a contractor is his or her relationship to the owner; mere relationships by and between those who provide materials or labor to a project can never create 'contractor' status for purposes of a Kansas mechanic's lien without a contract – express or implied – with the owner." *Alliance Steel, Inc. v. Piland*, 39 Kan.App.2d 972, 983, 187 P.3d 111 (Kan.App. 2009).

Here, Puetz was the contractor for the Hotel project, yet Puetz's name does not appear anywhere on Wagner's lien statement. [*See* Rec. Vol. 3, at pp. 98-100 and Rec. Vol. 4, at pp.1-89.] Wagner instead identifies the contractor as Dynamic, but there is no evidence that Dynamic had any contracts of any kind with the Owner. Therefore, Dynamic could not have been the contractor. "A supplier's lien statement is absolutely required to state the name of the contractor." *Alliance Steel, Inc.*, 39 Kan.App.2d at 985.

Wagner's failure to properly identify the contractor on its lien statement renders its lien claim fatally defective. *See, e.g., Badger Lumber & Coal Co. v. Schmidt*, 122 Kan. 48, Syl. ¶1, 251 Pac. 196 (1926) (holding that a mechanic's lien statement filed by a subcontractor which fails to state the name of the contractor is fatally defective); *Tradesmen Int'l, Inc. v. Wal-Mart Real Estate Business Trust*, 35 Kan.App.2d 146, 129 P.3d 102, *rev. denied* 281 Kan. 1382 (2006) (same as to lien statement filed by supplier); *Alliance Steel, Inc.*, 39 Kan.App.2d 972 (same as to lien statement filed by supplier).

Finally, Wagner's lien statement was fatally defective because a supplier's lien statement must be filed no more than three (3) months after the date supplies were last furnished by the supplier. *See* K.S.A. § 60-1103(a)(1). According to Wagner's lien statement, Wagner last furnished supplies on September 10, 2013. [*See* Rec. V. 3, pp. 98-100 and Rec. V. 4, pp. 1-89.] Wagner's ability to amend the lien statement under K.S.A. § 60-1105 has long since passed because the statutory filing period has expired. *See D.J. Fair Lumber Co. v. Karlin*, 199 Kan. 366, 372, 430 P.2d 222 (1967) (holding that a lien statement cannot be amended after the statutory filing period has expired). Any proposed amendment to cure the fatal defects in the lien statement would be untimely.

Wagner's lien claim was clearly defective and a lien never attached to the Hotel property.

ii. <u>The holding in *Eldridge* is no longer controlling, and K.S.A. § 60-1110 allows owners and contractors to post a bond to any person claiming a lien that is disputed for any reason</u>.

Wagner claims that it is entitled to recover $108,162.97 against the Release of Lien Bond notwithstanding its failure to attach a lien to the Hotel property. Wagner's bond claim is predicated on the Supreme Court's decision in *Bob Eldridge Constr. Co. v.*

Pioneer Materials, Inc., 235 Kan. 599, 684 P.2d 355 (1984), where the Court held that the filing of a lien discharge bond excuses a lien claimant from having to comply with the strict statutory requirements under K.S.A. §§ 60-1102 and 60-1103 for perfecting a lien. However, Wagner's bond claim fails as a matter of law because it conflicts with the plain language of K.S.A. § 60-1110--which was revised more than twenty (20) years after *Eldridge*--and it is contrary to the statute's obvious purpose of freeing up property from disputed liens so that it can be conveyed.

Wagner's reliance on *Eldridge* is misplaced because the Legislature has since changed the law. That case was decided based on an outdated version of K.S.A. § 60-1110. The statute was revised in 2005 to allow a "contractor or owner [to] execute a bond to *** any person claiming a lien *which is disputed by the owner or contractor* ***." [Emphasis added.] *See* Laws 2005, Ch. 95,§ 4. Puetz's dispute concerning Wagner's defective lien clearly falls within the plain language of revised K.S.A. § 60-1110. There is nothing in the plain language of the statute suggesting that the Legislature intended to limit its application to only certain types of lien disputes.

Still, Wagner argues that the revision to K.S.A. § 60-1110 did not change the law. However, the Kansas Supreme Court has stated that "[w]hen the legislature amends a statute, [the] court must presume it intended to change the law from how it existed because we assume the legislature does not enact useless or meaningless legislation." *State v. McElroy*, 281 Kan. 256, 263, 130 P.3d 100 (2006). Therefore, the Legislature would not have revised K.S.A. § 60-1110 if its intention was to maintain the law as it stood under *Eldridge.*

The obvious purpose of the revised law is to allow a party to post a bond to effectively transfer the disputed lien to the bond to free up the property for conveyance. Property should not be held hostage, potentially for years, while the validity of a claimed lien is litigated. When a mechanic's lien is asserted, there are basically two competing interests. The first interest is that of the owner of the property that is encumbered by the claimed lien. The second interest is that of the supplier, subcontractor or contractor who claims the lien because it was not paid in full. Kansas, like other states, now permits the posting of a bond to discharge or release an alleged lien that is disputed for any reason. *See* K.S.A. § 60-1110. Doing so satisfies both competing interests. First, it frees the property from the encumbrance and cloud of title that could linger for years while the disputed lien is litigated. And, second, posting of a bond provides the claimant with an alternative source of payment in lieu of the property in the event the claimant is able to establish the validity and enforceability of its lien.

Nonetheless, Wagner argues that because Puetz posted the release of lien bond, it automatically eliminated the need for Wagner to meet the strict construction rule required of contractors in mechanic's lien cases. Ultimately, Wagner argues that the court is bound by the decision of *Eldridge*. Notably, it is uncontested that the statute was revised in 2005—long after the *Eldridge* case. In fact, the statutory language upon which the Court in *Eldridge* based its opinion is not the language of the statute today. Therefore, to argue that the Court here is bound to blindly apply the holding of *Eldridge* would require the Court to ignore the plain language of the statute.

Wagner claims that *Eldridge* is still good law because the statutory language that the Court relied on is still present in the statute. Again, this argument ignores the fact

that the Legislature revised the statute in 2005. While it is true that the original statutory language remains, the additional provisions in the revised version of the statute alter the meaning of the statute. It would be absurd to assert that the Legislature intended that the additional provisions in the 2005 version of the statute be meaningless. But practically speaking, Wagner's argument is just that. It admits that the statute was revised, but refuses to acknowledge that the revision alters the statute's application.

A prudent search reveals that no Kansas court has addressed the relevant statutory provision since its revision in 2005. However, the Kansas Real Estate Practice & Procedure, *Fifth Edition,* which is published by the Kansas Bar Association states the following about K.S.A. § 60-1110:

> *When a lien is claimed but disputed, either the contractor or the owner may file a bond* with the clerk of the district court conditioned for the payment of the claim. K.S.A. § 60-1110. A bond must have sureties approved by a judge. *Id.* When an approved bond is filed, no lien may attach to the property or, if a lien has already been filed, the lien is discharged. *Id. The dispute is then litigated through a suit on the bond. Id.*

(Emphasis added). While not binding, the procedural manual provides guidance to Kansas attorneys regarding updates in the law. In the absence of authoritative case law on the revised statute, the manual provides insight into the practical interpretation of the added provisions. The plain language of the statute simply states that when a lien is disputed, the contractor may file a bond with the clerk. That is precisely what Defendants did here. Now, in accordance with the statute, that dispute can be litigated. As such, in light of this added provision regarding disputed liens, *Eldridge* is no longer controlling. Defendants complied with K.S.A. § 60-1110. Wagner's claim on the Release of Bond fails as a matter of law because Wagner did not and could not have

perfected a lien on the Hotel property if a bond had not been filed. Therefore, the trial court did not err in granting summary judgment in favor of Defendants.

iii. The plain language of K.S.A. § 60-1110 allows for the posting of a bond on a disputed lien.

Wagner argues that courts must consider the provisions of the statute as a whole. That argument is puzzling, however, since Wagner's position is based on the premise that the additional language in the revised statute should essentially be ignored. Nonetheless, Defendants maintain that the court must look at the language of the *revised* statute as a whole. The relevant statute in its entirety is as follows:

> **60-1110.** Bond to secure payment of claims. The contractor or owner may execute a bond to the state of Kansas for the use of all persons in whose favor liens might accrue by virtue of this act, conditioned for the payment of all claims which might be the basis of liens in a sum not less than the contract price, or to any person claiming a lien which is disputed by the owner or contractor, conditioned for the payment of such claim in the amount thereof. Any such bond shall have good and sufficient sureties, be approved by a judge of the district court and filed with the clerk of the district court. When bond is approved and filed, no lien for the labor, equipment, material or supplies under contract, or claim described or referred to in the bond shall attach under this act, and if when such bond is filed liens have already been filed, such liens are discharged. Suit may be brought on such bond by any person interested but no such suit shall name as defendant any person who is neither a principal or surety on such bond, nor contractually liable for the payment of the claim.

It is readily apparent that the 2005 amendment allows a bond to be made in favor of "any person claiming a lien *which is disputed by the owner or contractor* ***." [Emphasis added.] *See* Laws 2005, Ch. 95,§ 4. Puetz's dispute concerning Wagner's defective lien clearly falls within the plain language of revised K.S.A. § 60-1110.

The purpose of the revised law is to allow a party to post a bond to effectively transfer the disputed lien to the bond to free up the property for conveyance. Under the revised statute, Kansas now permits the posting of a bond to discharge or release an

alleged lien that is disputed for any reason. *See* K.S.A. § 60-1110. Doing so frees the property from the encumbrance and cloud of title that could linger for years while the disputed lien is litigated. Further, the posting of a bond provides the claimant with an alternative source of payment in lieu of the property in the event the claimant is able to establish the validity and enforceability of its lien.

Wagner argues that whether the lien was defective is irrelevant because the release of lien bond alleviated the need for strict compliance with the statutory requirements. Put another way, Wagner believes that Puetz could only challenge the validity of the lien prior to posting its bond. Again, Wagner's argument requires the court to ignore the fact that the Legislature intentionally added a provision to the statute for this precise situation—when a lien is disputed. The new language specifically addresses disputed liens. That language provides: "The contractor or owner may execute a bond to the state of Kansas for the use of all persons in whose favor liens might accrue by virtue of this act, conditioned for the payment of all claims which might be the basis of liens in a sum not less than the contract price, *or to any person claiming a lien which is disputed by the owner or contractor, conditioned for the payment of such a claim in the amount thereof.*" K.S.A. § 60-1110 (emphasis added).

A mechanic's lien does not arise unless the claimant has strictly complied with all of the provisions of the statutes authorizing the lien. *Haz-Mat Response, Inc. v. Certified Waste Services Ltd.*, 259 Kan. 166, 170, 910 P.2d 839 (1996). As already discussed, Wagner does not dispute that its lien statement was defective and, as a result, no lien attached to the Hotel property. By the time the bond was filed, Wagner's time to amend or file a new lien statement had already expired. The filing of the bond did not revive

Wagner's already expired ability to perfect a lien on the property. Such a result would effectively render the Legislature's revisions to K.S.A. § 60-1110 meaningless.

The posting of a bond should not result in a concession that the disputed lien is valid and enforceable. It also should not result in a waiver of the strict statutory requirements for perfecting a lien under K.S.A. §§ 60-1102 and 60-1103 because that would defeat the primary purpose of freeing up the property for conveyance. *See, e.g., Lindt & Sprungli USA, Inc. v. PR Painting Corp.*, 292 A.D.2d 610, 740 N.Y.S.2d 369 (2d Dep't 2002) (upon the filing of a lien-release bond, the action becomes a test of the validity of the lien had it not been discharged); *Conmac Corp. v. Southern Diversified Development, Inc.*, 245 Ga. App. 895, 539 S.E.2d 532 (2000) (holding that the claimant must establish rights both to the lien and the foreclosure thereof in order to recover on a lien-release bond); *Few v. Capitol Materials, Inc.*, 274 Ga. 784, 559 S.E.2d 429 (2002) (holding that the principal and surety on the bond are entitled to raise any defense that would have been available as a defense to the lien foreclosure). There would be almost no incentive for an owner or contractor to post a bond under K.S.A. § 60-1110 if doing so would essentially revive or cure disputed liens that were otherwise fatally defective. Nevertheless, that is the result for which Wagner is advocating. Such an interpretation would effectively render the revisions to K.S.A. § 60-1110 meaningless, and courts presume that the Legislature does not enact meaningless legislation. *See McElroy,* 281 Kan. at 263. The only logical conclusion is that the Legislature intended to change the law to permit the posting of bonds to discharge an alleged lien that is disputed for any reason. *See McElroy*, 281 Kan. at 263.

Based on the foregoing, Wagner must prove that its underlying lien claim is valid and enforceable in order to recover on the Release of Lien Bond, but it cannot do that because it is undisputed that Wagner's lien statement did not comply with the requirements of K.S.A. §§ 60-1102 and 60-1103. For that reason, summary judgment was properly granted in favor of Defendants Puetz and United Fire and the District Court's decision should be affirmed.

B. The trial court did not err in denying Wagner's Motion for Summary Judgment because Wagner failed to comply with the strict statutory requirements under K.S.A. §§ 60-1102 and 60-1103 for perfecting a lien, and as such, could not establish that it was entitled to judgment as a matter of law.

Wagner argues that its own motion for summary judgment was improperly denied, but it raises the same issues that are addressed above. For the same reasons discussed above, Wagner's motion for summary judgment was properly denied and the District Court's decision should be affirmed in its entirety.

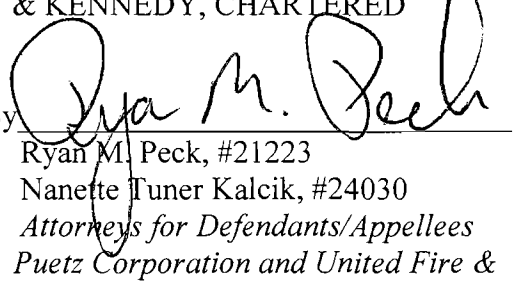
CONCLUSION

It is uncontroverted that Wagner failed to comply with the strict statutory requirements of K.S.A. §§60-1102 and 60-1103 for perfecting a lien. Wagner's reliance on *Eldridge* is misplaced because the Legislature has revised the language of §60-1110. As such, this Court is bound by the language of the statute today. The Legislature revised the statute to allow owners and contractors to post a bond to any person claiming a lien that is disputed. The lien here is disputed. Accordingly, the plain language of the revised statute requires a different result than *Eldridge.*

Therefore, the trial court did not err in denying Wagner's motion for summary judgment and granting Puetz and United Fire judgment as a matter of law. The judgment of the trial court must be affirmed.

Respectfully submitted,

MORRIS, LAING, EVANS, BROCK
& KENNEDY, CHARTERED

By 

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of April, 2015, two (2) true and correct copies of the above and foregoing Brief of Appellees were placed in the U.S. Mail, postage prepaid, and addressed to:

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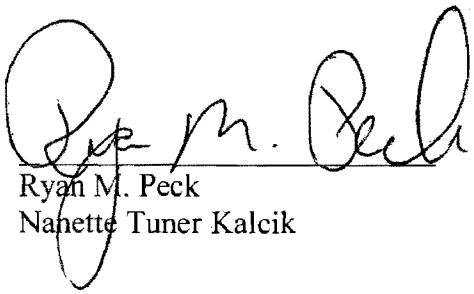

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