UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1274

September Term, 2014

RHEMA, LLC

v.

FORESITE, LLC

Meredith,
Woodward,
Leahy,

JJ.

Opinion by Leahy, J.

Filed: November 10, 2015

After completing significant renovations and improvements to certain real property owned in fee simple by Rhema, LLC, ("Rhema"), contractor Foresite, LLC, ("Foresite") sought a mechanic's lien on the property for payments due and owing pursuant to Maryland Code (1974, 2010 Repl. Vol.), Real Property Article ("RP") §§ 9-101 *et seq*. The case was filed in the Circuit Court for Prince George's County. After two unsuccessful attempts to personally serve Rhema's resident agent with the circuit court's show cause order, Foresite served the order and related documents on SDAT in accordance with the Maryland Rules. Rhema failed to make a timely response to the mechanic's lien complaint. Subsequently, the circuit court entered a final mechanic's lien order.

Rhema filed a motion to vacate the order asserting that it did not receive notice of the lien until well after the time to respond had expired, and that, under the particular circumstances of this case, substitute service through SDAT violated Rhema's constitutional rights to due process. The circuit court, by the Honorable Toni E. Clarke, denied Rhema's motion to vacate. Rhema now presents the following questions for review:

1) Did substituted service on SDAT afford Rhema procedural due process by apprising Rhema of the pendency of the action and afford Rhema an opportunity to present its defenses? Was service on SDAT of such nature as reasonably calculated to convey the required information to Rhema and afford Rhema a reasonable time to make an appearance?

2) Did the Circuit Court err in entering a Final Mechanic's Lien Order when Rhema was not the "Owner" under Maryland law, Foresite's contract was with Ambondem, and Ambondem was not a party to Foresite's Petition?

Based upon the facts of this case, we conclude that service on SDAT in accordance with the Maryland Rules satisfied the requirements of due process. Further, as the record contains no facts to establish that Ambondem, LLC, had a tenancy "for life or for years"

on the subject property, or that Rhema is not the "owner" as contemplated under Maryland's mechanic's lien law, we hold that the court did not err, abuse its discretion, or deny Rhema due process rights in entering the final mechanic's lien order, or in deciding not to vacate the order.

BACKGROUND

On or about June 27, 2011, Rhema acquired, in fee simple, the parcel of land—as well as the buildings and improvements thereon—at 7823 Parston Drive in Prince George's County "known as Lots 2 through 5, Block 'A' as shown on a subdivision plat entitled 'Forestville Commercial Center' and recorded among the Land Records . . . in Plat Book WWW 77 at Page 58" (the "Property"). Ten days earlier, according to SDAT records, Mr. John Foretia (organizer and sole member of Rhema), filed Articles of Organization for Ambondem, LLC ("Ambondem") on June 17, 2011. Mr. Foretia was the organizer, sole member, and resident agent of both Rhema and Ambondem.

On May 10, 2013, Foresite entered into a "Building Construction /Renovation Agreement" entitled "Ambondem Catering Center, Forestville, Maryland." The agreement provided that it was "[b]y and between Foresite LLC . . . hereinafter referred to as 'Builder', and John Foretia of Ambondem, LLC . . . (hereinafter referred to as 'Owner')." The scope of the contract was articulated as follows:

> The Builder shall furnish to the Owner all of the labor and material required for the remodel / renovation of a part of the existing building at 7823 Parston Dr. Forestville, MD 20747 and proposed as Ambondem Catering Center, according to the plans and specifications i.e.[,] Permitted Set of drawings as approved by Prince George's County, subject only to tolerances and deviations customary in the building industry as well as changed specifications agreed by the owner.

The contract and related documents were executed by John Foretia and portions of the agreements to be initialed by the "Owner" were initialed "JF." The record reflects that no interest in the real property was ever conveyed to Ambondem. Additionally, there is no evidence of a lease agreement or other agreement establishing Ambondem's tenancy at 7823 Parston Drive.

The 2012 Application for Plan Examination and Permit, filed in the Prince George's County Permit Office, listed Rhema and Mr. Foretia as the "Property Owner." "Ambondem Catering Ctr." is listed as "Occupant." Similarly, the Prince George's County commercial use permit, dated April 16, 2013, listed Rhema, LLC as the property owner.

On or about November 7, 2013, an AIA Certificate, providing that work on the Ambondem Catering Center project was 75-80% complete and "conform[ed] to the applicable building codes and building standards in use," was issued by Landis Group Architects. At that point, Foresite had substantially completed improvements on the property including, but not limited to, concrete slab construction; extensive metal stud framing; installation of customs doors, windows, flooring, interior finishes; and fire suppression, plumbing, mechanical, and electrical systems. The Materials and Equipment Expense Summary, submitted by Foresite along with its complaint, lists expenses in the amount of $374,182.49 for, among other things, equipment rentals and building supplies.

On or about December 31, 2013, Foresite mailed copies of a letter entitled "Notice to Owner or Owner's Agent of Intention to Claim a Lien" to Rhema, Ambondem, and Mr.

Foretia. Certified mail return receipts indicate that the letters to Rhema and Mr. Foretia were received and signed for on January 9, 2014. The intention letter stated:

> Foresite, LLC, did work and furnished materials for or about the building generally designated or briefly described as Ambondem Catering Center, located at and within 7823 Parston Drive, Forestville, Maryland 20747. . . .
>
> The total amount earned under Foresite, LLC's undertaking to the date hereof is $1,532,846.73 of which $808,221.38 is due and unpaid as of the date hereof. The work done or materials provided were as follows: Foresite, LLC provided general contracting services and related labor materials and equipment for the renovation and retrofit of the above referenced building into use as a banquet catering hall, kitchen and associated ancillary uses, included but not limited to the furnishment of demolition, concrete slab, metal stud framing . . . . Foresite, LLC furnished the said labor, materials and equipment from May 12, 2013 through and including November 11, 2013. Foresite, LLC furnished the above described labor, materials, equipment and services to Rhema, LLC, to and through its agents John Foretia and/or Ambondem, LLC.

On March 7, 2014, Foresite filed a petition to establish and enforce a mechanic's lien against the Property and averred, *inter alia*, that Rhema was the owner of the Property at which Foresite furnished "repair, rebuilding and improvement of [the] building to the extent of 25 [percent] of its value or greater." The petition stated "[t]he total amount claimed by Foresite to be due from [Rhema], less all credits recognized by Foresite, is $808,221.38." In addition, Foresite's petition averred that "[t]he said labor and materials were furnished to [Rhema], both directly and via its agents Ambondem LLC and/or John Foretia." In response to Foresite's petition, the Circuit Court for Prince George's County, entered a Show Cause Order on March 13, 2014, which provided, in part:

> **ORDERED**, that the Respondent, Rhema, LLC (hereinafter "Owner" or "Respondent"), as the owner or purported owner of the said land, property and improvements, is directed to show cause by filing a Counter-Affidavit or Verified Answer on or before the 11th day of April, 2014, why a lien for the

> amount claimed should not attach upon the land, improvements and buildings described in the Petition, provided that a copy of the Order together with copies of the pleadings and exhibits filed shall have been served on the Respondent by the 4th day of April, 2014, and it is
>
> **FURTHER ORDERED**, that a show cause hearing will be held in this case on the 18th day of April, 2014, at 9:00 a.m., which date is not later than 45 days from the date of this Order[.]

Ida Manly, Ann Bollino, and Stephen Folcher executed an Affidavit of Good Faith Attempts (filed April 17, 2014) as employees of and on behalf of Monumental Process Servers, Inc. In the affidavit, the process servers attest that the show cause order and related materials were presented on two separate occasions to an individual at 5007 Ashford Drive, Upper Marlboro, Maryland 20772 (the address of John Foretia, and the listed resident agent address for Rhema). On April 2, 2014, at 8:30 p.m., Mr. Folcher went to the address, spoke with an individual who claimed to be Mr. Foretia's son, and was informed that Mr. Foretia would be in the following evening. Then on April 3, 2014, at 8:45 p.m., another process server, Ms. Bollino, returned to the address, spoke with a man who indicated that Mr. Foretia was in, but who later returned to indicate that Mr. Foretia was not in and that no one present would accept service on his behalf. The affidavit concludes with the statement, "Monumental believes that the Resident Agent is evading service."

According to the affidavit of SDAT Administrative Officer Denise Spigner, on the next day, April 4, 2014, service of process for Rhema was accepted by the department pursuant to Maryland Rule 2-124(o) or Rule 3-124(o). In accordance with CJP § 6-307, SDAT forwarded service to Rhema on April 10, 2014, via certified mail. Attached to the affidavit is a copy of the U.S. Postal Service tracking information for the certified mail in question, showing that it arrived at the Capital Heights sort facility on April 11, 2014,

where it was processed for delivery to the address in Upper Marlboro on April 12, 2013. On April 12, the tracking information sheet shows "Notice Left (No Authorized Recipient Available)." Subsequent entries on May 14 and 20 mark the status of the certified mail as "Unclaimed."

On April 18, 2014, counsel for Foresite, along with three process servers from Monumental Process Servers, Inc., appeared in the circuit court for the Show Cause Hearing. No one appeared on behalf of Rhema. Foresite also filed a memorandum that day in support of the immediate entry of a final mechanic's lien. Foresite averred that Rhema was properly served on April 4, 2014, via substituted service on SDAT and that, because no counter-affidavit or verified answer to Foresite's petition had been filed, Rhema had forfeited its right to a show cause hearing. Following the hearing, on April 18, 2014, the circuit court entered an order establishing a mechanic's lien in the amount of $808,221.38 plus costs. The court directed that, unless the lien amount was paid on or before May 16, 2014, the "land and improvements shall be sold" and the court appointed Joseph L. Katz, Esq. as trustee to complete the sale.

According to its own filings, Rhema first became aware of the mechanic's lien when it received a copy of the circuit court's final order on April 29, 2014. In response, Rhema filed a motion to vacate on May 8, 2014. In its memorandum in support of the motion to vacate, Rhema maintained that Foresite "fail[ed] to perform the work provided for in the

Contract" and engaged in "fraudulent actions of billing [Rhema] for work that it did not perform."[1] Regarding service of process, Rhema averred that:

> [Foresite] on April 4, 2014, purportedly served [SDAT] pursuant to Rule 1-124(o)(ii) leaving SDAT less than 5 business days to provide notice to [Rhema] of the filing before the expiration of the April 11, 2014 filing deadline. [Rhema], in fact, did not receive any notice from [Foresite] or SDAT of the filing of the petition and/or of the Court's Show Cause Order in advance of the April 11th filing deadline.

Rhema further argued that, under the circumstances of this case, service pursuant to 2-124(o) violates due process.

The next day, May 9, 2014, Rhema filed an answer to Foresite's petition for mechanic's lien. Rhema asserted as affirmative defenses, *inter alia*, that Foresite was not entitled to a mechanic's lien because Foresite "failed to abide by the contract's dispute resolution procedures," had not "substantially completed its work under that contract," and "seeks payment for work not ordered or authorized by [Rhema]." Rhema requested that Foresite's petition be dismissed with prejudice and that Foresite be ordered to pay all costs.

Foresite filed an opposition to the motion to vacate on May 27, 2014, and argued that

> [Rhema] was properly and correctly served via service upon [SDAT] on April 4, 2014 for one simple and straightforward reason – *because [Rhema] did not make itself available for direct service as required.* Now, having initially avoided direct service, [Rhema] realizes that it is much worse off

[1] On March 5, 2014, Rhema filed an action against Foresite in the Circuit Court for Prince George's County, Case No. CAL1405497. In that breach of contract action, Rhema charged, *inter alia,* that Foresite and its managing member, Anwar Mahmood, failed to perform the work as provided for in their contract for construction of the Ambondem Catering Center, engaged in fraudulent billing, and failed to pay subcontractors and other vendors.

> th[a]n had it simply made itself available for service the first time around, and essentially requests that the Court grant it a second chance.

(Emphasis in original). Foresite maintained that, in the absence of a timely answer or responsive affidavit, the circuit court was statutorily bound to accept all statements of fact within its petition as admitted and, absent any genuine dispute of material fact, establish the requested lien. Foresite further asserted that service on SDAT is constitutionally sufficient in a mechanic's lien action.

On June 6, 2014, Rhema filed a response to Foresite's opposition arguing, *inter alia*, that Foresite's petition was facially defective, and that Rhema was denied a meaningful opportunity to respond to the show cause order because SDAT did not attempt to transmit the process documents to Rhema until after the deadline for response set by the circuit court had passed. An order granting Rhema's request for a stay of enforcement of the final mechanic's lien "until such time as th[e] court enters its decision of [Rhema's] Motion to Vacate" was entered on June 9, 2014.[2] The court denied Rhema's request for a protective order.

In its memorandum and order denying Rhema's motion to vacate, entered on June 20, 2014, the circuit court found that service was proper and explained:

> When two good faith attempts, on two separate days, have been made to serve the resident agent of a limited liability company prove unsuccessful, MD Rule 2-124(o) permits service upon SDAT. Here, [Foresite] filed an Affidavit of Good Faith Attempts as Exhibit #1 to its opposition stating that [Foresite] tried unsuccessfully on April 2, 2014 and April 3, 2014 to serve

[2] On June 17, 2014, Foresite filed a surreply, reiterating that three process servers had affirmed their belief, under oath, that Mr. Foretia had purposefully evaded service, and that, under the Maryland Rules, substitute service through SDAT is "equivalent to personal service," and constitutionally sufficient.

> [Rhema's] resident agent. Exhibit #3 to [Foresite's] Motion to Strike Untimely Answer clearly shows that after service was properly made on SDAT, the summons and complaint were forwarded to [Rhema] by SDAT, but that the summons and complaint were returned to SDAT as "unclaimed." Thus, [Foresite] has shown that it complied with the requirements of MD Rule 2-124(o), and therefore service was proper, appropriate, and within the bounds of MD Rules 2-121 and 12-304.

On July 2, 2014, Rhema filed a Notice of Appeal from the denial of its motion to vacate. On July 10, Rhema sought a motion to stay enforcement of the mechanic's lien pending appeal. The stay was granted on July 14, 2014, on the condition that Rhema post a bond in the amount of $800,000.00.

DISCUSSION

Standard of Review

We review a decision of the circuit court to establish and enforce a mechanic's lien under the standard articulated in Md. Rule 8-131(c), which provides:

> When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

Md. Rule 8-131(c).

The 'Mechanics' of the Lien

The right to a mechanic's lien is presented in RP § 9-102, establishing that

> [e]very building erected and every building repaired, rebuilt, or improved to the extent of 15 percent of its value is subject to establishment of a lien in accordance with this subtitle for the payment of all debts, without regard to the amount, contracted for work done for or about the building and for materials furnished for or about the building. . . .

The requisites for a petition to establish a mechanic's lien are enumerated in RP § 9-105.[3]

After a conforming petition is filed, the circuit court reviews the pleadings and documents,

[3] RP § 9-105, provides:

(a) In order to establish a lien under this subtitle, a person entitled to a lien shall file proceedings in the circuit court for the county where the land or any part of the land is located within 180 days after the work has been finished or the materials furnished. The proceedings shall be commenced by filing with the clerk, the following:

(1) A petition to establish the mechanic's lien, which shall set forth at least the following:
   (i) The name and address of the petitioner;
   (ii) The name and address of the owner;
   (iii) The nature or kind of work done or the kind and amount of materials furnished, the time when the work was done or the materials furnished, the name of the person for whom the work was done or to whom the materials were furnished, and the amount or sum claimed to be due, less any credit recognized by the petitioner;
   (iv) A description of the land, including a statement whether part of the land is located in another county, and a description adequate to identify the building; and
   (v) If the petitioner is a subcontractor, facts showing that the notice required under § 9-104 of this subtitle was properly mailed or served upon the owner, or, if so authorized, posted on the building. If the lien is sought to be established against two or more buildings on separate lots or parcels of land owned by the same person, the lien will be postponed to other mechanics' liens unless the petitioner designates the amount he claims is due him on each building;
(2) An affidavit by the petitioner or some person on his behalf, setting forth facts upon which the petitioner claims he is entitled to the lien in the amount specified; and
(3) Either original or sworn, certified, or photostatic copies of material papers or parts thereof, if any, which constitute the basis of the lien claim, unless the absence thereof is explained in the affidavit.

(b) The clerk shall docket the proceedings as an action in equity, and all process shall issue out of and all pleadings shall be filed in the one action.

and, if the court determines that a lien should attach, it must then issue an order directing the property owner to show cause within 15 days why the lien should not attach. RP § 9-106. Pursuant to Maryland Rule 12-304(b)(2), the show cause "order, together with copies of the pleadings and exhibits filed, shall be served on the defendant in the manner provided by Rule 2-121."

The court's show cause order must inform the owner that s/he may appear and present evidence or may file a counter-affidavit at or before the expiration of the 15 day period. RP § 9-106. Additionally, the owner must be notified that "[i]f he fails to appear and present evidence or file a counter-affidavit, the facts in the affidavit supporting the petitioner's claim shall be deemed admitted and a lien may attach to the land or buildings described in the petition." RP § 9-106(a)(1)(ii). The failure of the owner to file an opposing affidavit constitutes an admission of all facts alleged in the petitioner's affidavit. RP § 9-106(a)(2). Finally, RP § 9-106(b)(1) provides:

> If the pleadings, affidavits and admissions on file, and the evidence, if any, show that there is no genuine dispute as to any material fact and that the lien should attach as a matter of law, then a final order shall be entered establishing the lien for want of any cause shown to the contrary. Further, if it appears that there is no genuine dispute as to any portion of the lien claim, then the validity of that portion shall be established and the action shall proceed only on the disputed amount of the lien claim.

I. Substitute Service under Md. Rule 2-124(o).

First, Rhema argues that substitute service via SDAT was constitutionally insufficient because Rhema did not learn of Foresite's petition until after the circuit court had entered the final order establishing the mechanic's lien. Rhema maintains that service

on SDAT did not provide Rhema with adequate notice and failed to afford Rhema an opportunity to respond.

The notice required by law prior to the imposition of a mechanic's lien on real property is governed, initially, by Maryland Rule 12-304, which provides:

> (b)(1) *Entry; Contents.* If the court determines that there is a reasonable ground for the lien to attach, it shall enter an order directing the defendant to file an answer under oath on or before a date indicated in the order, showing cause why a lien for the amount claimed should not attach to the land described in the complaint, provided that a copy of the order together with copies of the pleadings and exhibits filed shall have been served on the defendant by the deadline for service specified in the order. . . .
>
> (2) *Service.* **The order, together with copies of the pleadings and exhibits filed, shall be served on the defendant in the manner provided by Rule 2-121.**

(Emphasis added). Rule 2-121, in turn, addresses in personam service but provides:

> **(d) Methods Not Exclusive.** The methods of service provided in this Rule are in addition to and not exclusive of any other means of service that may be provided by statute or rule for obtaining jurisdiction over a defendant.

Service on SDAT is one of the "other means . . . provided by statute or rule" pursuant to Maryland Rule 2-124(o),

> **Service may be made** upon a corporation, limited partnership, limited liability partnership, limited liability company, or other entity required by statute of this State to have a resident agent **by serving two copies of the summons, complaint, and all other papers filed with it, together with the requisite fee, upon the State Department of Assessments and Taxation if** (i) the entity has no resident agent; (ii) the resident agent is dead or is no longer at the address for service of process maintained with the State Department of Assessments and Taxation; or **(iii) two good faith attempts on separate days to serve the resident agent have failed.**

(Emphasis added).

There is no dispute in this case that the order, pleadings, and exhibits were properly served on SDAT on April 4, 2014. Although Rhema accuses Foresite of deliberately waiting until 3 days before the service deadline to begin attempting to serve Rhema, no credible argument has been presented that Foresite failed to follow the required rules and procedures. Rhema maintains, however, that service of the show cause order through SDAT did not comport with the requirements of due process. We disagree.

"[W]hen the resident agent cannot be located according to SDAT records, alternative service on SDAT has been deemed proper." *Thomas v. Rowhouses, Inc.*, 206 Md. App. 72, 86 (2012). In *Barrie-Peter Pan School, Inc. v. Cudmore*, 261 Md. 408, 409-10 (1971), the Court of Appeals addressed the validity of substitute service on SDAT where the Sheriff of Montgomery County attempted to serve a summons on appellant Barrie-Peter Pan Schools, Inc. (directed to its resident agent). Three times, a private process server filed a return reflecting "(t)hat he made five separate attempts to effect service on said resident agent but was unable to contact her," and, thereafter, service was made upon SDAT. SDAT then, pursuant to rule, forwarded a copy of the declaration and summons to the corporation at its correct address in care of the resident agent by certified mail; however, that mailing was returned to SDAT by the post office marked "unclaimed." *Id.* Subsequently, default judgments totaling $23,400.00 were entered against the corporation and attachments were issued on its bank accounts. *Id.* The corporation filed a motion to vacate contending that *"*the judgment thus obtained is void because the corporation was 'without actual notice of suit.'" *Id.* at 410. The Court of Appeals, however, rejected that argument. Instead, the Court in *Barrie-Peter Pan School* looked to other jurisdictions with similar substitute

service statutes, and favorably quoted *Silva v. Crombie & Co.*, 44 P.2d 719 (1935) where the Pennsylvania court of appeals held:

> Appellee contends that such service was not completed, and not effective, unless the secretary of state notified appellee of such service as provided by [statute].
>
> With this contention of appellee we do not agree. The particular terms of our statute we deem decisive of the question. The service upon the secretary of state was effective to all intents and purposes as if made upon the president or head officers of the corporation. If the Legislature had desired to make the service effective only when the secretary of state had notified such corporation, it could have so stated in plain language.

261 Md. at 413-14 (quoting *Silva*, 44 P.2d at 719). Reaching a similar conclusion regarding Maryland's substitute service rule, the Court of Appeals then declared:

> By the law of this state, the state of its incorporation, [SDAT] was thus conclusively presumed to have been designated as the true and lawful attorney of the corporation to accept service of process. It clearly appears that legitimate efforts were made to notify the defendant corporation of this action and that those efforts were by means reasonably calculated to bring the attention of the corporation to the pendency of the proceeding. We do not regard the failure of the corporation to claim from the post office the notice admittedly sent to it by [SDAT] as invalidating what under these circumstances was an otherwise valid service of process.

Barrie-Peter Pan School, 261 Md. at 421.

Rhema cites to no authority for its proposition that substitute service on SDAT in a mechanic's lien case fails to satisfy the requirements of due process. Plainly, service under Rule 2-124(o) is generally found to comport with the requirements of due process. As in *Barrie-Peter Pan School*, this is true even where the property owner failed to receive notice through its own fault by failing to claim its certified mail. 261 Md. at 421. Moreover, the Court of Appeals has, on multiple occasions, stated "that the mechanic's lien law should not be construed in such a way as to make the burden on the claimant so difficult as

effectively to withdraw the remedy that the Legislature has clearly provided." *Winkler Const. Co. v. Jerome*, 355 Md. 231, 252 (1999) (citing *Reisterstown Lumber v. Tsao,* 319 Md. 623, 631 (1990)).

In the present case, all parties acknowledge that both Rhema and Mr. Foretia received the "Notice to Owner or Owner's Agent of Intention to Claim a Lien" on or about January 9, 2014. The uncontradicted affidavit of Monumental Process Servers, Inc., establishes that the show cause order and related materials were presented to an individual at the address of the resident agent for Rhema on two separate occasions—April 2 and 3, 2014. After "two good faith attempts on separate days to serve the resident agent [] failed," service of process for Rhema was accepted by SDAT on April 4, 2014. *See* Md. Rule 2-124(o). In accordance with CJP § 6-307, SDAT forwarded service to Rhema on April 10, 2014, via certified mail. Rhema, however, failed to accept delivery or claim the certified mail. Although Rhema argues that, even if it had claimed the certified mail from SDAT, it would have been too late to file a responsive affidavit, we note that nothing in our rules precluded Rhema from appearing at the scheduled hearing on April 18, 2014, to assert its defenses.

Here, there is no dispute that the applicable rules for service of the show cause order and related materials were followed, and Rhema presents no credible argument that the faithful application of those rules resulted in a denial of due process. We hold that the circuit court did not err in finding that Foresite has shown that it complied with the requirements of MD Rule 2-124(o), and therefore service was proper, appropriate, and within the bounds of MD Rules 2-121 and 12-304.

II. Owner Under RP § 9-101

Next, Rhema argues that the circuit court erred in entering the mechanic's lien because the contract for improvements to the Property was between Ambondem and Foresite, and because Rhema "was not the 'Owner' under Maryland Law." Rather, they claim that, as a tenant, Ambondem is the "owner" for the purposes of establishing a mechanics lien.

Foresite counters that its "sworn and uncontroverted averments" establish that it "provided its labor and materials to Rhema through [Rhema's] agents John Foretia and/or Ambondem." Foresite argues that "Rhema never proffered documentary or even testimonial proof of a tenancy" and, thus, Rhema is the owner under the lien law. Foresite further argues that Rhema acknowledged that it was a party to the contract with Foresite when Rhema filed a breach of contract action against Foresite under its own name.

As Rhema acknowledged in its brief, RP § 9-101(f) states that "'Owner' means the owner of the land except that, when the contractor executes the contract with a tenant for life or for years, 'owner' means the 'tenant.'" However, nothing has been presented to indicate that Ambondem is actually a tenant at the property. There is no lease agreement in the record; nor is there any affidavit affirming the existence of one. Likewise, there is no indication that any rights in the Property were conveyed to Ambondem in any manner. Thus, there are no facts in the record to establish that a "tenant for life or for years" exists on the Property. Accordingly, under RP § 9-101, "owner" means the owner of the land, Rhema.

In its May 8, 2014, memorandum in support of its motion to vacate, Rhema failed to assert that it was not the owner or that it was not a party to the contract for the Project. Following Foresite's response to its motion to vacate, Rhema changed course. In its June 6, 2014, response to Foresite's opposition to the motion to vacate, Rhema argued that it was not in privity with Foresite, that the contract was with tenant Ambondem, and that there was, therefore, no basis to establish a mechanics' lien against Rhema's property. Rhema still made no proffer of evidence of a tenancy nor did it provide any affidavit to that effect. At the time of the June 20, 2014, ruling on the motion to vacate, there was no evidence before the court tending to establish that Rhema was not the owner under RP § 9-101(f).

"It is an accepted rule that where a plaintiff has established a *prima facie* case [for a mechanic's lien], and the defendant seeks to support his defense by facts which are or ought to be within his knowledge, the burden shifts to him." *Cottage City Mennonite Church, Inc. v. JAS Trucking, Inc.*, 167 Md. App. 694, 706 (2006) (quoting *District Heights Apartments, Section D-E, Inc. v. Noland Co., Inc.,* 202 Md. 43, 50-51 (1953)). In the present case, we cannot say that the circuit court erred or abused its discretion where there was no evidence before it to contradict Foresite's claim for a statutory mechanic's lien.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED.

COSTS TO BE PAID BY APPELLANT.