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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1074**

Peoples Electric Co., Inc.,
Plaintiff,

Arthur D. Walsh,
Appellant,

vs.

Integrity Works Construction, Inc., et al.,
Defendants,

State Bank of Faribault,
Respondent.

**Filed May 7, 2012
Affirmed
Halbrooks, Judge**

Rice County District Court
File No. 66-CV-09-3148

Arthur D. Walsh, A.D. Walsh Law Office, Forest Lake, Minnesota (attorney pro se)

Matthew C. Berger, Gislason & Hunter LLP, New Ulm, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Halbrooks, Judge; and Hudson,
Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant attorney challenges the district court's award of sanctions against him following a lien-foreclosure action. Because the district court acted within its discretion by awarding sanctions, we affirm.

FACTS

In late 2008, Peoples Electric Co., Inc. provided electrical work to a restaurant located in a commercial property in Faribault owned by J & J Nelson Enterprises, L.P. Peoples Electric was never paid for its work and, in December 2009, prevailed in a breach-of-contract claim against the contractor, the restaurant, and J & J Enterprises, obtaining a judgment of \$3,822.48. Peoples Electric recorded a mechanic's lien on the commercial property in January 2009.

In September 2009, Peoples Electric attempted to foreclose on that lien. It filed a complaint in district court, including as an interested party respondent State Bank of Faribault, which had a pre-existing recorded \$4,000,000 mortgage lien on the property. In the complaint, Peoples Electric's attorney, appellant Arthur Walsh, alleged that Peoples Electric's lien was superior to the bank's earlier recorded lien. Under Walsh's theory, the bank's lien became "junior, subordinate, and inferior" to Peoples Electric's lien when the bank recorded an extension of mortgage in March 2009.

Approximately six months into the litigation, the bank's attorney, Matthew Berger, contacted Walsh to attempt to get him to stipulate that the bank's mortgage had priority over the later-recorded mechanic's lien. During those conversations, Berger

presented Walsh with legal research that supported his position. Walsh refused to stipulate or withdraw his claim that Peoples Electric's lien is superior. He told Berger that, "as a matter of policy" he does not "stipulate to priority in mechanic's lien cases." On July 8, the bank notified Walsh that it intended to move for sanctions unless Walsh agreed to stipulate that the bank's mortgage was superior to the mechanic's lien. Walsh did not respond.

A court trial was held on October 8 to determine whether Peoples Electric had a valid lien on the property. The district court ordered judgment against Peoples Electric, finding that it did not have a valid lien because Peoples Electric failed to provide a subcontractor's pre-lien notice as required under Minn. Stat. § 514.011, subd. 2 (2010), or any evidence establishing an exception to the pre-lien notice requirement.

The bank subsequently moved for sanctions against Walsh. The district court ruled in favor of the bank, finding that Walsh had no basis in law for believing that Peoples Electric had a superior lien. The bank requested a sanction of \$7,145 in attorney fees; the district court ordered Walsh to pay \$2,000. Walsh appeals from the sanctions judgment.

D E C I S I O N

Walsh argues that the district court's award of sanctions is substantively defective and that the bank's motion for sanctions was procedurally defective. We review the district court's award of sanctions under Minn. Stat. § 549.211 (2010) and Minn. R. Civ. P. 11.03 under an abuse-of-discretion standard. *Collins v. Waconia Dodge, Inc.*, 793 N.W.2d 142, 145 (Minn. App. 2011), *review denied* (Minn. Mar. 15, 2011).

I.

We first address Walsh's claim that the district court's award of sanctions is substantively defective. When an attorney presents a pleading to the court, all of his or her claims and legal contentions must be "warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law." Minn. Stat. § 549.211, subd. 2(2); Minn. R. Civ. P. 11.02(b). If they are not, the district court may impose sanctions, provided that the attorney who made the unwarranted contentions had notice and a reasonable opportunity to respond. Minn. Stat. § 549.211, subd. 3; Minn. R. Civ. P. 11.03. Sanctions "should not be imposed when counsel has an objectively reasonable basis for pursuing a factual or legal claim or when a competent attorney could form a reasonable belief a pleading is well-grounded in fact and law." *Uselman v. Uselman*, 464 N.W.2d 130, 143 (Minn. 1990), *superseded by statute on other grounds*, by Minn. Stat. § 549.21 (1990).

A.

Walsh contends that the award of sanctions is substantively defective because his claim about the superiority of his client's lien is supported by law. The general rule on priority of liens is that a mechanic's lien takes priority over all liens that are not yet recorded when the mechanic's work begins. Minn. Stat. § 514.05 (2010). Here, it is undisputed that the bank's mortgage lien was recorded before Peoples Electric began work. The bank's mortgage would therefore be the superior lien and the mechanic's lien would be subordinate. Nevertheless, Walsh asserted in the complaint that the bank's extension of its mortgage made its mortgage subordinate. At issue is whether that

contention has any reasonable basis in law. The district court found it did not, noting: “The case law in Minnesota is clear that the execution of a renewal note does not constitute payment or discharge of the original note and only operates as an extension of the time for payment.”

In support of his argument that his contention is based in law, Walsh argues that it is reasonable for him to believe that the bank’s claimed “extension of mortgage” could have been a “renewal”—or essentially a new mortgage. He cites a landlord-tenant case for the following propositions:

The legal distinction between an extension and a renewal of a lease is that an extension merely continues the original lease, while a renewal requires a new lease. . . . If any contractual terms for the additional period must be negotiated or determined, the statute of frauds requires a new lease, and the new period is a renewal.

Unity Investors, Ltd. P’ship v. Lindberg, 421 N.W.2d 751, 754 (Minn. App. 1988) (citing *Med-Care Assocs., Inc. v. Noot*, 329 N.W.2d 549, 551 (Minn. 1983)). Walsh then concludes, “[A]s a new arrangement recorded after visible improvements on the premises, the so called ‘extension’ would be subordinate to [Peoples Electric’s] mechanic’s lien.”

There are two flaws in Walsh’s argument. The first is that his sanction-inducing legal contention that he made in the complaint was not that the bank’s mortgage lien is subordinate because it is a new mortgage lien (that he is arguing now)—it was that it was subordinate because it was an extension to the mortgage. That claim remains unsupported by law.

The second flaw is that the cases cited by Walsh are landlord-tenant cases discussing the renewal or extension of leases that have nothing to do with mortgages or liens. Cases dealing with mortgages and liens universally hold that a mortgage extension does not operate as a release of the original mortgage. *See, e.g., Farmers Union Oil Co. v. Fladeland*, 287 Minn. 315, 319, 178 N.W.2d 254, 257 (1970) (“[M]ere execution of a renewal note evidences the same debt by a new promise and does not constitute a payment or discharge of the original note but operates only as an extension of time for payment.”); *Am. Bank of St. Paul v. Coating Specialties, Inc.*, 787 N.W.2d 202, 205 (Minn. App. 2010) (“[T]he execution of a renewal note evidences a new promise to pay the same debt. It does not constitute discharge of the original note; it merely extends the time for payment.” (quotation omitted)). Walsh fails to offer any reasonable legal argument for why these cases do not control.

B.

Walsh claims that the award of sanctions is substantively defective because it is not supported by a district court finding of bad faith. In support of his proposition that a bad-faith finding is required, he cites cases from 1987 and 1990. But the civil-sanctions statute was amended in 1997. Prior to the amendment, “bad faith” was used as a basis for sanctions, and “good faith” was used as a defense to making a frivolous argument. Minn. Stat. § 549.21, subd. 2 (1996). But after 1997, the term “bad faith” was removed entirely from the statute. Minn. Stat. § 549.211 (Supp. 1997). In post-1997 cases, this court has observed that a finding of bad faith is not required. *Gibson v. Trs. of Minn. State Basic Bldg. Trades Fringe Benefits Funds*, 703 N.W.2d 864, 869 (Minn. App. 2005) (“The

presence of bad faith *can* be considered when deciding whether to award sanctions.” (emphasis added)), *vacated on other grounds*, No. A05-39, 2005 WL 6240754 (Minn. Dec. 13, 2005). Likewise, a finding of bad faith is not required under rule 11. *Uselman*, 464 N.W.2d at 142 (observing that a change in rule 11 in 1989 “altered counsel’s certification responsibility, eliminating the bad faith threshold and substituting in its stead, a certification that, upon belief after reasonable inquiry, a pleading or other paper is well-grounded factually, warranted by existing law or is a good faith argument for changing existing law and filed for proper purposes only”). Because there is no bad-faith requirement, Walsh’s argument that the order is deficient for lack of a bad-faith finding is without merit.

C.

Walsh also asserts that the award of sanctions is substantively defective because the failure to stipulate or amend a pleading cannot be the basis of a sanction. But in making this argument, Walsh ignores the true basis for his sanction, which is that he asserted (and continued to assert) a claim that is unwarranted by law. The fact that the district court observed that he failed to amend the complaint or stipulate to the bank’s superior mortgage, does not mean that the district court sanctioned him for failing to amend or stipulate. Rather, the failures to stipulate to the bank’s superiority or amend the complaint to remove the unwarranted claim demonstrate Walsh’s continued assertion of the unwarranted claim. The continued assertion of an unwarranted claim is a basis for sanctions. *See* Minn. Stat. § 549.211, subs. 2, 3 (permitting sanctions when party submits or is “later advocating” a claim that is not warranted by law).

D.

Walsh claims that the award of sanctions is substantively defective because he should not be required to conform to the opposing party's view of the law. Walsh argues that "[l]egal research is . . . subjective and not static or homogenized. It varies with individual mindset, diligence, perception, outlook and talent for exposition." Walsh's assertion is that he should not be sanctioned for having his own subjective view of the law. But the law requires that attorneys submit pleadings that are based on an objectively reasonable view of the law. *See, e.g., Uselman*, 464 N.W.2d at 142-43 (observing that sanctions should not be imposed when counsel has an objectively reasonable basis for pursuing a legal claim). So while Walsh is not required to trust opposing counsel's research, he is required to base a pleading on an objectively reasonable view of the law. His view of the law here is not reasonable.

II.

We next address Walsh's claims that the bank's motion for sanctions was procedurally defective. There are specific procedural rules for moving for sanctions under Minn. Stat. § 549.211. The motion "must be made separately from other motions or requests and describe the specific conduct alleged to violate subdivision 2." Minn. Stat. § 549.211, subd. 4(a). The motion "may not be filed with or presented to the [district] court unless, within 21 days after service of the motion . . . the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected." *Id.* It is an abuse of discretion for the district court to award sanctions if the motion for sanctions is procedurally defective. *Gibson v. Coldwell Banker Burnet*, 659

N.W.2d 782, 790 (Minn. App. 2003) (reviewing sanctions ordered under the identically worded rule 11 provisions).

A.

Walsh argues that the bank's motion was defective because the bank "abandoned" its sanctions motion by not filing it before the district court resolved the merits of the foreclosure action, and therefore the sanctions claim "merged" into the district court's judgment on the merits. Walsh cites *Ortiz v. Jordan*, 131 S. Ct. 884, 889 (2011), a case concerning an appeal from an interlocutory order, for the proposition that "[o]nce the case proceeds to trial, the full record developed in court supersedes the record existing at the time of the motion." But sanctions are not interlocutory matters; they are collateral matters. See, e.g., *Kellar v. Von Holtum*, 605 N.W.2d 696, 700 (Minn. 2000) ("[M]otions for attorney fee sanctions and costs and disbursements [are] collateral to the merits of the underlying litigation."), *superseded by rule on other grounds*, Minn. R. Civ. P. 11.03; see also *Spaeth v. City of Plymouth*, 344 N.W.2d 815, 825 (Minn. 1984) ("[A] claim for attorneys' and experts' fees . . . should be treated as a matter independent of the merits of the litigation."). And, as collateral matters, motions for sanctions can be litigated after the final judgment on the merits. See *Kellar*, 605 N.W.2d at 700 (affirming sanctions when a motion was made one year after the district court's final judgment and the attorney was "clearly put on notice" of the potential for sanctions). The supreme court has noted that "there is likely to be little, if any, harm caused by waiting to resolve such collateral issues until the merits are resolved." *Id.* at 700. Walsh's claim that the sanctions motion was abandoned or merged is without merit.

B.

Walsh contends that the bank failed to comply with the 21-day safe-harbor rule because it served him with notice of its motion for sanctions after trial, preventing him from an opportunity to correct his pleadings. Walsh's argument fails on the facts. It is undisputed that the bank first asked Walsh to withdraw the superiority claim seven months before trial and provided Walsh notice of its intent to move for sanctions four months before trial. He was given much more than 21 days to correct the pleadings.

C.

Walsh asserts that the bank's motion was procedurally defective because it failed to "charge a violation of a particular section of Subdivision 2 And the Motion itself says nothing about bad faith." Minn. Stat. § 549.211, subd. 4(a), requires only that the motion "describe the specific conduct alleged to violate subdivision 2." It does not require citation to a particular subpart of subdivision 2 or an allegation of bad faith. The bank's motion satisfied the requirements of subdivision 4(a), describing the conduct as follows:

[T]he specific conduct alleged to violate subdivision 2 . . . and Rule 11 consists of [Peoples Electric]'s failure to stipulate to priority of the Bank's prior mortgage against the property at issue in these proceedings. [Peoples Electric] has acknowledged in its Complaint that the Bank's mortgage was recorded before the first work performed by [Peoples Electric], and the Bank has provided [Peoples Electric] with several references to Minnesota law demonstrating that [Peoples Electric]'s assertion of priority is frivolous and wholly without merit under Minnesota law. Without providing any legal basis to support its claim, [Peoples Electric] has nonetheless repeatedly refused to stipulate to the priority of the Bank's mortgage, thereby causing the Bank to

incur unnecessary expenses and attorneys' fees to defend [Peoples Electric]'s frivolous claim.

It is clear from the bank's motion that it was alleging that Walsh committed conduct that would constitute a violation of Minn. Stat. § 549.211, subd. 2(2), as the bank's motion refers to a "frivolous" claim "wholly without merit under Minnesota law" and "without providing any legal basis." Accordingly, the bank's motion was not procedurally defective.

Affirmed.