

Challenging Validity of Mechanic's Liens in Kansas

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The Kansas Court of Appeals in *In re A Purported Lien Against Prop. of Dist. at City Ctr., LLC*, 2020 Kan. App. LEXIS 13 (Ct. App. Feb. 28, 2020)

reversed the district court in an interesting case regarding an allegedly fraudulent mechanic's lien.

This case began with a recognizable fact pattern where a construction company was contracted to build a mixed-use development. The contractor then hired a subcontractor to supply steel and labor. As is often the case, change orders began to be submitted and approved resulting in a total that exceeded the original contract terms.

Subsequently, the subcontractor filed a mechanic's lien for unpaid labor and cost materials totaling over \$400,000 – which was the difference between the value of the work the subcontractor believed it had completed and the amount already paid. However, as part of the supporting documentation filed with the mechanic's lien, the subcontractor failed to include itemizations evidencing the full value of the purported additional labor, leaving a gap of approximately \$25,000.

Where this case takes an interesting turn is that instead of the contractor challenging the mechanic's in the

traditional way under K.S.A. §60-1108 or the subcontractor amending or foreclosing the mechanic's lien pursuant to K.S.A. §§60-1105(a) or 60-1106, the contractor filed a motion claiming the lien was fraudulent under K.S.A. 2019 Supp. §58-4301.

K.S.A. §58-4301 was enacted to address issues with militias and "common-law type groups" who file and record fraudulent liens against properties in an effort to harass property owners and delay judicial proceedings. The key issue to analyze under this statute with regards to whether a document is "fraudulent" is whether the document or instrument is provided for by the constitution or laws of Kansas or the United States. Legitimacy of the actual document is not weighed or analyzed.

The benefit to the contractor here (and presumably why this route was chosen) is that the statute provides for an expedited review and does not require a filing fee. If there is substantial compliance with the statute, then, "the court's findings may be made solely on a review of the documentation or instrument attached to the motion and without hearing any testimonial evidence." K.S.A. §58-4301(b). The Motion can also be heard *ex parte* without delay or notice of any kind.

Relying on its authority to expeditiously review the matter, the district court granted the contractor's

motion removing the lien before the subcontractor could even object or otherwise respond; basing its decision on the subcontractor's failure to account for the \$25,000 in additional work and finding the mechanic's lien insufficient to provide notice for what claims were actually owed.

The problem for the contractor (and the district court), however, was that the mechanic's lien at issue was and is a document provided for by Kansas law, therefore, the decision to remove the lien as "fraudulent" was an error and the case was remanded. The district court should not have even looked at whether the lien itself was sufficient or statutorily compliant.

In applying this case to the servicing industry, the important take away here is that even where a mechanic's lien appears to be faulty or even fraudulent, the shortcut for the lien removal provided under K.S.A. §58-4301 has to be avoided. The Court will not look at the validity of a mechanic's lien under that statute since we now know that the mechanic's lien is provided for under Kansas law.

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