IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
June 9, 2008 Session

WILLIAMSON COUNTY READY MIX, INC. v. PULTE HOMES TENNESSEE LIMITED PARTNERSHIP ET AL.

Appeal from the Chancery Court for Davidson County
No. 06-2961-I Claudia C. Bonnyman, Chancellor

No. M2007-01710-COA-R3-CV - Filed December 15, 2008

In this suit to enforce materialman's liens, we have concluded that the lienor was statutorily required to perfect a lien for each townhouse instead of a blanket lien in order for the liens to have priority against subsequent purchasers and encumbrances. The lien was properly preserved, however, with respect to the original owner.

Tenn. R. App. R. 3 Appeal as of Right; Judgment of the Chancery Court Modified in Part, Affirmed in Part, and Remanded

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

Todd E. Panther, Nashville, Tennessee, for the appellant, Pulte Homes Tennessee Limited Partnership et al.

Patrick M. Carter, Columbia, Tennessee, for the appellee, Williamson County Ready Mix, Inc.

OPINION

FACTUAL AND PROCEDURAL BACKGROUND

Williamson County Ready Mix, Inc. ("WCRM") contracted with Excalibur Construction to provide concrete and related materials to be used in the construction of multiple townhome units in a development known as Creekside of Brentwood. Excalibur contracted with Pulte Homes Tennessee Limited Partnership ("Pulte"), the owner and general contractor on the project, to provide concrete foundations, driveways, walkways, patios, and HVAC pads for the townhomes. Each of the five buildings at issue in this case contained four to six townhomes.

WCRM delivered the concrete materials to Creekside from approximately May 11, 2006, to August 1, 2006. It is undisputed that the materials were not defective and were delivered in

accordance with WCRM's agreement with Excalibur. WCRM's executive vice president/secretary stated in an affidavit that WCRM supplied the concrete on a building by building basis pursuant to its agreement with Excalibur. Pulte paid Excalibur all amounts to which it was entitled, but Excalibur failed to pay its account with WCRM and declared Chapter 7 bankruptcy. WCRM served on Pulte and current townhome owners and mortgage holders (collectively "the defendants") five notices of nonpayment dated September 15, 2006, one for each of the five buildings. WCRM served on the defendants and recorded with the register of deeds five sworn notices of lien, one for each building, dated September 15, 2006. Pulte received the lien notices on September 19, 2006.

On December 8, 2006, WCRM filed a sworn complaint against the defendants asserting a claim under the mechanics' and materialmen's lien statutes as well as a claim for unjust enrichment. In its prayer for relief, WCRM included a request for an attachment against the defendants' real property. The writ of attachment references WCRM's sworn complaint "claiming a debt of $40,752.54." The complaint itself, however, does not state an amount but only identifies the numbers of the recorded notices of lien. On January 26, 2007, the defendants moved to dismiss WCRM's claim to enforce its materialman's liens or, in the alternative, to quash the writ of attachment. On February 5, 2007, WCRM filed an amended verified complaint including the dollar amount associated with each of the five liens. Following a hearing, the trial court denied the defendants' motion for partial dismissal or to quash the writ of attachment. The defendants then filed an answer to the complaint.

The defendants filed a motion for summary judgment on May 11, 2007, asserting five grounds for dismissal of WCRM's materialman's lien claim and arguing that the unjust enrichment claim should be dismissed because the defendants made full payment to the entity with whom they had contracted. WCRM filed its own motion for summary judgment on June 14, 2007. After a hearing on July 6, 2007, the trial court granted the defendants' motion for summary judgment as to the unjust enrichment claim and granted WCRM's motion for summary judgment as to the lien claims. The court stated that, "[b]y virtue of the Court granting WCRM's Counter-Motion for Summary Judgment, WCRM is entitled to enforce its liens by sale of the property and/or Pulte's interests therein to satisfy WCRM's delinquent account of $40,752.54, plus recording fees in the amount of $60.00."

On appeal, the defendants assert five main grounds to support their position that the trial court erred in granting summary judgment in favor of WCRM on the lien claims.[1] These grounds are: (1) WCRM did not serve its notices of nonpayment on Excalibur, as allegedly required under Tenn. Code Ann. § 66-11-145; (2) WCRM did not apportion its claim and file a separate lien as to each defendant's property, as allegedly required by Tenn. Code Ann. § 66-11-118(b)(1); (3) WCRM did not obtain a separate writ of attachment for each defendant's property, as allegedly required by Tenn. Code Ann. §§ 66-11-118, 66-11-126, and 29-6-101, *et seq.*; (4) WCRM's complaint did not state the amount of the debt or demand pursuant to Tenn. Code Ann. §§ 29-6-113 and 66-11-126;

[1] The grounds asserted are the same as those given in support of the defendants' motion for summary judgment in the trial court.

and (5) WCRM did not properly enforce its liens within 90 days after service of the liens pursuant to Tenn. Code Ann. § 66-11-115. The defendants further argue that the trial court erred in granting WCRM's motion for summary judgment because the hearing on the motion was held sooner than 30 days after the motion was filed.

STANDARD OF REVIEW

Summary judgments do not enjoy a presumption of correctness on appeal. *BellSouth Adver. & Publ'g Co. v. Johnson*, 100 S.W.3d 202, 205 (Tenn. 2003). This court must make a fresh determination that the requirements of Tenn. R. Civ. P. 56 have been satisfied. *Hunter v. Brown*, 955 S.W.2d 49, 50 (Tenn. 1997). We consider the evidence in the light most favorable to the non-moving party and resolve all inferences in that party's favor. *Godfrey v. Ruiz*, 90 S.W.3d 692, 695 (Tenn. 2002). When reviewing the evidence, we must determine whether factual disputes exist. If a factual dispute exists, we must determine whether the fact is material to the claim or defense upon which the summary judgment is predicated and whether the disputed fact creates 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). The moving party must negate an element of the opposing party's claim or "show that the nonmoving party cannot prove an essential element of the claim at trial." *Hannan v. Alltel Publ'g Co.*, No E2006-01353-SC-R11-CV, 2008 WL 4790535, *6 (Tenn. Oct. 31, 2008).

ANALYSIS

I.

The defendants first argue that Tenn. Code Ann. § 66-11-145 required WCRM to serve its notices of nonpayment on Excalibur, the company with whom WCRM contracted to provide concrete and related materials. Excalibur contracted with Pulte, the owner and general contractor, to provide concrete foundations, driveways, walkways, patios, and HVAC pads for the townhomes. WCRM did not send notices of nonpayment to Excalibur.

Materialmen's liens are created by statute, and Tennessee courts generally require strict compliance with the requirements of the lien statutes. *Eatherly Constr. Co. v. DeBoer Constr. Co*., 543 S.W.2d 333, 334 (Tenn. 1976); *D.T. McCall & Sons v. Seagraves*, 796 S.W.2d 457, 460 (Tenn. Ct. App. 1990). Our interpretation must not, however, be so strict as to defeat the purpose of the statutes. *McCall*, 796 S.W.2d at 460.

Tenn. Code Ann. § 66-11-145(a)[2] required a materialman to provide, within 90 days of the last day of the month in which materials were provided, a notice of nonpayment "to the owner *and contractor contracting with the owner* if its account is, in fact, unpaid." (Emphasis added). In this

[2]The mechanics' and materialmen's lien statutes, Tenn. Code Ann. § 66-11-101, *et seq*. were substantially amended by 2007 Tenn. Pub. Acts ch. 189. The quoted provision is from the earlier version of the statute.

case, Pulte was both the owner and the general contractor. Excalibur entered into a contract with Pulte to provide concrete work on the project. Thus, argue the defendants, WCRM was required to send a notice of nonpayment to Excalibur. The flaw in this argument is that Excalibur does not meet the statutory definition of a "contractor."

Tenn. Code Ann. § 66-11-101(3)[3] defined "contractor" as "a person other than a materialman or laborer who enters into a contract with the owner of real property for improving it, or who takes over from a contractor, as defined in this section, the entire remaining work under such contract."[4] The defendants argue that Excalibur "entered into a contract with the owner," Pulte, to improve the property, and should therefore be considered a contractor. The statutory definition of "subcontractor," however, belies this classification. Tenn. Code Ann. § 66-11-101(16) defined a "subcontractor" as "a person other than a materialman or laborer who enters into a contract with a contractor for the performance of *any part of the contractor's contract*, or who enters into a contract with a subcontractor, as above defined, and in any degree, for the performance of any part of such subcontractor's contract." (Emphasis added). Since Excalibur contracted to perform only part of the general contractor's work on the project, it should be considered a subcontractor, not the contractor.

This interpretation is consistent with the legislative history of Tenn. Code Ann. § 66-11-145:

> This [legislative] history shows that § 66-11-145 was a new provision, added to the lien requirements in 1990, to assure that owners *and general contractors* have sufficient notice to deal with unpaid subcontractors. Excerpts from the Committee debate highlight this motive:
>
> > [The bill] provides that materialmen and subcontractors must notify the owner *and general contractor* within certain time parameters of nonpayment for work, services, or materials furnished to the project . . . .
>
> The transcript demonstrates that the primary concern of the legislators was giving the owner *and general contractor* notice of payment problems so that problems could be taken care of before the subcontractor's work was completed and the project could be encumbered with a lien.

CMT, Inc. v. West End Church of Christ, No. 03A01-9511-CH-00383, 1996 WL 64003, *1-2 (Tenn. Ct. App. Feb. 15, 1996) (emphasis added).

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[3] Tenn. Code Ann. § 66-11-101 was among the statutes amended by 2007 Tenn. Pub. Acts ch. 189.

[4] The parties agree that Excalibur was not a materialman or laborer under the statutory definitions.

As we have concluded that Tenn. Code Ann. § 66-11-145(a) required notice to the owner and the general contractor, WCRM complied with the statutory requirements by providing notice to Pulte, who was both the owner and the general contractor.

II.

The defendants next assert that Tenn. Code Ann. § 66-11-118(b)(1) required WCRM to apportion its claim and file a separate lien as to each townhome. WCRM sent notice to the defendants and recorded five notices of lien, one for each of the buildings, but did not record a separate lien for each townhome.

Tenn. Code Ann. § 66-11-115(b)[5] required that, within 90 days after completion of the improvement or expiration of the materialman's contract or his discharge, the materialman "shall notify, in writing, the owner of the property on which the building is being erected or the improvement is being made . . . that the lien is claimed." Tenn. Code Ann. § 66-11-112(a)[6] contained the following requirements for establishing the priority of a materialman's lien:

> In order to preserve the virtue of the lien, *as concerns subsequent purchasers or encumbrancers for a valuable consideration without notice thereof, though not as concerns the owner*, such lienor, who has not so registered such lienor's contract, is required to file for record in the office of the register of deeds of the county where the premises, or any part affected lies, a sworn statement similar to that described in § 66-11-117, and pay the fees. . . . Such filing for record is required to be done within ninety (90) days after the building or structure or improvement is demolished, altered and/or completed, as the case may be, or is abandoned and the work not completed, or the contract of the lienor expires or is terminated or the lienor is discharged, prior to which time the lien shall be effective as against such purchasers or encumbrancers without such registration . . . .

(Emphasis added). Tenn. Code Ann. § 66-11-118[7] addressed the proper procedure for liens involving multiple lots or improvement. The parties agree that Tenn. Code Ann. § 66-11-118(b)(1) is the subsection applicable in this case. Subsection (b)(1) provided:

> Whenever more than one (1) building, condominium unit or other improvement is constructed upon or made to a single lot, parcel or tract of land or contiguous lots,

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[5]Tenn. Code Ann. § 66-11-115 was among the statutes amended by 2007 Tenn. Pub. Acts ch. 189.

[6]Tenn. Code Ann. § 66-11-112 was among the statutes amended by 2007 Tenn. Pub. Acts ch. 189.

[7]Tenn. Code Ann. § 66-11-118 was among the statutes amended by 2007 Tenn. Pub. Acts ch. 189.

> parcels or tracts of land, the visible commencement of operations[8] as defined in this chapter with respect to each such separate building, unit or improvement shall not be deemed to constitute or otherwise relate to the visible commencement of operations with respect to any other building, unit or improvement on any such single lot, parcel or tract of land or any such contiguous lots, parcels or tracts of land. In connection therewith, except in cases where the lienor has furnished ornamental shrubbery and/or trees[,] . . . a lienor who has performed labor or furnished materials therefor shall, in claiming a lien, *apportion the lienor's contract price between the separate buildings, units or improvements thereon as applicable and file a separate claim of lien for the amount demanded against each such separate building, unit or improvement*; in such event, the time prescribed in §§ 66-11-112 and 66-11-115 for giving or filing notice of lien shall commence to run with respect to each such building, unit or improvement immediately upon the completion of the same.

Tenn. Code Ann. § 66-11-118(b)(1) (emphasis added).

The issue presented here is the impact of these provisions under the circumstances of this case. WCRM argues that it was not required to apportion its lien claims between the individual townhomes. Pointing to the language of Tenn. Code Ann. § 66-11-118 (b)(1) referencing "buildings, units *or* improvements," WCRM asserts that the visible commencement of operations and the apportionment of liens could be determined building by building, unit by unit, or improvement by improvement. Since WCRM provided materials on a building by building basis, it argues that its filing of a lien on each building was proper. The defendants argue that Tenn. Code Ann. § 66-11-118(b)(1) required WCRM to claim a separate lien for each townhome and that its failure to do so invalidates its liens.

In interpreting a statute, the court is to ascertain the intent of the legislature from the natural and ordinary meaning of the language used and in the context of the entire statute. *Cohen v. Cohen*, 937 S.W.2d. 823, 828 (Tenn. 1996). We are to give effect to every word and assume that the legislature deliberately chose to use these words. *Tenn. Manufactured Hous. Ass'n v. Metro. Gov't*, 798 S.W.2d 254, 257 (Tenn. Ct. App. 1990); *see Tidwell v. Collins*, 522 S.W.2d 674, 676-77 (Tenn. 1975). The pertinent statutory language stated that the lienor "who has performed labor or furnished materials *therefor* shall, in claiming a lien, apportion the lienor's contract price between the separate buildings, units or improvements thereon *as applicable* and file a separate claim of lien for the amount demanded against each such separate building, unit or improvement." Tenn. Code Ann. § 66-11-118(b)(1) (emphasis added). We interpret "therefor" to reference the "more than one (1) building, condominium unit or other improvement" mentioned in the first sentence of Tenn. Code Ann. § 66-11-118(b)(1) and the phrase "as applicable" to reference the building, condominium unit or other improvement for which labor or materials are being used. Since this case involves materials provided to build separate townhome units, we believe that the townhomes are the applicable basis

[8] Pursuant to Tenn. Code Ann. § 66-11-104, the lien generally related back to and took effect from the time of the visible commencement of operations.

for apportionment. We therefore interpret Tenn. Code Ann. § 66-11-118(b)(1) to require an apportionment of the lien between the separate units or improvements, in this case, the townhomes.

What is the effect of WCRM's failure to apportion its liens among the townhomes? A similar issue was addressed in *Walker Supply Co., Inc. v. Corinth Cmty. Dev., Inc.*, 509 S.W.2d 514 (Tenn. Ct. App. 1974), a case involving an earlier version of Tenn. Code Ann. § 66-11-118.[9] Walker Supply furnished building materials to the general contractor on a project to build six houses on noncontiguous lots owned by Corinth Community Development. *Walker*, 509 S.W.2d at 515. Walker Supply sent Corinth a notice by certified mail that it was claiming a lien for unpaid amounts due for the materials; at the same time, Walker Supply filed a sworn notice of lien in the register's office. *Id.* The notice did not apportion the balance between the six lots, but was a "blanket lien on the six lots." *Id.* Although there were defendants other than the property owner at the time of trial, the parties agreed that the only issue to be determined was whether Walker Supply had a lien on Corinth's property. *Id.* Corinth argued that the statute required Walker Supply to apportion its claims among the six lots and that, because it had not done so, the liens had not been perfected and could not be enforced *Id.* The court determined that, as argued by Walker Supply, the apportionment provisions did not apply; rather, the provisions of what is now Tenn. Code Ann. § 66-11-115 were determinative:

> In so far as a dispute between the owner and furnisher is concerned, the statute [a prior version of Tenn. Code Ann. § 66-11-115] does not provide for any filing of any notice with any County Register. The written notice to the owner is sufficient to perfect the lien as between furnisher and owner. . . .
>
> The failure to register the notice in compliance with § 64-1117 or § 64-1118 [now Tenn. Code Ann. §§ 66-11-117 and 66-11-118] only affects the rights of the furnisher as to any subsequent purchaser or lienor.

Id. at 517. The court therefore concluded that, as between the furnisher and the owner, the notice mailed to Corinth was sufficient to perfect the lien.[10] *Id.*

The requirements of Tenn. Code Ann. §§ 66-11-117[11] and 66-11-118 have been interpreted as applicable only to the lienor's rights against subsequent purchasers and encumbrances. *Walker*, 509 S.W.2d at 517. Tenn. Code Ann. § 66-11-112, quoted in full above, expressly addresses the priority of the materialman's lien "as concerns subsequent purchasers or encumbrancers for a valuable consideration without notice thereof, though not as concerns the owner." *See Streuli v.*

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[9] The applicable statutory language tracked what is now Tenn. Code Ann. § 66-11-118(a)(2).

[10] Walker Supply properly preserved its lien by filing suit and attaching the property within 90 days of the notice. *Walker*, 509 S.W.2d at 515.

[11] Tenn. Code Ann. § 66-11-117 contained provisions similar to those found in § 66-11-112 and was repealed by 2007 Tenn. Pub. Acts ch. 187.

Brooks, 313 S.W.2d 262, 264 (Tenn. 1958); *D.T. McCall*, 796 S.W.2d at 461. Thus, as to the owner, "simple notice without registration or filing will suffice." *McCall*, 796 S.W.2d at 461. To be effective as to subsequent purchasers or encumbrancers, however, registration is necessary. *Id.* We therefore conclude that, as to Pulte, WCRM's notices of lien were sufficient to perfect the liens. As to the other defendants, WCRM's recorded unapportioned notices did not afford it priority with respect to subsequent purchasers or encumbrancers without notice. *See Southern Blow Pipe & Roofing Co. v. Grubb*, 260 S.W.2d 191, 197 (Tenn. Ct. App. 1953); *Brown v. Brown Co.*, 160 S.W.2d 431, 434 (Tenn. Ct. App. 1941).

There is nothing in the record to suggest that the defendants who purchased or provided financing on the townhomes had actual notice of WCRM's lien claims at the time when these transactions occurred. Should such evidence exist, however, the trial court could be asked on remand to make a determination on that issue. *See Don Huckaby Plumbing Co. v. Cardinal Indus. Mortgage Co.*, 1991 WL 155709, *4 (Tenn. Ct. App. Aug. 16, 1991), *rev'd on other grounds*, 848 S.W.2d 57 (Tenn. 1993); *Southern Blow Pipe*, 260 S.W.2d at 197; *Brown*, 160 S.W.2d at 434.[12]

III.

The defendants next argue that WCRM's lien claims should fail because the lienor did not obtain a separate attachment as to each townhome. As discussed in part II above, it appears that WCRM failed to properly perfect liens with respect to the defendants other than Pulte. We will, therefore, confine our discussion to the attachment issue as to Pulte.

Pursuant to Tenn. Code Ann. § 66-11-115(c), a materialman's lien "shall continue for the period of ninety (90) days from the date of the notice . . . and until the final termination of any suit for enforcement brought within that period." Tenn. Code Ann. § 66-11-126[13] addressed the enforcement of materialmen's liens and stated that such liens "shall be enforced by attachment only." A suit for enforcement has been held not to be "brought" within the meaning of this provision until the writ of attachment has actually been issued. *C.O. Christian & Sons Co., Inc. v. Nashville P.S. Hotel, Ltd.*, 765 S.W.2d 754, 758 (Tenn. Ct. App. 1988).

Only one writ of attachment was issued in this case, and it instructs the sheriff "to attach so much of the property of the defendant(s) as will be of value sufficient to satisfy the debt [of $40,752.54] and all costs." The property description includes all of the Creekside property as described in the Master Deed, as amended; it lists the numbers of all of the affected townhomes but does not apportion the debt among them. Given the fact that WCRM's lien claims are likely valid only with respect to Pulte, the writ of attachment is overly broad in its scope. It should properly issue only against the ownership interests of Pulte in the Creekside property--for example, any unsold townhome units--and only as to the value of the materials provided for that property.

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[12]The applicable statutory language tracked what is now Tenn. Code Ann. § 66-11-118(a)(2).

[13]Tenn. Code Ann. § 66-11-126 was among the statutes amended by 2007 Tenn. Pub. Acts ch. 189.

Tenn. Code Ann. § 29-6-124 provides that "[t]he attachment law shall be liberally construed" and allows a plaintiff "to amend any defect of form in the affidavit, bond, attachment, or other proceedings" before or during trial. The purpose of a "writ of attachment is to seize property." *Fischer Lime & Cement Co. v. Kaucher*, 51 S.W.2d 492, 494 (Tenn. 1932). Attachment "puts the property in the custody of the law." *Id.* The attachment requirement "is made necessary for the safety of others who may purchase or extend credit, and the officer in whose hands his final process may come for execution." *Barnes v. Thompson*, 32 Tenn. 313, 1852 WL 1868, *2 (Tenn. 1852). This court has previously endorsed the general rule:

> "[F]ailure to describe particularly the property or the building or improvement on which the lien is claimed, or a mistake in the description of the property, may be corrected by amendment at least as long as the amended description keeps within the bounds included by the original."

Sequatchie Concrete Serv., Inc. v. Cutter Labs., 616 S.W.2d 162, 165 (Tenn. Ct. App. 1980) (quoting 57 C.J.S. *Mechanics' Liens* § 306(b). We therefore conclude that, under the circumstances of this case, WCRM should be allowed to amend the writ of attachment to more accurately describe the property to be attached.

IV. and V.

The defendants further assert that WCRM's claims should be dismissed because the complaint did not state the amount of the debt or demand as required under Tenn. Code Ann. §§ 66-11-126 and 29-6-113. Thus, the defendants argue, WCRM did not properly enforce its liens within 90 days of the notice of lien as required by Tenn. Code Ann. § 66-11-115(c).

As to indirect liens, where the lienor had no contract with the owner, subsection (2) of Tenn. Code Ann. § 66-11-126 required an affidavit as described in subsection (1): "setting forth the facts, describing the property, and making the necessary parties defendant." Subsection (2) also required that the writ of attachment be "accompanied by a warrant for the sum claimed." Tenn. Code Ann. § 66-11-126(2). Moreover, Tenn. Code Ann. § 29-6-113, regarding the proper issuance of an attachment, states that the plaintiff or the plaintiff's agent or attorney "shall make oath in writing, stating the nature and amount of the debt or demand, and that it is a just claim." The statutory affidavit requirements have been held to be jurisdictional. *New York Cas. Co. v. Lawson*, 24 S.W.2d 881, 884 (Tenn. 1930). Thus, without a proper affidavit/complaint, the writ of attachment is void for lack of subject matter jurisdiction. *Id.*

In the present case, the writ of attachment itself was not sworn or accompanied by a separate affidavit. It was, however, accompanied by the complaint, which included a verification signed by WCRM's executive vice-president/secretary making an "oath that the facts stated in the foregoing Complaint are true to the best of her knowledge, information and belief . . . ." A verification satisfies the requirement that the writ of attachment be supported by a sworn complaint or affidavit. *D.T.*

McCall, 796 S.W.2d at 463. But the complaint does not include one of the statutorily required statements: the amount of the liens claimed by WCRM. WCRM argues that this requirement was satisfied by a paragraph in the complaint listing the instrument numbers of the five notices of lien recorded in the office of the Davidson County Register of Deeds. Copies of the notices of lien are not attached to the complaint. Thus, there is no sworn statement as to the amount of the liens.[14]

The chancellor found that "WCRM's original Verified Complaint is sufficient and incorporates by reference each of the five (5) Notices of Claim of Lien by WCRM which are of public record." We respectfully disagree that the original complaint was sufficient to meet the statutory requirement of including a statement of the amount of the debt. As stated above, however, Tenn. Code Ann. § 29-6-124 allows for amendments to correct defects of form. We have concluded that WCRM's failure to include the debt amount in the verified complaint is a matter of form and not substance in this case since the complaint referenced by number the recorded liens, of which Pulte had received timely notice. Thus, the amended complaint corrected the defect.

VI.

The defendants' final argument is that the trial court erred in granting WCRM's motion for summary judgment because the hearing on the motion was held sooner than 30 days after the motion was filed in contravention of Tenn. R. Civ. P. 56.04 and the local rules of practice in Davidson County.

The defendants filed their motion for summary judgment on May 11, 2007. WCRM filed a response and countermotion for summary judgment on June 18, 2007. Both sides submitted extensive briefs and supporting affidavits. On July 2, 2007, the defendants filed a response to WCRM's countermotion asserting that the countermotion was not properly before the court because it had been filed on June 14, 2007,[15] only 22 days before the hearing date on July 6, 2007. The defendants filed a reply brief on July 5, 2007. It appears from the trial court's order in this case that the defendants' response or objection to WCRM's countermotion for summary judgment was not argued before the court. The order states that the case was before the court "upon Defendant's Motion for Summary Judgment, Plaintiff's Response to Defendants' Motion for Summary Judgment and Counter-Motion of Plaintiff for Summary Judgment." There is no ruling by the court on the defendants' objection. We consider the defendants' objection waived as it was not argued before the trial court. *See Sparks v. Metro. Gov't of Nashville*, 771 S.W.2d 430, 434 (Tenn. Ct. App. 1989). If the defendants had brought this matter to the trial court's attention, the court could have postponed the hearing. By failing to argue the point, the defendants waived this issue.

[14] Although the writ of attachment itself states the total lien amount, the writ is not a sworn statement.

[15] While the certificate of service on WCRM's response and countermotion was dated June 14, 2007, the document was not filed with the court until June 18, 2007.

CONCLUSION

The judgment of the trial court is modified in part and affirmed in part, and the case is remanded for further proceedings. Costs of appeal are assessed one half against the appellants and one half against the appellees.

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ANDY D. BENNETT, JUDGE