

Recording a Mechanic's Lien? Hold Your Horses!

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We have all heard of mechanic's liens being invalid when they are recorded after the statutory deadline (generally, 90 days from completion of the work, with certain exceptions). But did you know that your mechanic's lien can also be deemed invalid if it recorded too early?

That was exactly the outcome in a recent California Court of Appeal case entitled *Precision Framing Systems, Inc. v. Henry Luzuriaga*. In this case, Henry and Deborah Luzuriaga undertook to construct a veterinary hospital. They hired a general contractor and architect. The general contractor then hired Precision Framing Systems, Inc. ("Precision") as the framing subcontractor. Precision contracted with Inland Empire Truss, Inc. ("Inland") for design and fabrication of the trusses. Although Inland contracted solely with Precision and invoiced Precision, it was paid directly by the construction lender.

The chronology of events is important in this case. Therefore, I will bullet point them:

- o July 24, 2013: Precision started work on framing
- o July 29, 2013: Inland delivered the trusses
- o August 2, 2013: Precision began installing the trusses
- o August 7, 2013: City issued a correction notice relating to the trusses
- o August 14, 2013: Precision notified Inland that the trusses were defective
- o Later in August 2013: Inland carried out repairs to the trusses
- o December 9, 2013: City issued a second correction notice relating to the trusses
- o December 23, 2013: General contractor and Precision's superintendent walked the project

The general contractor found that Precision's work was complete and fully in compliance with the plans and specifications. At that point, according to the general contractor, Precision had completed its scope of work. The city approved Precision's framing work. However, the owner refused to pay Precision and later locked out all contractors.

- o January 2, 2014: Precision recorded its mechanic's lien claim for \$53,268.16
- o Between January 20 – 29, 2014: Precision first became aware of the correction notices, although Precision had communicated with Inland in January 2014 regarding repairs Inland would be performing
- o January 29, 2014: Owner took the position that Precision's mechanic's lien was premature because it had not yet completed its scope of work and because the correction notices were still outstanding. She even confirmed with Precision that it intended "on completing any work pursuant to [their] contract"
- o On February 12 or 13, 2014: Inland carried out repairs which took two or three hours

When Precision filed suit to foreclose on the mechanic's lien, the owner filed a cross-complaint. The court granted summary judgment against Precision ruling that the mechanic's lien claim was filed prematurely. In other words, it was filed before Precision ceased to provide work. Precision appealed the decision claiming (1) that the word "cease" within the meaning of the statute can be a gradual process, (2) the repair was not part of Precision's work, (3) Precision had completed all of its work before it recorded the mechanic's lien, and (4) the repairs were done by Inland. The Court of Appeal affirmed the trial court ruling and held that Precision had not yet ceased work with it recorded its mechanic's lien.

Although the mechanic's lien is a creditors' remedy stemming from the California constitution, a claimant must observe and comply with the statutory provisions in order to enforce the lien. The important statute, *Civil Code* Section 8414, provides:

"A claimant other than a direct contractor may not enforce a lien unless the claimant records a claim of lien within the following times:

- (a) After the claimant ceases to provide work.
- (b) Before the earlier of the following times:
 1. Ninety days after completion of the work of improvement.
 2. Thirty days after the owner records a notice of completion or cessation."

If filed prematurely, a mechanic's lien is void and cannot be enforced. The court defines the word "cease" as meaning "to end." If it is in the process of ending, it can end gradually (*ceasing*), but it has not *ceased* for purposes of the statute. The court held that the statutory definition of "work of improvement" includes both construction and repairs. Therefore, it had to analyze whether the repairs performed by Inland were part of the "scheme of improvement as a whole." If they were, then the time to file a mechanic's lien runs from repairs done after other work is complete.

Precision's contract stated that the contract price was "for labor, lumber, trusses, and hardware necessary to complete the...project." Since the contract called for Precision to supply the trusses *necessary to complete the project*, not merely trusses in conformity with the plans, the project could not be completed as long as the notices of correction were outstanding. Further, Inland was deemed Precision's subcontractor, even though it was paid direct by the lender. Therefore, the repair of the trusses was within Precision's scope of work, and until these repairs were complete, Precision had not "cease[d] to provide work."

Finally, although Precision claims it did not know of correction notices when it recorded the lien, the claimant's subjective knowledge as to whether it has ceased to provide work is not relevant. In fact, Precision could have recorded its mechanic's lien claim again after the repairs were performed and avoided this harsh outcome!



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