



NOTICE: Decisions issued by the Appeals Court pursuant to its rule 1:28 are primarily addressed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, rule 1:28 decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28, issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent.

COMMONWEALTH OF MASSACHUSETTS APPEALS COURT

MICHAEL SHEA COMPANY, INC. vs. GARY CHELLIS & others, [\[FN1\]](#) trustees.  
[\[FN2\]](#)

11-P-161

*MEMORANDUM AND ORDER PURSUANT TO RULE 1:28*

The plaintiff subcontractor, Michael Shea Company, Inc. (Shea), brought the present action to enforce a mechanic's lien against the defendant trustees of 50-60 Longwood Avenue Condominium Trust (trustees). The trustees filed a motion to dismiss Shea's complaint and discharge the lien, which a judge of the Superior Court granted. Shea now appeals. We affirm.

*Background.* The following undisputed facts are taken from the complaint, and relevant attachments thereto. At some undisclosed time, the trust entered into a contract with Basepoint Contracting, LLC (Basepoint), a general contractor, to complete, among other things, a project known as the 'plaza and connector link.' On January 7, 2008, Basepoint, in turn, entered into a contract with subcontractor Shea to provide landscaping work for the completion of the plaza and connector link. The final amount owed Shea under the contract was \$433,832, of which Shea received \$175,000, leaving a remaining balance of \$258,832. Basepoint failed to pay the remaining amount owed, and, on October 12, 2009, petitioned for Chapter 7 bankruptcy relief in the United States Bankruptcy Court for the District of Massachusetts, claiming that the trustees still owed it a total of \$729,741 under their general contract.

On September 4, 2009, and November 6, 2009, respectively, Shea filed a notice of contract and statement of account at the Norfolk County registry district of the Land Court pursuant to § 4 and § 8 of G. L. c. 254, the mechanic's lien statute. The notice of contract describes the 'lot of land or other interest in real property' as '[t]he common areas and facilities of the condominium known as 50-60 Longwood Avenue, 50-60 Longwood Avenue, Brookline, MA.' Shea thereafter filed a complaint in Superior Court, seeking to enforce the mechanic's lien against the trust. It also claimed entitlement to payment under the theory of quantum meruit. In response, the trustees moved to both dismiss the complaint pursuant to Mass.R.Civ.P. 12(b)(6), 365 Mass. 754 (1974), and summarily discharge the lien pursuant to G. L. c. 254, § 15A.

In his memorandum of decision, the motion judge ruled in favor of the trustees. The judge based his ruling on the plain language of § 13 of the condominium statute, G. L. c. 183A, as amended by St. 1985, c. 788, § 10, which provides that:

'All claims involving the common areas and facilities shall be brought against the organization of unit owners, and all attachments and executions related to such claims shall be made only against common funds or property held by the organization of unit owners and not against the common areas and facilities themselves other than the leasehold of any lease included therein. After such common funds and property have been exhausted, individual unit owners shall be liable for the balance due, if any, provided, however, that the amount for which a unit owner is liable shall be limited to a sum equal to the amount of his percentage interest in the common areas and facilities times the balance due.'

Simply put, the judge observed that under § 13, '[c]laims cannot be brought against the common areas and

facilities of a condominium. . . . Therefore, . . . a mechanic's lien simply does not fit on a condominium's common areas.' The judge therefore dismissed Shea's various claims that it should be able to enforce the lien, as the only property listed on its notice of contract is the 'common areas and facilities' of the condominium. Citing *Boswell v. Zephyr Lines, Inc.*, 414 Mass. 241, 250 (1993), the judge likewise dismissed Shea's quantum meruit claim, as Shea acknowledged in its complaint that a valid contract existed between Basepoint and the trustees.

*Discussion.* We review a rule 12(b)(6) motion to dismiss de novo, taking as true the allegations in the complaint, and drawing all inferences in favor of the plaintiff. *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008). 'What is required at the pleading stage are factual 'allegations plausibly suggesting (not merely consistent with)' an entitlement to relief, in order to 'reflect[] the threshold requirement of [Fed.R.Civ.P.] 8(a)(2) that the 'plain statement' possess enough left to 'sho[w] that the pleader is entitled to relief.''' *Ibid.*, quoting from *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007).

On appeal, Shea reiterates its claim that its mechanic's lien may reach the common areas and facilities of a condominium, despite the plain language of G. L. c. 183A, § 13. Shea further argues that the lien may reach the trustees' interests through any statutory liens the trustees have acquired, citing G. L. c. 183A, § 6, as well as through any other property or interests that the trustees own, such as individual units they hold through foreclosure or otherwise, or leases. Shea also claims that it may reach the units through their individual owners. Lastly, Shea argues that the judge erred in dismissing its quantum meruit claim.

1. *Common areas and facilities.* As to Shea's main argument, we agree with the motion judge that the language of § 13 controls the issue. As quoted above, the statute plainly requires that 'all attachments and executions related to [claims against common areas and facilities] shall be made only against common funds or property held by the organization of unit owners and not against the common areas and facilities themselves other than the leasehold of any lease included therein.' G. L. c. 183A, § 13. Because Shea's notice of contract is clearly limited to common areas and facilities, the complaint was properly dismissed and the lien discharged, as Shea had no entitlement to a lien against the property listed. See G. L. c. 254, § 15.

Shea counters that a mechanic's lien is not the equivalent of an attachment, and that nothing in the mechanic's lien statute prohibits the filing of a lien with respect to common areas and facilities. As to the first point, mechanic's liens are defined as 'an encumbrance or attachment upon real property which secures the right to payment for work performed on such real property.' Lewin & Schaub, *Construction Law* § 11.1, at 821 (2009-2010). As to the second, we decline to favor the provisions of the one statute over the other. 'So long as the two statutes covering the same subject matter, when read together, are not repugnant to each other, and there is some rational basis for reconciliation of the two, then the presumption against implied repeal shall stand.' *Shrewsbury v. Seaport Partners Ltd. Partnership*, 63 Mass. App. Ct. 272, 276 (2005). Here, as observed by the motion judge, G. L. c. 183A, § 13's, incompatibility with the mechanic's lien statute does have a rational basis: namely, that there is no separate interest in common areas and facilities apart from the individual condominium units, and therefore, no interest that could be conveyed to a hypothetical purchaser to satisfy the lien. See *Berish v. Bornstein*, 437 Mass. 252, 262 (2002).

2. *Other property and interests.* Shea's attempts to reach other property or interests owned by the trustees likewise fail for the simple reason that its notice of contract lists only the common areas and facilities of 50-60 Longwood Avenue. A mechanic's lien is a creature of statute requiring strict compliance in order to obtain relief. *National Lumber Co. v. Lombardi*, 64 Mass. App. Ct. 490, 492-293 (2005). The statute is strictly construed against the party claiming the lien. *Golden v. General Builders Supply LLC*, 441 Mass. 652, 654 (2004). Therefore, it fell on Shea to properly identify any property interest it was seeking to reach in its notice of contract, and any failure on its part to list any such interests must be strictly construed against it. [\[FN3\]](#) See G. L. c. 254, § 4.

3. *Quantum meruit.* Shea lastly claims that its quantum meruit claim should not have been dismissed. We disagree. The general rule stated in our cases is that '[i]n the absence of a lien perfected under G. L. c. 254, an owner who enters into a general contract for improvements on real property is not ordinarily liable to subcontractors whose sole contractual arrangements are with the general contractor.' *Brick Constr. Corp. v. CEI Dev. Corp.*, 46 Mass. App. Ct. 837, 840 (1999), quoting from *Evans v. Multicon Constr. Corp.*, 30 Mass. App. Ct. 728, 740 (1991). [\[FN4\]](#) This rule coincides with the principle that '[r]ecovery in quantum meruit presupposes that no valid contract covers the subject matter of a dispute. Where such a contract exists, the law need not create a quantum meruit right to receive compensation for services rendered.' *Boswell v. Zephyr Lines, Inc.*, 414 Mass. at 250. As noted, Shea admits in his complaint that the trust entered into a contract with the general contractor, Basepoint, which covers the subject matter of the dispute.

*Judgment affirmed.*

By the Court (Grasso, Smith, & Meade, JJ.),

Entered: December 20, 2011.

[FN1.](#) Gwen Simpkins, Madeline Hartley, Richard Diutsh, and Sol Feldman.

[FN2.](#) Of the 50-60 Longwood Avenue Condominium Trust.

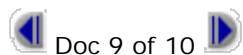
[FN3.](#) Although some leniency is allowed in the description of the property interest in question, see G. L. c. 254, § 11, that principle does not apply in this case where Shea only listed one interest in property in its notice, and then later in its complaint sought to attach other, completely separate interests.

[FN4.](#) Shea's citation to *Mike Glynn & Co. v. Hy-Brasil Restaurants, Inc.*, 75 Mass. App. Ct. 322 (2009), is distinguishable on the facts of that case. In *Glynn*, the holding of the case turned on the subcontractor's expectation of payment from the owner based on certain actions of the owner. *Id.* at 327-328. In this case, no such expectation or actions on the part of the trust are alleged.

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