Mechanic’s & Materialman’s Lien Basics for the Consumer Lawyer

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Homeowner vs. Contractor

• Beware the Hurricane Season and the Roofing Contractors who follow
• Contractor’s Rights are (surprisingly?) robust.
• So why are mechanic’s lien foreclosures so rare?
  – Small stakes
  – Shoddy contractors are shoddy at perfecting liens too
• Primary use of lien: threat
The Constitutional Lien

• Constitutional Lien is established:
  – if the contractor has **privity of contract** with the owner of the building or article; and
  – the contractor **made or repaired** the building or article, and or **supplied goods incorporated** into the construction or repair of the building or article.
Constitutional Lien

• Most contractors will qualify as “mechanic, artisan, or materialman.”
  – If the court can’t quite understand what you do, maybe not.

• The work must be done upon a “building”
  – A home is a building
  – Things attached to the home/building qualify
    • Sewer lines/water pipes/road construction on a lot? Nope.
    • The well outside? Nope.
Enforcing the Constitutional Lien

• “Automatic” and “Self-Executing”
  – No messy notice or lien filing requirements.
• Other than establishing the existence of the debt and the fact of the work performed, no jury question
  – No quibbling over value of services or costs of materials
• Other defenses to underlying obligation, such as statute of limitations, still apply.
Constitutional vs. Statutory Lien

• Constitutional Lien is a very powerful tool for contractors who have a written contact with the owner.

• Homeowners beware: your contractor may have a lien on your house even without providing you with notice.

• Statutory Lien Advantages: lien preference or priority, applies against subsequent purchasers of property.
Statutory Lien

• Chapter 53 of the Property Code
• Contract directly with the owner? If so:
  – File affidavit with county clerk no later than the 15th day of the 3rd month after indebtedness accrues
    • “accrues” when contractor provides notice of completion, or
    • Last day of the month in which work stopped
Statutory Lien Affidavit

• Property Code Section 53.054 sets forth the technical requirements:
  – (a)(1) “sworn statement” of claim – which requires an additional signed jurat inside the affidavit in addition to the acknowledgment at the end of the affidavit
  – (a) (3) Statement, broken down by month, of work done and/or materials furnished
  – (a) (6) “legally sufficient” description of the property
Statutory Lien Affidavit

- Note: only “substantial compliance” with the statute is required.
- The lien statute is liberally construed for the purpose of protecting laborers and materialmen:
  - If a court can find a way to enforce a lien, expect that it will...
Statutory Lien for Subcontractors

• Don’t have a contract with the owner?
• “derivative claimants” must comply with the above affidavit requirements and much more.
• Also must provide “trapping notice” prior to filing of affidavit (Section 53.252):
  – 15\textsuperscript{th} day of the second month in which all or part of the labor was provided.
  – Contents of notice are highly technical, especially for residential construction (Subchapter K)
Enforcing the Statutory Lien

• Lien enforced by judicial foreclosure
• One year to foreclose a lien on residential property
  – runs from last day to file the affidavit, or within one year of “completion” whichever is later.
• Burden is on the claimant to prove the contract, the location of the property, and the perfection of the lien.
• Court may award reasonable attorneys fees as are “equitable and just.”
The Homestead Exemption

• Homestead Rights are “liberally construed to protect the homestead.”

• But, the Texas Constitution and Property Code have carved out an exception for work done on the homestead where:
  – Repairs or improvements were made to the homestead, and
  – Written contract will all the owners of the property executed, prior to commencement of work.
Challenging a Lien

• Property Code Section 53.160: may bring suit and file a summary motion to declare a lien invalid or unenforceable.
  – May be awarded attorneys fees

• Civil Practice and Remedies Code § 12.002: the knowing filing of a false lien should be a violation of this section, with potential for recovery of $10K and/or actual damages, costs and fees, and exemplary damages.
Useful Resources

• Texas Property Code, Chapter 53, “Mechanic’s, Contractor’s, or Materialman’s Lien.”