

THE NOBLE ARCHITECT, THE HEARTLESS LANDOWNER AND AN AMBIGUITY IN OREGON'S CONSTRUCTION LIEN STATUTE

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I. INTRODUCTION

Imagine the following conversation between an architect and her attorney:

Architect: I finished preparing the plans last week for the big job I was working on, but the owner abandoned the project for financial reasons. The owner is several months behind in its payments to me and I want you to file a construction lien to be sure I get paid.

Attorney: Do you know whether any other contractors have not been paid on the job or whether any liens have already been filed?

Architect: Everyone else who worked on the job has been paid and there are no liens, or other encumbrances, against the property of any kind, so we will not have to worry about priority disputes with any other creditors.

Attorney: Excellent. One last question: what exactly was the status of construction when the owner told you it was abandoning the job?

Architect: Well, we had finished preparing the architectural plans, and some surveying work may have been completed, but the owner abandoned the project before any excavation at the site began.

The essential question posed by the above scenario is whether architects are entitled to construction liens¹ based upon their prepara-

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1. Oregon's lien statute uses the term "construction lien." *See, e.g.*, OR. REV. STAT. § 87.001 (2003) (declaring that "ORS 87.001 to 87.060 . . . shall be known and may be cited as the Construction Lien Law"). Many other states, however, continue to use the term "mechanics' lien." *See, e.g.*, BRIAN A. BLUM, MECHANICS' AND CONSTRUCTION LIENS IN ALASKA, OREGON AND WASHINGTON § 1.3 (Issue 4 1994) (discussing the terminology different states

tion of plans even though visible construction² never begins.³ For convenience, this Article uses the phrase “the lien” to refer to a construction lien granted to an architect even though visible construction does not commence at the site of the planned improvement.⁴

Architects obviously have a vested interest in being paid whether or not a building is constructed based upon their plans.⁵ In many instances, architects may be able to sue the owner for breach of contract and recover without resorting to a construction lien. Often, however, construction liens are the only viable remedy when a landowner abandons a project.⁶

liens when landowners abandon projects prior to visible commence-

Part II of this Article analyzes our question under Oregon law and concludes that an Oregon court is equally likely to grant or deny architects the lien.¹⁶ Part III analyzes how other states have addressed our question. This serves several related purposes. First, because our question is undecided in Oregon, investigating how other jurisdictions have dealt with our issue may help predict how an Oregon court would address the issue. Second, because a primary goal of this Article is to suggest improvements to Oregon's statute, it is useful to survey the choices, both good and bad, that other states have made. Finally, analyzing the law from other jurisdictions (whether or not such analysis is directly relevant to interpreting or improving Oregon's statute) may assist legislators and practitioners, in states other than Oregon, that are grappling with their construction lien statutes.

Part IV summarizes the arguments courts have employed to grant or to deny architects the lien. Part V presents some specific suggestions for Oregon's legislature if it wishes to clarify Oregon's construction lien statute to provide a clear answer to our question. Finally, Part VI concludes with a plea for clarification of the construction lien statutes in all states where the law concerning our issue is currently unclear.

terests of the debtor, the lien holder, and purchasers at a foreclosure sale).

16. This Article does not discuss all the steps required to acquire, perfect, and foreclose a lien in Oregon, or in any other state. Oregon practitioners needing such guidance should consult the resources discussed below in Part II.C. This Article also assumes that our hypothetical architect seeking a construction lien has prepared competent plans in accordance with her contract with the owner. Furthermore, although this Article frequently discusses priority disputes between competing creditors, determining how best to resolve priority disputes between architects and other contractors, or between architects and lenders, is not a primary concern of this Article.

Finally, this Article assumes that the reader understands the basic purpose of construction lien statutes. Brian Blum aptly summarizes the key rationale of construction lien laws as follows:

Mechanics' lien statutes are motivated by the policy that building construction is likely to be encouraged by legislation that secures the debt due to a builder or supplier of materials for work or material furnished for the improvement of real property. Apart from the policy of stimulating construction activity by assisting builders and suppliers in the collection of their claims, the lien is also supported by a policy of fairness: When work or material is devoted to the improvement of property, the value of the property is likely to be enhanced, and the cost of that work or material is appropriately treated as a charge on the property.

BLUM, *supra* note 1, § 1.1 (footnotes omitted).