

Wed Oct 8 2014

Lien Foreclosure Claims after the Filing of a Release of Lien Bonds—a Cautionary Tale

With Halloween quickly approaching, frightening stories are everywhere. For example, I recently received a copy of a Motion to Dismiss that seeks the dismissal of an untimely lien foreclosure suit brought by an intervening lien claimant against a contractor's release of lien bond. Once I realized that the Motion to Dismiss was not directed at my client's claim and the terror had subsided, I could see the makings of a cautionary tale that should be told.

Payment issues arose from the construction of a large retail store in the Seattle metropolitan area. Many liens by subcontractors and suppliers were filed against the real property upon which the improvements were made. Some of the liens were released upon payment and some of them were released by the contractor's filing of a release of lien bond. My client's lien claim was neither paid nor bonded around and, after obtaining a title report and litigation guarantee, we proceeded with the filing of a lien foreclosure action only against the real property and its owner.

Several months after filing the lien foreclosure action, I was contacted by another lien claimant who asked if my client would stipulate to a Motion to Intervene. Under Washington law, a lien claimant shall not begin an action to foreclose a lien upon any property while a prior action is pending. Appropriately, all lien claims against such property are to be joined in one action, and the filing of a Motion to Intervene in an existing action will toll the running of the eight-month period for commencing a lien foreclosure action.

The other lien claimant did file a Motion to Intervene within eight months of the filing of its Claim of Lien, and we ended up filing a notice of no opposition to the Motion. Unfortunately for the intervening lien claimant (and presumably without its knowledge) its lien had been released from the property by a release of lien bond that was filed by the contractor. Under Washington law, once a release of lien bond is filed, the real property is released, and the lien attaches to the bond. Thereafter, a foreclosure action is to be brought against the bond and not against the real property. By filing its Motion to Intervene in our action against the real property, the intervening lien claimant did toll the time period in which it needed to commence its lien foreclosure action against the real property, however, since our action did not include a claim against the contractor or the contractor's surety, the Motion did nothing to toll the time period in which the lien claimant needed to commence its action against the release of lien bond. Regrettably for the intervening lien claimant, once it was made aware of its error, the eight-month time period for commencing its foreclosure action against the bond had run.

This horror story is not uncommon and could be avoided by a minor change in our laws requiring that lien claimants be provided with notice of the filing of a release of lien bond when

filed. Unless and until the law is changed, prudent lien claimants must not wait until the last minute to contact their attorney for the filing of a foreclosure action. Instead, lien claimants can avoid this pitfall by providing their counsel with sufficient time to obtain a title report and litigation guarantee, which will disclose whether a release of lien bond has been filed.