

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-1392

GOLDEN POND RESIDENT CARE CORP.

vs.

CONGRESS BUILDING CORP.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The defendant Congress Building Corp. (Congress) appeals from an order summarily discharging a mechanic's lien it recorded on real property owned by the plaintiff Golden Pond Resident Care Corp. (Golden Pond). We reverse.

Background. Golden Pond owns and operates an assisted living facility in Hopkinton. Congress is a construction company that Golden Pond previously hired to construct the first two phases of its facility. In February 2018, Golden Pond sought bids from five construction contractors, including Congress, for construction of the third phase of its facility. Golden Pond received bids from each contractor and met with Congress on March 9, 2018, to review Congress's bid. On April 17, 2018, Congress and Golden Pond executed a letter of intent (LOI) whereby the parties agreed that Congress was "the

designated [c]ontractor for the project" with a maximum construction price of \$7,725,000. The LOI itemized that estimate in general terms and required Congress to hold the price for ten days, until the parties executed a formal written contract. The LOI authorized Congress "to immediately commence procurement of all subcontractors and materials for the [p]roject," but stated that the "[o]wner ha[d] no obligations until a final contract [wa]s signed." On April 19, 2018, Golden Pond sent Congress an electronic mail message (e-mail) proposing that, on May 3, 2018, the parties execute the written contract called for in the LOI. On April 27, 2018, Golden Pond sent Congress an e-mail stating that the LOI had terminated by its own terms. On May 1, 2018, Congress sent Golden Pond a draft written contract. The parties communicated until May 21, 2018, when Golden Pond advised Congress that it was not selected as the contractor. Four days later, Golden Pond received a bill from Congress in the amount of \$359,070.11.¹ On May 29, 2018, Congress recorded a notice of contract and statement of account in the Middlesex South Registry of Deeds in order to establish a mechanic's lien on Golden Pond's property, see G. L. c. 254, § 2. The contract was identified as the LOI.

¹ The bill consisted of \$129,070.11 in labor charges, \$5,000 in estimated legal costs, and the \$225,000 general contractor fee Congress anticipated earning in connection with the project.

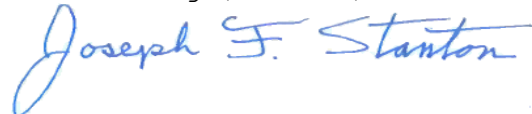
On June 6, 2018, Golden Pond commenced a civil action to discharge Congress's mechanic's lien, and moved for an order summarily discharging the lien pursuant to G. L. c. 254, § 15A. In its motion for an order to discharge the lien, Golden Pond argued that the LOI was not a "contract" within the meaning of G. L. c. 254, § 2, because it anticipated the signing of a formal contract within ten days of the LOI, which never occurred. Congress countered that the LOI had no provision for unilateral termination and that the parties' behavior indicated their intention to be bound by the LOI. Specifically, Congress noted that Golden Pond proposed executing the written contract on May 3, 2018, more than ten days after the LOI was signed. After hearing from the parties, a judge of the Superior Court found that the LOI "merely represents an agreement to negotiate in the future." Holding that the LOI was not an enforceable contract under G. L. c. 254, § 2, the judge allowed Golden Pond's motion to dissolve the lien.

Discussion. Summary discharge of a mechanic's lien pursuant to G. L. c. 254, § 15A, "can only be obtained for defects that will customarily appear of record or be readily ascertainable by reference to undisputed documents -- defects in the notice of contract or statement of account, failure to timely record the notice or statement, or a judgment or release that would preclude the lien." Golden v. Gen. Bldrs. Supply

LLC, 441 Mass. 652, 657 (2004). Golden Pond claims no defect in the content or timeliness of Congress's filings. Instead, it argues that the LOI is not an enforceable contract. The parties have submitted conflicting evidence regarding their intention to be bound by the LOI, which is an essential part of an enforceable contract. See Goddard v. Goucher, 89 Mass. App. Ct. 41, 47 (2016). Thus, whether the LOI is a contract is a question of fact. See David J. Tierney, Jr., Inc. v. T. Wellington Carpets, Inc., 8 Mass. App. Ct. 237, 239 (1979). Where "factual determinations" are required, "summary discharge of the lien[] under G. L. c. 254, § 15A, is inappropriate." Madigan v. Trace Constr., Inc., 71 Mass. App. Ct. 1, 5-6 (2007). See also John Marini Mgt. Co. v. Butler, 70 Mass. App. Ct. 142, 147 (2007). Accordingly, the judge erred in allowing Golden Pond's motion.

Order discharging lien is
vacated.

By the Court (Kinder, Singh &
McDonough, JJ.²),



Clerk

Entered: July 16, 2019.

² The panelists are listed in order of seniority.