

***TWB Architects, Inc. v. The Braxton, LLC and Fidelity and Deposit Co. of Maryland***  
COA Docket # M2017-00423-COA-R3-CV

**Issue**

Did the trial court properly grant summary judgment<sup>1</sup> in favor of TWB Architects on the mechanic's lien.<sup>2</sup>

**Facts**

This is the second appeal in a dispute over enforcement of a mechanic's lien. TWB Architects entered into an architect agreement with a developer to build a condominium project known as "The Braxton" in Ashland City, Tennessee. TWB later entered into a purchase agreement with The Braxton LLC, successor developer, to receive a penthouse as "consideration of design fees owed" on the first contract. TWB never received payment for its work and, in March 2009, filed suit against The Braxton LLC and its surety to enforce its mechanic's lien for the amount owed under the architect agreement. The trial court held that the purchase agreement was a novation,<sup>3</sup> extinguishing the rights and obligations of the parties under the architect agreement. In the first appeal, this Court found a lack of intent for a novation and, therefore, reversed the decision of the trial court and remanded the case for further proceedings.

On remand, after additional discovery, TWB moved for summary judgment on its claim.

**The Trial Court's Decision**

The trial court found, in a detailed memorandum opinion, that there were no genuine issues of material fact as to any of the defenses raised and that TWB's motion for summary judgment should be granted. On the novation issue, the court stated that the undisputed proof from the only two parties to the negotiations to the purchase agreement showed that "there was no intention to extinguish the original architect's agreement, as evidenced by its incorporation into the purchase agreement." The court further found that "there could

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<sup>1</sup> Pursuant to Tenn. R. Civ. P. 56.04, a moving party is entitled to summary judgment if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

<sup>2</sup> A mechanic's lien is "[a] statutory lien that secures payment for labor or materials supplied in improving, repairing, or maintaining real or personal property." BLACK'S LAW DICTIONARY (10th ed. 2014).

<sup>3</sup> A novation is "[t]he act of substituting for an old obligation a new one that either replaces an existing obligation with a new obligation or replaces an original party with a new party." BLACK'S LAW DICTIONARY

not have been a novation because the parties to the two agreements are not the same.” In an order entered on October 20, 2016, the trial court granted summary judgment in favor of TWB and entered judgment for the lien claimed in the amount of \$882,526.14 against The Braxton, LLC and its surety, Fidelity and Deposit Company of Maryland. The court also dismissed all of the defendants’ counterclaims.

The Braxton filed a motion to alter or amend, which was denied by the trial court on January 25, 2017. The Braxton and its surety appeal.

### **Arguments**

The appellants, The Braxton and its surety, argue that the trial court’s decision should be reversed because there are disputed material facts that must be decided by a jury, not at the summary judgment stage. The trial court erred by failing to view the evidence in the light most favorable to The Braxton and to draw all reasonable inferences in favor of The Braxton. Furthermore, they assert, the trial court erroneously relied upon certain evidence to support its holding, including affidavits and deposition testimony, but failed to consider countervailing evidence in support of The Braxton’s affirmative defenses. The Braxton submits that a reasonable jury could resolve the disputed facts in its favor and find that one of the affirmative defenses barred TWB’s recovery.

TWB submits that the trial court correctly granted summary judgment. TWB argues that The Braxton could not establish two critical elements of its novation defense: (1) an agreement with TWB supported by evidence of intention to substitute for the underlying agreement, and (2) that the underlying agreement was extinguished under the circumstances, including the fact that the parties to the two agreements were not the same. Furthermore, TWB asserts that the trial court correctly granted summary judgment on The Braxton’s remaining defenses which were primarily based on the same facts and theories as the novation defense and were insufficient to create material issues of fact rebutting TWB’s negation of the critical elements of the affirmative defenses.