

Circuit Court for Worcester County
Case No. C-23-CV-20-000097

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0867

September Term, 2020

INTERMOOR, INC.

v.

U.S. WIND INC.

Kehoe,
Gould,
Zic,

JJ.

Opinion by Gould, J.

Filed: September 10, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This action requires us to determine whether the Circuit Court for Worcester County has jurisdiction to impose and enforce a mechanic’s lien over a meteorological tower located on the Outer Continental Shelf (the “OCS”),¹ some ten nautical miles from the Maryland shoreline. The circuit court determined that it lacked jurisdiction and dismissed the mechanics’ lien action. The plaintiff appealed. We agree with the circuit court and affirm.

BACKGROUND AND LEGAL PROCEEDINGS

On July 29, 2019, InterMoor, Inc. (“InterMoor”) and U.S. Wind Inc. (“US Wind”) entered into a Master Service Agreement (the “Agreement”), under which InterMoor was appointed the prime contractor to transport and install a meteorological tower (the “Tower”) on the OCS. The Tower was to collect raw wind data for an offshore wind farm project located on the OCS (the “Project”). The Project was located on property in which US Wind held leasehold interests.² The Project was located approximately ten nautical miles from Ocean City. InterMoor was to be paid \$8,701,098 under the Agreement.

By letter dated September 26, 2019, US Wind informed InterMoor that it was terminating the Agreement, effective October 6, 2019. InterMoor contended that “the

¹ “The term ‘outer Continental Shelf’ means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 1301 of this title, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control[.]” 43 U.S.C. § 1331(a).

² US Wind’s leasehold interests existed pursuant to two Commercial Leases of Submerged Lands for Renewable Energy Development on the OCS, effective December 1, 2014.

value of [its] work, services, and/or materials provided” in connection with the transportation and installation of the Tower that remained unpaid totaled \$4,817,993.

On January 31, 2020, InterMoor sent a “Notice to U.S. Wind Inc. and the Bureau of Ocean Energy Management of InterMoor’s Inc.’s Intention to Claim a Lien” in the amount of \$4,817,993. After US Wind failed to pay, InterMoor filed a complaint for a mechanic’s lien, pursuant to Title 9 of the Real Property Article (“RP”) of the Maryland Annotated Code (1974, 2015 Repl. Vol.). InterMoor filed its complaint in the Circuit Court for Worcester County, the court physically closest to the Project. InterMoor asserted that the court could impose a mechanic’s lien on the Tower.

The circuit court issued an order dated July 29, 2020, requesting that InterMoor “supplement its Complaint as to whether this Court has jurisdiction to hear this matter and provide a basis for relief[.]” InterMoor filed a response explaining that, pursuant to 43 U.S.C. § 1333(a)(2)(A) of the Outer Continental Shelf Lands Act (“OCSLA”),³ jurisdiction was appropriate in Worcester County. InterMoor contended that OCSLA permits state lien laws to “be applicable as federal surrogate law” InterMoor argued that “under

³ 43 U.S.C. § 1333(a)(2)(A) of the OCSLA provides:

To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State, now in effect or hereafter adopted, amended, or repealed are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf[.]

OCSLA, the adjacent state lien law of Maryland should be applied because”: (1) “the State adjacent to the Property is Maryland”; (2) “the controversy arose out of project management services related to the transportation and installation of the MET Mast Tower on a portion of the subsoil and seabed of the OCS”; (3) “no federal maritime law applies of its own force”; and (4) “there is no conflict between State and Federal law.”

The circuit court disagreed. The court held that InterMoor “failed to present sufficient facts to demonstrate that the statute under which they request relief provides this Court with jurisdiction with regards to submerged lands in the Atlantic Ocean outside of the Seaward Boundaries of the State of Maryland as defined under 43 U.S.C. § 1312.”⁴ The court then entered an order denying InterMoor’s petition, and entered a final order so stating.

⁴ 43 U.S.C. § 1312 provides:

The seaward boundary of each original coastal State is approved and confirmed as a line three geographical miles distant from its coast line or, in the case of the Great Lakes, to the international boundary. Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast line, or to the international boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries. Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to extend its boundaries is approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line. Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress.

InterMoor timely appealed. On appeal, InterMoor presents one question for our review:

Did the Maryland State Court have jurisdiction to apply Maryland’s mechanics’ lien laws to InterMoor’s labor and materials expended and to be performed on OCS land adjacent to Maryland’s coast?

We answer this question in the negative and affirm.

DISCUSSION

I.

STANDARD OF REVIEW

“We review *de novo* a circuit court’s determination[] of its own subject matter jurisdiction[.]” *Ibru v. Ibru*, 239 Md. App. 17, 32-33 (2018). “Whether a court has fundamental jurisdiction, i.e., the power, to decide a matter, must be determined by looking to ‘applicable constitutional and statutory pronouncements[.]’” *Md. Bd. of Nursing v. Nechay*, 347 Md. 396, 405 (1997) (quotation omitted). “When the trial court’s order ‘involves an interpretation and application of Maryland statutory and case law, our Court must determine whether the lower court’s conclusions are legally correct under a *de novo* standard of review.’” *Nesbit v. Gov’t Employees Ins. Co.*, 382 Md. 65, 72 (2004) (cleaned up).

II.

ANALYSIS

According to InterMoor, jurisdiction exists pursuant to 43 U.S.C. § 1333(a)(2)(A) because: (1) the OCSLA permits lienholders to invoke Maryland lien laws; (2) the mechanics’ lien law does not conflict with federal law; and (3) public policy supports the

application of Maryland mechanics’ law to the OCS. InterMoor claims that “[a]dopting adjacent state lien laws on work performed to benefit the OCS is common,” and cites to other jurisdictions where it alleges the court applied state lien law to the OCS.

Our analysis begins with the Maryland Constitution, which provides that a circuit court “shall have and exercise, in the respective counties, and Baltimore City, all the power, authority and jurisdiction, original and appellate, which the Circuit Courts of the counties exercised on the effective date of these amendments, and the greater or lesser jurisdiction hereafter prescribed by law.” MD. CONST. art. IV, pt. III, § 20(a).⁵ We discern no basis in this clause of the Maryland Constitution for a circuit court to exercise jurisdiction over property located beyond the border of the county in which the court sits.

Turning now to the Maryland Code, we again find no support for InterMoor’s argument. Section 1-501 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland (2006, Repl. Vol. 2020) states:

The circuit courts are the highest common-law and equity courts of record exercising original jurisdiction within the State. Each has full common-law and equity powers and jurisdiction in all civil and criminal cases within its county, and all the additional powers and jurisdiction conferred by the Constitution and by law, except where by law jurisdiction has been limited or conferred exclusively upon another tribunal.

Under this statute, as with the Maryland Constitution, the circuit court is vested with power to act only within its county.

⁵ Further, “Article 13 of the Maryland Constitution grants the General Assembly the *exclusive authority* to create new counties and to alter boundary lines between existing counties[.]” *Myers v. Bd. Of Comm’rs for Carroll Cnty.*, 240 Md. App. 330, 339 (2019).

Similarly, we have not found a basis for the circuit court’s jurisdiction in our case law. As stated by the Court of Appeals, “[t]he territorial jurisdiction of a court of chancery, unless enlarged by statute, is limited to the area within which its process is effective . . . so that ‘no jurisdiction whatever exists unless the parties to be affected are by service of process or voluntary appearance within the jurisdiction and subject to the control of the court, or the res is within the jurisdiction[.]’” *Evans v. Zouck*, 172 Md. 12, 14 (1937); *Eastham v. Young*, 250 Md. 516, 519 (1968). “Chancery cannot decree *in rem*, when the thing against which the decree goes, and is alone the subject of, and to be operated upon by it, is beyond its territorial jurisdiction.” *White v. White*, 7 G. & J. 208, 208 (Md. 1835); *see also Kortobi v. Kass*, 182 Md. App. 424, 431 (2008) (quotations omitted) (“Jurisdiction over a foreign or domestic estate is typically based on *in rem* jurisdiction theories. The State has the right ‘to subject all property within its borders to its laws.’”); *Livingston v. Naylor*, 173 Md. App. 488, 502 (2007) (quoting *Coward v. Dillinger*, 56 Md. 59, 60-61 (1881)) (“Early Maryland cases held that ‘[a]ll property . . . within the limits of the State, whether belonging to residents or nonresidents, is subject to its laws, and the State has the right to prescribe how and in what manner such property shall be subjected to the claims of creditors.’”).

A mechanic’s lien action is a statutorily created *in rem* proceeding. *Wolf Org., Inc. v. Oles*, 119 Md. App. 357, 366 (1998). As a creature of statute, a mechanic’s lien is allowed only if it comes “within the plain meaning and obvious purpose of the statute.” *Giles & Ransome, Inc. v. First Nat’l Realty Corp.*, 238 Md. 203, 205 (1965). Relying on

section 9-105 of the Real Property Article,⁶ we have previously held that “Maryland law specifically provides that circuit courts have jurisdiction to hear mechanics’ lien cases.” *Westpointe Plaza II Ltd. P’ship v. Kalkreuth Roofing & Sheet Metal, Inc.*, 109 Md. App. 569, 577 (1996). Under the plain meaning of RP § 9-105, and consistent with the constitutional and statutory provisions discussed above, the power to impose a lien is

⁶ RP § 9-105(a) provides:

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.

limited to the circuit court of the county in which the land or part thereof is located. In sum, InterMoor has not pointed us to any Maryland legal authority for the proposition that the circuit court may exercise in rem jurisdiction over a property located outside of the county in which the court sits. Nor has our own research yielded any such authority.

InterMoor maintains that jurisdiction was conferred by federal law, particularly 43 U.S.C. § 1333(a)(2). *See* herein, n.3. Applying this statute, InterMoor contends that its “right to assert a mechanic’s lien claim under [the Maryland mechanics’ lien statute] against an OCS lease, equipment, and other items, is a matter arising under the laws of Maryland and is not inconsistent with federal law.” InterMoor relies on several federal cases which it contends support the proposition “that an adjacent state’s laws may be applicable as federal surrogate law under OCSLA.”

The problem with InterMoor’s argument is that it confuses choice of law with fundamental jurisdiction. A prime example of InterMoor’s misplaced reliance on the choice of law provision of OCSLA can be found in InterMoor’s reliance on *Union Texas Petroleum Corp. v. PLT Eng’g, Inc.*, 895 F.2d 1043, 1047 (5th Cir. 1990). There, the court determined that the OCSLA adopted a Louisiana law⁷ that specifically extended the parish beyond its boundary, and therefore held that Louisiana’s laws could be applied to property on the OCS. *Id.* at 1051-52. Notably, the *Union Tex. Petroleum Corp.* action was filed and litigated in federal court, and nowhere in the opinion does the court speak to the

⁷ LSA-R.S. 49:6 provides: “[T]he gulfward boundary of all said coastal parishes extend coextensively with the gulfward boundary of the State of Louisiana.”

fundamental power of a state court to impose a lien on property located beyond its border. The other cases relied on by InterMoor are unavailing for the same reasons.⁸

The issue here is not which law applies to InterMoor’s request for a mechanic’s lien; it’s whether the circuit court has the power to provide the relief that InterMoor is requesting. We agree with the circuit court that it does not.

**JUDGMENT OF THE CIRCUIT COURT
FOR WORCESTER COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**

⁸ See *Ten Taxpayer Citizens Grp. v. Cape Wind Assocs, LLC*, 373 F.3d 183, 193 (1st Cir. 2004) (“Congress left no doubt that it expected the federal courts to have control over the administration of adopted state laws on the outer Continental Shelf.”); *Gardes Directional Drilling v. U.S. Turnkey Expl. Co.*, 98 F.3d 860, 864 (5th Cir. 1996) (quoting 43 U.S.C. § 1333(1)(a)) (“The Constitution and laws and civil and political jurisdiction of the United States are hereby extended . . . to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a state[.]”).