[Cite as *Eng. Excellence Inc. v. Northland Assoc., L.L.C.*, 2011-Ohio-3397.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Engineering Excellence Incorporated,	:	
Plaintiff-Appellee,	:	
v.	:	No. 11AP-249 (C.P.C. No. 06CVE-11-14910)
Northland Associates, LLC,	:	(ACCELERATED CALENDAR)
Defendant-Appellant,	:	
Retail Ventures, Inc. et al.,	:	
Defendants-Appellees.	:	

D E C I S I O N

Rendered on July 7, 2011

Roetzel & Andress, *LPA*, *Thomas L. Rosenberg*, and *Klodiana Basko*, for appellant.

Vorys, *Sater*, *Seymour and Pease*, *LLP*, and *William A. Sieck*, for appellee Retail Ventures, Inc.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} Defendant-appellant, Northland Associates, LLC ("Northland"), appeals the Franklin County Court of Common Pleas' entry of summary judgment in favor of

defendant-appellee, Retail Ventures, Inc. ("RVI"), on Northland's cross-claims alleging the right to indemnity and/or contribution from RVI. For the following reasons, we affirm.

{¶2} This action arises out of a construction project to convert a portion of the former Northland Mall in Columbus, Ohio, to office space. Effective February 11, 2004, Northland, which owns the building located at 1649 Morse Road (the "building"), entered into an Amended and Restated Lease Agreement (the "Lease") with RVI, by which it agreed to lease the building to RVI for 20 years, for use as RVI's corporate headquarters. The Lease required Northland to perform, or cause to be performed, construction and improvements to the building, including interior improvements to the first, second, and third floors, as well as the basement; RVI's obligation to pay rent was to commence upon completion of construction. While Northland was responsible for general construction costs under the Lease, RVI was required to pay the costs of any change orders it requested by depositing those costs with Northland's construction lender, Charter One Bank, N.A. ("Charter One"). During the year after the effective date of the Lease, RVI issued four change orders, all of which Northland approved, and RVI transmitted completion deposits for each change order to Charter One.

{¶3} Northland contracted with Construction Plus, Inc. ("Construction Plus") to serve as the general contractor on the construction project and recorded a notice of commencement pursuant to R.C. 1311.04. Exhibit C to the Lease, the "Construction Exhibit," specifically acknowledged the construction contract between Northland and Construction Plus. Construction Plus subcontracted portions of the project to Engineering Excellence, Inc. ("Engineering Excellence"), Roehrenbeck Electric, Inc.

("Roehrenbeck"), Knollman Construction, LLC ("Knollman"), and Paint Masters, Inc. ("Paint Masters") (collectively, "subcontractors").

{¶4} On February 8, 2005, Northland and RVI executed a Confirmation of Substantial Completion, which stated, "Substantial Completion has occurred with respect to all of the basement (63,520 square feet), all of the first floor, except the dock area (99,960 square feet)[,] and all of the second floor (93,060 square feet) and * * * the Rent Commencement Date for 256,540 square feet is March 13, 2005."

{¶5} Prior to the completion of construction, RVI decided not to occupy the building, and, Northland and RVI signed a letter (the "Letter Agreement"), in which they agreed to modify certain terms of the Lease, effective February 18, 2005. In the Letter Agreement, the parties agreed that Northland would cease construction on the third floor, which, for purposes of the Lease, was deemed completed and delivered to RVI. The parties also agreed that RVI's rent obligation with respect to the entire building would commence March 13, 2005. Nevertheless, Northland agreed to complete certain construction work, including punch-list items, work described on an attached exhibit, and work on the building systems located on the third floor as required by the Lease in order to complete the balance of the building. In an email dated February 18, 2005, William M. Kahn ("Kahn"), Northland's Vice President, informed Construction Plus that the "work stoppage on the third floor does not affect any other work we are required to do under the Lease and Construction Documents."

{¶6} The Letter Agreement authorized RVI to sublet the building and to initiate change orders in connection with a sublease. The necessity of Northland's approval of

any sublease and/or of any subtenant change order, and the process governing approval, were to be determined in accordance with the Lease. As with change orders under the Lease, RVI was required to deposit the cost of any subtenant change order with Charter One "for use in the same manner as monies heretofore deposited by [RVI] with such lender in connection with this project." Costs of a subtenant change order were to include a monthly Landlord supervision fee of $25,000 and the project architect's fee. The Letter Agreement states that none of the cost of a subtenant change order is Northland's obligation and that "if any dispute or other controversy arises with respect to the performance of the Subtenant Change Order, [RVI] shall resolve same directly with Construction Plus and shall not seek recovery from [Northland] with respect thereto." RVI subsequently submitted two subtenant change orders and undisputedly deposited the costs of those change orders with Charter One. It is also undisputed that Northland disbursed the funds deposited by RVI to Construction Plus.

{¶7} Between March and June 2006, each of the subcontractors filed a mechanic's lien based on Construction Plus's alleged failure to pay amounts due under the various subcontracts. On November 13, 2006, plaintiff, Engineering Excellence, filed this action in the Franklin County Court of Common Pleas for foreclosure of its mechanic's lien and unjust enrichment. The complaint named the following as defendants: Northland, RVI, Charter One, Paint Masters, Knollman, Roehrenbeck, the state of Ohio, and the Franklin County Treasurer. In response, Paint Masters, Knollman, and Roehrenbeck filed counterclaims and cross-claims to foreclose on their

own mechanic's liens. Northland and RVI filed cross-claims, each claiming that it was entitled to indemnity and/or contribution from the other. Northland also sought damages from RVI for any loss it would suffer if the trial court ordered foreclosure. The central issue in Northland and RVI's cross-claims is which party is ultimately responsible for liability on the subcontractors' mechanic's liens.

{¶8} In August 2007, Engineering Excellence and Northland filed motions for partial summary judgment, and RVI filed a motion for summary judgment on Northland's cross-claims. On January 7, 2010, the trial court denied Engineering Excellence and Northland's motions and granted RVI's motion for summary judgment. The trial court determined that Northland, not RVI, is responsible for payment of any valid mechanic's lien. RVI voluntarily dismissed its cross-claim against Northland on March 5, 2010, and, on March 30, 2010, the trial court dismissed Northland's cross-claims against RVI with prejudice, consistent with its January 7, 2010 decision. In its judgment entry, the trial court expressly determined that there was no just reason for delay.

{¶9} Northland filed a notice of appeal from the trial court's March 30, 2010 entry, but this court dismissed that appeal for lack of a final appealable order. See *Eng. Excellence, Inc. v. Northland Assoc., LLC*, 10th Dist. No. 10AP-402, 2010-Ohio-6535. Despite the trial court's inclusion of Civ.R. 54(B) language in its March 30, 2010 entry, we concluded that the entry did not qualify as a final order under R.C. 2505.02 because the trial court had not determined the validity of the mechanic's liens or the existence of any liability arising out of the construction project. We observed that, until the

subcontractors establish a right to relief, the question of whether Northland or RVI is ultimately responsible is moot.

{¶10} While Northland's previous appeal was pending, Roehrenbeck dismissed its counterclaims and cross-claims as a result of a settlement with Northland. Subsequently, Paint Masters and Knollman likewise voluntarily dismissed their counterclaims and cross-claims. Finally, on remand, Engineering Excellence filed a notice, dismissing its claims with prejudice, as a result of a settlement with Northland. At that point, no claims remained pending in the trial court, and the March 30, 2010 entry became a final, appealable order. See *Denham v. New Carlisle*, 86 Ohio St.3d 594, 1999-Ohio-128.

{¶11} Northland has now filed a second notice of appeal, and this court has granted Northland's motion to submit this appeal upon the briefs filed and oral arguments given in Northland's first appeal. Northland presently reasserts the following assignments of error:

> 1. The trial court committed error when it granted summary judgment to [RVI] and denied [Northland's] Motion for Partial Summary Judgment and ruled that RVI is not responsible for payment of the claims of subcontractors [Knollman, Paint Masters, and Roehrenbeck] pursuant to the Letter Agreement of February 18, 2005, entered into between RVI and Northland.
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> 2. The trial court committed error when it granted Summary Judgment to RVI and denied Northland's Motion for Partial Summary Judgment and ruled that RVI was not liable to indemnify Northland for any and all liability Northland may have to the subcontractors, [Engineering Excellence, Knollman, Paint Masters, and Roehrenbeck] pursuant to the Letter Agreement of February 18, 2005.

> 3. The trial court committed error when it granted Summary Judgment to RVI and denied Northland's Motion for Partial Summary Judgment when it did not find that RVI assumed responsibility for the mechanic's liens of the subcontractors, upon entering into the Letter Agreement of February 18, 2005.

Because they are interrelated, we address Northland's assignments of error together.

{¶12} We review a summary judgment de novo. *Koos v. Cent. Ohio Cellular, Inc.* (1994), 94 Ohio App.3d 579, 588, citing *Brown v. Scioto Cty. Bd. of Commrs.* (1993), 87 Ohio App.3d 704, 711. When an appellate court reviews a trial court's disposition of a summary judgment motion, it applies the same standard as the trial court and conducts an independent review, without deference to the trial court's determination. *Maust v. Bank One Columbus, N.A.* (1992), 83 Ohio App.3d 103, 107; *Brown*, at 711. We must affirm the trial court's judgment if any grounds the movant raised in the trial court support it. *Coventry Twp. v. Ecker* (1995), 101 Ohio App.3d 38, 41-42.

{¶13} Pursuant to Civ.R. 56(C), summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Accordingly, summary judgment is appropriate only under the following circumstances: (1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the non-moving party, reasonable minds can come to but one conclusion, that conclusion being adverse to the non-

moving party. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66. Because summary judgment is a procedural device to terminate litigation, courts should award it cautiously after resolving all doubts in favor of the non-moving party. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358-59, 1992-Ohio-95, quoting *Norris v. Ohio Std. Oil Co.* (1982), 70 Ohio St.2d 1, 2.

{¶14} The crux of this matter is whether the parties' written contracts placed upon RVI responsibility for the mechanic's liens filed by the subcontractors after execution of the Letter Agreement. The construction of a written contract is a matter of law for the court. *Alexander v. Buckeye Pipe Line Co.* (1978), 53 Ohio St.2d 241, paragraph one of the syllabus (superseded by statute on other grounds). When construing a contract, a court's primary objective is to ascertain and give effect to the parties' intent, which is presumed to reside in the contractual language. *Hamilton Ins. Servs., Inc. v. Nationwide Ins. Cos.,* 86 Ohio St.3d 270, 273, 1999-Ohio-162; *Kelly v. Med. Life Ins. Co.* (1987), 31 Ohio St.3d 130, paragraph one of the syllabus. We will give common words in a contract their ordinary meaning unless manifest absurdity results, or unless some other meaning is clearly intended, based upon the face of the contract. *Alexander* at paragraph two of the syllabus. In determining the parties' intent, a court must read the contract as a whole and give effect, if possible, to every part of the contract. *Foster Wheeler Enviresponse, Inc. v. Franklin Cty. Convention Facilities Auth.,* 78 Ohio St.3d 353, 361-62, 1997-Ohio-202. Further, a court may consider multiple documents together if they concern the same transaction. *Ctr. Ridge Ganley, Inc. v. Stinn* (1987), 31 Ohio St.3d 310, 314.

{¶15} The trial court determined that the language of the Lease and Letter Agreement is unambiguous, and neither Northland nor RVI argues otherwise on appeal. If a contract is clear and unambiguous, its interpretation is a matter of law, and there is no issue of fact to be determined. *Inland Refuse Transfer Co. v. Browning-Ferris Industries of Ohio, Inc.* (1984), 15 Ohio St.3d 321, 322. If no ambiguity exists, a court must simply apply the contract terms without resort to methods of construction or interpretation. *Mason v. Gaddis*, 10th Dist. No. 03AP-23, 2003-Ohio-4690, ¶8. Because we interpret unambiguous contracts as a matter of law, the resolution of contract disputes is particularly amenable to summary judgment. Id.

{¶16} To determine the parties' obligations under the Lease and the Letter Agreement, we turn to the specific, relevant language of those documents. Northland relies solely on the Letter Agreement in support of its cross-claims, but, because the Letter Agreement expressly confirms the Lease, we first look to that document.

{¶17} The Lease required Northland to perform or cause the performance of "Landlord's Work," defined as "those improvements to the Premises to be made pursuant to [the] Construction Exhibit, including any work to be performed pursuant to Change Orders." The Construction Exhibit, incorporated by reference into the Lease, sets forth terms and conditions relating to the construction. Under the Lease, RVI was permitted to submit construction change orders, but was required to pay approved change order costs, consisting of the net increase caused by or resulting from RVI's change orders. These were the only construction costs for which RVI was responsible.

Northland was responsible for the disbursement of amounts deposited by RVI with Charter One for change order costs.

{¶18} The Lease expressly addressed the parties' responsibilities for mechanic's liens and placed that responsibility on RVI in certain, limited situations. Specifically, Section 7 provides as follows:

> (a) Caused by Tenant. If, because of any act or omission of [RVI] or anyone claiming by or through [RVI], any mechanic's lien * * * shall be filed against the Premises or any portion thereof, [RVI], at its own cost and expense, shall cause the same to be discharged of record within sixty (60) days of the filing thereof; and [RVI] shall indemnify and save harmless [Northland] against and from all costs, liabilities, suits, penalties, claims and demands, including attorneys' fees, on account thereof.

RVI thus assumed responsibility for mechanic's liens only to the extent that they resulted from its own acts or omissions.

{¶19} We now turn to the Letter Agreement, which Northland and RVI executed after RVI decided not to occupy the building. In certain respects, the Letter Agreement modified the parties' contractual obligations under the Lease, but the parties also "ratif[ied] and confirm[ed] the Lease and agree[d] that nothing [in the Letter Agreement] shall be deemed a waiver of any of [RVI's] or, except to the extent expressly set forth herein, [Northland's], obligations under the Lease."

{¶20} The Letter Agreement modified Northland's construction obligations and established a commencement date for RVI's obligation to pay rent with respect to the entire building. In those respects, the Letter Agreement states, as follows:

> 2. Effective immediately, [Northland] will cease construction work on the third floor and the installation of the executive third floor elevator (collectively, the "Third Floor Work") and for all purposes of the Lease the third floor shall, as of the date hereof, be deemed fully completed and delivered to [RVI] and [RVI's] obligation to pay Base Rental with respect to the entire Building shall commence March 13, 2005; provided, however, that the Third Floor Work shall exclude such work to building systems located on the third floor as [Northland] may be obligated to perform pursuant to the Lease in order to complete the balance of the Building (the "Remaining Work")
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> 3. [Northland] will, in accordance with the Lease, promptly complete (with respect to space in and around the Building other than the Third Floor Work) punch list items, the work described on Exhibit A to this letter and the Remaining Work.
> * * *

{¶21} Despite the commencement of RVI's rent obligation, the Letter Agreement permitted RVI to issue a subtenant change order in connection with a sublease, subject to Northland's approval, if required under the Lease. Thus, the parties anticipated that RVI would begin to pay rent while construction proceeded, to ready the building for a subtenant. With respect to a subtenant change order, the Letter Agreement provides, in pertinent part, as follows:

> 5. * * * None of the costs of the Subtenant Change Order are a [Northland] obligation.
>
> * * *
>
> 7. Once the cost of the Subtenant Change Order * * * has been determined and prior to work commencing with respect to the Subtenant Change Order, such amount must be deposited by [RVI] with [Northland's] construction lender, Charter One Bank, for use in the same manner as monies heretofore deposited by [RVI] with such lender in connection with this project.

> * * *
>
> 9. Nothing related to the Subtenant Change Order shall affect [RVI's] obligations under the Lease and if any dispute or other controversy arises with respect to the performance of the Subtenant Change Order, [RVI] shall resolve same directly with Construction Plus and shall not seek recovery from [Northland] with respect thereto.

The Letter Agreement is silent with respect to indemnification and mechanic's liens, but expressly confirms and ratifies the parties' ongoing obligations under the Lease to the extent not expressly waived by the Letter Agreement.

{¶22} Northland does not dispute the unambiguous Lease language regarding mechanic's liens and admits that the parties continue to be bound by the provisions of the Lease. Under the Lease, RVI contractually assumed responsibility for mechanic's liens caused by RVI, i.e., liens filed "because of any act or omission of [RVI] or anyone claiming by or through [RVI]." Northland has not claimed, nor is there evidence to suggest, that the subcontractors' mechanic's liens were filed because of any act or omission by RVI. Thus, as the trial court appropriately determined, Section 7(a) of the Lease did not impose liability on RVI for the mechanic's liens. Northland, however, argues that the cause of the mechanic's liens is immaterial because the Letter Agreement, rather than the Lease, places liability for the mechanic's liens on RVI.

{¶23} Northland's cross-claims are premised on its assertion that the Letter Agreement places upon RVI all liability for the mechanic's liens filed by the subcontractors here and a duty to indemnify Northland against those liens. In fact, Northland argues that, upon execution of the Letter Agreement, RVI assumed all

obligations under the Lease. Specifically, Northland contends that paragraphs five and nine of the Letter Agreement make RVI liable for any dispute with respect to performance of the subtenant change orders, including mechanic's liens arising therefrom. Contrary to Northland's assertions, however, neither of those provisions establishes RVI's liability for the mechanic's liens at issue here.

{¶24} While paragraph five states that subtenant change order costs are not a landlord obligation, the disclaimer of those costs does not relieve Northland of statutory liability for properly-perfected mechanic's liens. Instead, it simply affirms that RVI was required to pay any increase in construction costs as a result of a subtenant change order. The Lease defines Change Order Cost as follows:

> **"Change Order Cost"** shall mean the net increase * * * in costs caused by or resulting from Change Orders requested by [RVI] (after reasonable efforts of the parties to minimize such costs). Such costs include, without limitation, architectural and engineering fees * * *, the six percent (6%) construction fee payable to [Construction Plus] under the Construction Contract and hard and soft construction costs. Change Order Costs shall be paid to [Northland] by [RVI] * * *.

Under the Letter Agreement, subtenant change order costs also included a landlord supervision fee and project architect fee. As with change orders under the Lease, for which Northland was not responsible, the Letter Agreement required RVI to deposit subtenant change order costs with Charter One "for use in the same manner as monies heretofore deposited by [RVI] with such lender in connection with this project." As between Northland and RVI, RVI was contractually responsible for the increase in construction costs as a result of subtenant change orders and was obligated to pay

those amounts to Northland, via Charter One. RVI does not dispute that fact and, in fact, paid those costs to Charter One.

{¶25} The Lease sets forth circumstances in which RVI was responsible for mechanic's liens arising out of the construction. By contrast, the Letter Agreement does not expressly address the allocation of responsibility regarding mechanic's liens. Unless expressly waived by the Letter Agreement, the parties' contractual obligations under the Lease are ongoing after the execution of the Letter Agreement. This includes the parties' agreement regarding responsibility for mechanic's liens. Thus, as RVI asserts, it remains responsible for only mechanic's liens that are filed because of an act or omission of RVI or another party claiming through RVI. Despite the allocation of costs between RVI and Northland, paragraph five of the Letter Agreement does not affect Northland's liability for mechanic's liens filed on its property.

{¶26} Northland also argues that the subcontractors' claims underlying the mechanic's liens constitute disputes with respect to performance of the subtenant change orders and that paragraph nine of the Letter Agreement requires RVI to resolve those disputes with Construction Plus and not seek recovery from Northland. In response, RVI disputes that the mechanic's liens stem from the subtenant change orders at all, but also argues that payment of the subcontractors did not involve performance of the subtenant change orders because the subcontractors were not parties to the subtenant change orders.

{¶27} First, the fact that the mechanic's liens were filed after the parties executed the Letter Agreement does not establish that the mechanic's liens arose from

the subtenant change orders. In fact, the documents attached to Kahn's affidavit in support of Northland's motion for summary judgment indicate that at least some of the subcontractors' claims relate to retainage and/or punch-list work, unrelated to the subtenant change orders.

{¶28} Moreover, we disagree that the subcontractors' claims, underlying their mechanic's liens, involve the performance of the subtenant change orders. *Lake Ridge Academy v. Carney* (Oct. 16, 1991), 9th Dist. No. 91CA005063, the case Northland cites for the proposition that payment is a performance issue, is distinguishable. *Lake Ridge Academy* involved a private-school enrollment contract, whereby the defendant agreed to be responsible for tuition, books, and supplies for a full academic year whether his child was absent, withdrew, was dismissed, or the defendant cancelled enrollment after August 1. When the defendant cancelled the contract after August 1 to enroll his child in a different school, Lake Ridge Academy sued for payment. The Ninth District Court of Appeals held that "Carney's performance under the contract is payment of the tuition; the Academy's performance is educating his child during the school year. The contract requires specific performance." Id. *Lake Ridge Academy* involved direct enforcement of a simple, payment-for-performance contract and a claim of breach by one contracting party against the other.

{¶29} More akin to *Lake Ridge Academy* would have been a breach of contract action by the subcontractors here against Construction Plus. Instead, the subcontractors seek to enforce their statutory mechanic's liens against Northland. Only RVI, Northland, and Construction Plus were signatories to the subtenant change orders,

and it cannot be said that payment of the subcontractors was an issue of performance of those orders, to which the subcontractors were not parties. RVI's performance obligation under the subtenant change orders was to pay the costs of those orders to Charter One, and RVI undisputedly satisfied that obligation. Accordingly, we agree with the trial court's rejection of paragraph nine of the Letter Agreement as a basis for holding RVI liable for the mechanic's liens or for holding RVI responsible for indemnifying Northland with respect to those liens.

{¶30} Northland also contends that RVI assumed all obligations under the Lease and Letter Agreement because Northland had completed its construction obligations, other than limited, defined work irrelevant to this appeal, by February 18, 2005. The trial court rejected Northland's argument that its work was complete as of February 18, 2005, and that only work related to the subtenant change orders remained, noting the Letter Agreement's acknowledgment of several items for which Northland remained responsible. We agree with the trial court's determination that, as expressly set forth in the Letter Agreement, Northland's construction obligations continued past February 18, 2005. Moreover, the Letter Agreement provided that, unless expressly stated therein, it did not waive any of Northland's obligations under the Lease. Kahn also acknowledged Northland's continuing obligations in his February 18, 2005 email. The Letter Agreement simply cannot be read as placing upon RVI all future liability, including liability for the mechanic's liens at issue here.

{¶31} Finally, Northland argues that waivers executed by the subcontractors after execution of the Letter Agreement eliminate the subcontractors' rights to assert a

lien through the date of the waivers. There is no doubt that a subcontractor may validly waive the statutory right to file a mechanic's lien. See *Steveco, Inc. v. C & G Invest. Assoc.* (Aug. 4, 1977), 10th Dist. No. 77AP-101. Here, Roehrenbeck provided lien waivers through June 14, 2005; Paint Masters provided lien waivers through June 17, 2005; Knollman issued lien waivers through July 22, 2005; and Engineering Excellence provided lien waivers through June 20, 2005. Based on the lien waivers, Northland argues that the Letter Agreement controls and places responsibility on RVI because all liability passed from Northland to RVI as of February 18, 2005. In response, RVI argues that the lien waivers are limited to specific payments received by the subcontractors and do not purport to cover all work through the date of the waivers. At least with respect to Engineering Excellence, the only subcontractor that moved for summary judgment, the trial court rejected Northland's reliance on the lien waiver. The question of whether and to what extent the lien waivers preclude the subcontractors' recovery on their mechanic's liens, however, is now moot because Northland has entered into a settlement agreement with each of the subcontractors, and the subcontractors have dismissed all of their claims with prejudice. Thus, the subcontractors' ability to recover has been determined. Nevertheless, because we have rejected Northland's contention that all liability passed from Northland to RVI as of February 18, 2005, upon execution of the Letter Agreement, we conclude that the existence of lien waivers post-dating the Letter Agreement does not demonstrate that RVI, rather than Northland, is liable for valid mechanic's liens.

{¶32} In conclusion, and for the foregoing reasons, we agree with the trial court that RVI is not contractually liable for the mechanic's liens filed by the subcontractors and is not contractually required to indemnify Northland against liability on those liens. Accordingly, we overrule each of Northland's assignments of error and affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BRYANT, P.J., and TYACK, J., concur.