

LIEN RELEASES WHAT YOU DON'T KNOW WILL HURT YOU

Contractors who secure work in this tough economic market must always be prepared for the need to file a mechanics' lien. Many contractors do not realize that they may be losing their rights to file a mechanics' lien simply due to incorrectly filling out their conditional and unconditional liens.

We will follow Joe Contractor through a construction project. We will see (1) what type of mistakes he is making when filling out his lien releases, (2) how he can fix his mistakes, and (3) what effects his mistakes have on his ability to collect his money.

HOW JOE UNKNOWINGLY LOSES HIS MECHANICS' LIEN RIGHTS

Joe Contractor contracts with General Contractor (GC) to install plumbing at a new apartment complex belonging to Owner. The total amount of the contract between Joe and GC is \$100,000. In order to get paid, he must submit a conditional lien release every month for payment.

Joe begins work on January 1. On February 1, Joe submits a bill for work performed through January 31. As required, Joe fills out the conditional lien release. The lien release states the amount owed is \$50,000 and payment of which will release Joe's right to record a me-

chanics' lien for his work performed through January 31.

Not surprisingly, Joe does not receive payment on the conditional lien release, yet continues plumbing the apartment complex. Like clockwork, Joe submits a conditional lien release on March 1 for work performed through February 28. The lien release states the amount owed is \$10,000 and payment of which will release Joe's right to a mechanics' lien through February 28. (Mistake #1: At this juncture, Joe just waived \$50,000 in mechanics' lien rights without knowing it.)

Again, Joe does not receive payment on either of the previous two conditional lien releases. However, Joe continues working through the entire month of March.

On April 1, Joe submits his third conditional lien release for work through March 31. The lien release states the amount owed is \$10,000 and payment of which will release Joe's right to a mechanics' lien through March 31. (Mistake #2: At this juncture, Joe has now waived a combined \$60,000 in mechanics' lien rights without knowing it.)

At this point, Joe has made several critical mistakes. If Joe was to go to his attorney wanting to file a \$70,000 mechanics' lien against the Owner, he would be in for a shock. Joe would discover he can only file

a mechanics' lien for \$10,000, the amount stated on the final lien release!

WHY JOE LOSES HIS MECHANICS' LIEN RIGHTS

Most contractors, like Joe, follow a common practice of using lien releases as a receipt for work performed. Joe had the mistaken belief that each lien release was submitted for a specific timeframe i.e February 1st through February 28th.

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In our scenario, Joe failed, to see that the lien release is given a "through date". Therefore, the amount of each lien release must state THE TOTAL AMOUNT OWED at the date of issuing the lien release. Failure to include the previous unpaid amounts waives Joe's rights to file a mechanics' lien for monies owed, but not included in the last lien release.

Simply put, the California Supreme

Court does not want to promote the practice of using lien releases as a “glorified receipt”. If the California Legislature had intended the lien release to be a receipt, it would have clearly included a “to and from date” other than a through date in the required language. The Court has reiterated that it is not their duty to be an “accountant” for the contractor.

Therefore, the Court concluded that the California Legislature created a lien release that waives mechanics’ lien rights, bond rights, and stop notice rights even if those services and materials were not compensated by the progress payment.

WHAT JOE SHOULD HAVE DONE?

What Joe should have done is simple yet EXTREMELY important. Joe should have added ALL of the amounts owed in each consecutive conditional lien release so as to have a running total.

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Joe must think of the lien release as a “get out of jail for a FEE card” for the GC/Owner. If GC/Owner pays

the amount, the mechanics’ lien rights are stopped. What Joe does not want to do is give a “get out of jail FREE card”, which is in essence what Joe did. Joe has waived his rights to a \$70,000 mechanics’ lien in exchange for a \$10,000 mechanics’ lien by not adding all the monies owed to each successive conditional lien release.

Therefore, Joe should have submitted the lien release on February 1 for \$50,000. Then he should have submitted the next lien release on March 1 for \$60,000 because he has never received payment on the first lien release. Joe should have then submitted the April 1 lien release for \$70,000. This says to the GC/Owner, “I will release my right to a mechanics’ lien for the price of \$70,000 because that is what is owed”.

WHAT CAN JOE DO NOW?

All is not completely lost for Joe. At this juncture, Joe is owed a total amount of \$70,000.

Joe maintains his rights to file a mechanics’ lien against the Owner for \$10,000 with the last lien release. Upon prevailing in a lawsuit, Joe can sell the Owner’s property and collect the \$10,000 that is owed on the mechanics’ lien.

Further, Joe can also file a breach of contract lawsuit for \$70,000 owed against GC. This is a less desirable action as there is no collateral to collect the judgment. If Joe is lucky, the GC will remain solvent and he will collect on his judgment. More than likely the GC may become bankrupt and/or have cash flow issues which make collecting the judgment difficult if not impossible.

CONCLUSION

In conclusion, it is extremely important to properly understand and fill out conditional and unconditional lien releases up to the dollar amount that is still owed. Otherwise you will waive or limit your rights to a mechanics’ lien against the Owner’s property.

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