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Confusion over mechanic's lien preliminary notice

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To those who work with (and rely upon) mechanic's liens, the laws affecting Preliminary Notices may seem confusing and contradictory.

On the one hand, it is possible for an owner never to receive any form of notice whatsoever, and, yet, have his property burdened by an enforceable mechanic's lien. On the other hand, it is possible for an owner to be fully aware of the presence of the prospective claimant on the job from inception to completion, and yet the claimant will not have mechanic's lien rights due to its failure to serve a written Preliminary Notice upon the owner.

How could it be, one might ask, that an owner who has no notice of a claimant on a job could be subject to a valid lien, yet another owner who had full knowledge of the claimant's presence might not be subject to a mechanic's lien?

Analysis begins with reference to California Civil Code section 3097, which sets forth in detail the rules governing the "Preliminary 20-Day Notice (Private Work)." Section 3097 mandates that timely (20 day) written notice be served upon the reputed property owner. Unless the claimant has a contract directly with the owner, or is performing labor for wages, the timely service of a Preliminary Notice in the proper form is an absolute prerequisite to an enforceable lien: "A claimant shall be entitled to enforce a lien only if he has given the preliminary 20-day notice (private work) in accordance with the provisions of Section 3097 ..."

Consider the effect of this statute upon a claimant who attended pre-construction meetings with the owner, met with the owner periodically throughout construction of the job, and even attended social events with the owner during the job. In this hypothetical, there is no contention on the part of the owner that he did not know the claimant was working and bestowing value to the job. Equity would almost certainly dictate that the claimant ought to get some compensation toward the fair value of work and materials provided to the job. However, the statute makes no allowance for such conclusion. No valid preliminary lien; no lien rights.

The case of *Kim v. JF Enterprises* (1996) 42 Cal.App.4th 849, allows claimants to argue that the rule is not as unbending as the statutory language suggests. The Kim case will be the subject of a future article.

How, then, could it be that an owner who clearly did not receive a Preliminary Notice -- indeed, did not receive any form of notice -- could nonetheless find his job and property subject to a valid and enforceable mechanic's lien? The answer is found in the difference between serving a Preliminary Notice and receiving notice of the claimant's work.

Civil Code section 3097 provides that mechanic's lien claimants need only serve the "reputed" owner of the property only. In drafting section 3097, the legislature could have chosen, instead of "reputed," a verb such as "legal" or "true" or "actual." Instead, the legislature chose "reputed." It appears that the legislature's intention was to create a rule that gives latitude to lien claimants. As interpreted by California courts, section 3097 requires only that the lien claimant make a reasonable and good faith effort to investigate the ownership of the property. If the lien claimant timely serves its Preliminary Notice upon the party whom the lien claimant's reasonable and good faith research shows to be the owner of the subject property, the Preliminary Notice is deemed effective, even if the actual owner truly never knew until the recordation of the lien that the lien claimant would be asserting a lien against the property.

The California courts have hinted that reasonable and good faith research as to ownership might require only an inquiry to the prime contractor as to the identity of the owner, for example. Presumably, reliance on the names on contract documents would satisfy the research requirement. The investigation does not necessarily require a formal title search, which, as a practice matter, would be an undue burden on every prospective claimant on every construction job.

Thus it would appear that the legislature chose to be unbending on the issue of serving a Preliminary Notice, but a sense of equity crept into the rule relating to receipt of that notice. Presumably, the legislature wanted to set an absolute standard for a claimant initiating lien rights. However, once the initial requirement had been met, the legislature chose not to be harsh in requiring that the claimant correctly identified the owner or, in the alternative, lose all lien rights. Clearly, the moral to the story is that aspiring claimants had better comply completely with the Preliminary Notice requirements, but owners should not necessarily take comfort in a claimant's good faith failure to correctly identify and serve the legal owner of the property.

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