NO. 48058-1-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

FRANCISCO GUILLEN, ROBERTO GUILLEN, HECTOR FIERRO, MARTIN GUILLEN, and JOSE TIMOTEO,

Appellants

v.

BENJAMIN PEARSON, VULCAN MOUNTAIN CONSTRUCTION, ABSI BUILDERS, INC., GRAVELLY LAKE TOWNHOMES, LLC, CBIC, and RLI INSURANCE,
Defendants

and

MILESTONE AT WYNNSTONE LLC, MILESTONE AT WYNNSTONE 2 LLC, and RED CANOE CREDIT UNION,

Respondents.

BRIEF OF APPELLANTS

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Assignment No. 2: The trial court erred in granting summary judgment in favor of defendant Milestone at Wynnstone 2, LLC and Red Canoe Credit Union on May 29, 2015.

III. STATEMENT OF THE ISSUES

A. Whether laborers employed by a licensed subcontractor who has contracted with the real property owner have a right to file a chapter 60.04 RCW mechanics' lien?

1. Whether laborers have a right to file chapter 60.04 RCW liens?

2. Whether, and under what circumstances, a licensed subcontractor is a "construction agent" under RCW 60.04.011(1)?

B. Whether laborers must themselves be licensed as subcontractors in order to file liens, even though they only sell their labor and are not otherwise engaged in the contracting business?

C. Whether a lien plaintiff meets its obligation under RCW 60.04.141 by serving the entity that owned the property at the time of suit and does so within 90 days, even though the property is sold seven weeks after suit is filed?

IV. STATEMENT OF THE CASE

A. Unpaid Labor and Lien Claims Based Thereon

Appellants Francisco Guillen, Roberto Guillen, Hector Fierro, Martin Guillen, and Jose Timoteo (the "laborers") are five individuals who in 2014 worked as employees of ABSI Builders, Inc. ("ABSI"). CP 174-76

& 385-87. ABSI was a registered Washington contractor. CP 158-62 & 320. ABSI and Milestone at Wynnstone LLC ("Milestone") had a contract under which ABSI agreed to perform framing work at the Milestone apartment project. CP 68-70 & 157. Milestone was the owner of the real property. CP 66. The laborers filed a $9,914 mechanics' lien for a little more than two weeks unpaid labor performed on the Milestone property in April 2014. CP 71-77. The lien was filed on May 27, 2014. CP 71.

B. Agreement Between ABSI and Milestone

In October 2013, Milestone contracted ABSI to frame 14 apartment buildings at its Milestone at Wynnstone apartment development in Puyallup. CP 68-70 & 157. The contract defined ABSI as a "subcontractor." CP 68. The contract specified that ABSI was to "[p]rovide labor, material and equipment to frame [14] buildings." CP 68. Paragraph 2 of the contract's terms and conditions stated:

> **Subcontractor Responsible for Its Work.** Subcontractor shall be responsible for the design, engineering, construction details and all other aspects of its work hereunder, provided that Subcontractor shall comply with any plans, specifications and other Contract Documents.

CP 69, 157, & 346. ABSI was authorized to hire employees to perform the framing labor. CP 153 & 341.[1]

[1] ABSI was prohibited from subcontracting out the framing labor without prior authorization from Milestone; ABSI did not seek authorization from Milestone to subcontract out the labor. CP 153 & 341.

Paragraph 6 of the contract's terms and conditions, entitled "Liens," discusses material and labor liens, as follows:

> **Liens.** Payment under this Agreement may be withheld until satisfactory waivers of liens, release of liens or evidence of full payment is furnished from all subcontractors, materialmen, laborers or others who might be entitled to a lien on the premises upon which work is done or materials furnished under this Agreement, for work or material furnished thereon. Builder is authorized to pay directly Subcontractor's materialmen, laborers or subcontractors . . . .

CP 69, 157, & 346 (emphasis in original). Milestone did not obtain lien releases from appellant laborers, nor did it pay appellant laborers directly—two options which were available to Milestone under the contract. CP 154-56 & 342-344.

Paragraph 15 of the contract further provides that ABSI is an independent contractor, as follows:

> **Independent Contractor.** The Subcontractor shall under no circumstances be considered as the agent or employee of Builder and shall have no right or authority to, in any manner, obligate the Builder to any other person or entity.

CP 69, 157, & 346 (emphasis in original).

C. Procedural History

On June 4, 2014, the laborers filed a complaint in Pierce County Superior Court against Milestone and other defendants, to recover their

unpaid wages and to enforce their lien against Milestone.[2] CP 2-7. Milestone was served on August 27, 2014, by service upon the Secretary of State, pursuant to RCW 25.15.025. CP 287-97.[3] On July 21, 2014, seven weeks after suit was filed, Milestone recorded a quitclaim deed in favor of Milestone at Wynnstone 2 LLC ("Milestone 2"). CP 350-51. Milestone's managing member, Brandon Smith, is the sole owner and managing partner of Milestone 2. CP 66 & 339-40. A few days later, on July 25, 2014, Red Canoe Credit Union ("Red Canoe") recorded a deed of trust against the liened property, executed by Milestone 2. *See* CP 109.

On November 7, 2014, the trial court granted the laborers' motion for leave to file a supplemental complaint that added claims against Milestone 2 and Red Canoe. CP 105-06. The laborers filed the supplemental complaint on November 12, 2014, approximately five months

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[2] The additional defendants are not party to this appeal. They include the laborers' employers (ABSI, Vulcan Mountain Construction, Inc., and Benjamin Pearson), the employers' RCW 18.27.040 sureties (CBIC, and RLI Insurance), and the owner of another property on which the laborers had also performed unpaid labor (Gravelly Lake Townhomes, LLC). CP 2-7. The laborers obtained a default judgment against ABSI and Vulcan Mountain Construction, Inc. CP 21-22. They dismissed their individual claims against Mr. Pearson. CP 103-04. They were able to recover part of their wages from the sureties, sharing that recovery with other unpaid workers who had a separate lawsuit. CP 444-58. The lien claims against Gravelly Lake Townhomes, LLC were settled and dismissed on August 25, 2015. CP 416-17. The sureties CBIC and RLI were formally dismissed on September 29, 2015, although they had paid the proceeds of their bonds into the court registry and been exonerated several months earlier. CP 444-58.

[3] Milestone's registered agent abandoned his office in late 2013. CP 336-37. The laborers' process server attempted service on July 24, 2014, and found a vacant lot being prepped for construction. CP 290. Based on the process server's declaration, the laborers served Milestone through the Secretary of State. CP 287-88 & 292-97.

after the original complaint. CP 107-14. Red Canoe was served on December 30, 2014; Milestone 2 was served on January 27, 2015. CP 197; *see* CP 236-39.

On October 3, 2014, Milestone filed a 4-page motion for summary judgment. CP 62-65. It argued that ABSI was not its chapter 60.04 RCW "construction agent" because (a) the contract provided ABSI was not its "agent" and (b) ABSI was "not in charge" of the entire construction project. *Id.* It further argued that "Washington law certainly does not contemplate that each employee of a subcontractor has a lien for labor" and that laborers must be registered as contractors in order to able to file a mechanics' lien. *Id.* The trial court granted Milestone's summary judgment motion on January 30, 2015. CP 188-89.

On April 30, 2015, Milestone 2 and Red Canoe filed their motion for summary judgment, raising the same arguments raised by Milestone, plus additional arguments of allegedly untimely joinder and service of Milestone 2 under RCW 60.04.141. CP 271-77. The trial court granted summary judgment to Milestone 2 and Red Canoe on May 29, 2015. CP 409-10. The claims against the remaining defendants were subsequently dismissed and this appeal followed.[4] CP 418-43.

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[4] The laborers' original notice of appeal was filed on September 25, 2015, based on the dismissal of claims against Gravelly Lake Townhomes. CP 416-17. Since the claims against the sureties CBIC and RLI had not been formally dismissed, the laborers obtained

V. ARGUMENT

A. Standard of Review

"Summary judgment rulings are reviewed de novo." *Potter v. Wash. State Patrol*, 165 Wn.2d 67, 78, 196 P.3d 691 (2008). Summary judgment is proper if the record shows there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law. CR 56(c). The evidence must be reviewed in the light most favorable to the nonmoving party and all reasonable inferences must be drawn in that party's favor. *Qwest Corp. v. City of Bellevue*, 161 Wn.2d 353, 358, 166 P.3d 667 (2007).

B. Rules of Statutory Construction

"The court's fundamental objective in construing a statute is to ascertain and carry out the legislature's intent." *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 526, 229 P.3d 791 (2010). "If the language is unambiguous, [the Court] give[s] effect to that language and that language alone because [the Court] presume[s] the legislature says what it means and means what it says." *State v. Costich*, 152 Wn.2d 463, 470, 98 P.3d 795 (2004). "Plain meaning is to be discerned from the ordinary meaning of the language at issue, the context of the statute in which that

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an order dismissing them on September 29, 2015, CP 444-58, and filed a second Notice of Appeal on October 19, 2015. The Court assigned the second notice the same case number as the first notice.

provision is found, related provisions, and the statutory scheme as a whole." *Lake*, 169 Wn.2d at 526.

C. A Laborer's Lien Claim Has Three Elements: (1) Performing Labor, (2) For Improvement of Real Property, (3) at the Instance of a Construction Agent of the Owner.

Laborers have a right to lien real property on which they perform construction work. The statute says, "any person [1] *furnishing labor* . . . [2] for the improvement of real property shall have a lien upon the improvement for the contract price of labor . . . [3] furnished at the instance of the . . . construction agent of the owner." RCW 60.04.021 (emphasis added). As illustrated, the statute can easily be separated into three components: (1) an individual furnishing labor; (2) for the improvement of real property; (3) which is furnished at the instance of the construction agent of the owner.

D. The Laborers Meet Elements One and Two: Performing Labor for the Improvement of Real Property.

The laborers readily establish the first two elements. First, "[f]urnishing labor" is defined to include "the *performance* of *any labor*." RCW 60.04.011(4) (emphasis added). "Labor" is defined as the "exertion of the powers of body or mind performed at the site for compensation." RCW 60.04.011(7). The laborers in this case performed carpentry framing. Under the plain meaning of the statute, carpentry framing constitutes

"labor," and such "labor" was exerted on Milestone's "site for compensation." *See* RCW 60.04.011(4) & (11). Second, "[i]mprovement" is defined as "[c]onstructing, altering . . . upon any real property or street." RCW 60.04.011(5). Framing carpentry is the epitome of an improvement upon real property; without framing a building cannot stand erect.[5]

Milestone[6] argued below that "Washington law certainty does not contemplate that each employee of a subcontractor has a lien for labor he or she performed on the premises." CP 65 & 275. Milestone argued that "construction jobs [would] come to a halt" if each of, for example, "10,000" subcontractor employees could file individual liens. CP 184. This argument runs counter to the plain meaning of the lien statute. Milestone's argument is really a policy argument for changing the current law—not an argument about how to correctly apply it. As discussed *infra* providing

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[5] Moreover, the right of laborers to lien is further supported by the lien statute's priority provision, which provides that the rank of lien claimants:

> [S]hall be in the following order:
> (a) Liens for the performance of labor . . .
> (d) Liens for subcontractors, including but not limited to their labor and materials, and
> (e) Liens for prime contractors . . . .

RCW 60.04.181. The ranking provision makes it clear that individuals may lien for the labor that they performed, with the individual laborers having priority over labor liens filed by the contractors or subcontractors who employed them.

[6] "Milestone," as used in the argument portion of this brief, refers to all three respondents, Milestone, Milestone 2, and Red Canoe.

laborers and material suppliers broad lien rights is consistent with the purposes of Washington's longstanding lien laws.

E. A Licensed Contractor or Subcontractor is the "Construction Agent" of the Property Owner, Especially Where the Laborer or Material Supplier Acts to Assist the Contractor or Subcontractor in Meeting Its Contractual Obligations.

1. Licensed Contractors and Subcontractors Are "Construction Agents."

A lien for labor, materials, or other lienable service is available when the labor, material, or service was "furnished at the instance of the owner, or the agent or construction agent of the owner." RCW 60.04.021. Construction agent is defined as follows:

> **"Construction agent" means any** registered or licensed contractor, registered or licensed **subcontractor**, architect, engineer, **or** other person having charge of any improvement to real property, who shall be deemed the agent of the owner for the limited purpose of establishing the lien created by this chapter.

RCW 60.04.011(1) (emphasis added). The statute as written provides that any licensed contractor or licensed subcontractor is the owner's construction agent. ABSI was a licensed contractor. CP 158-62 & 320. The laborers were employees of ABSI, and, at ABSI's request, they performed labor on improvements on Milestone's property. CP 68-70, 157, 174-76. That should be the end of the analysis. Nothing more is needed.

2. A Material Supplier or Laborer Contracting with a Licensed Contractor or Subcontractor Need Not Prove That the

Contractor or Subcontractor had "Charge of Any Improvement to Real Property."

Milestone has a more restrictive reading of the term "construction agent." It relied on the final phrase in the first sentence of RCW 60.04.011(1), which reads "**or other person having charge of any improvement to real property,**" to argue that contractors, subcontractors, architects and engineers are constructions agents only if—like that "other person"—they too have "**charge of any improvement to real property.**" CP 64 & 274 (emphasis added).

Indeed, Milestone takes it a big step further, arguing that the construction agent must be "the company in charge of the improvement"—thereby virtually eliminating all subcontractors, architects and engineers from the possibility of being a construction agent. CP 64, 180, 274, & 403-04 (emphasis added). Milestone's interpretation of the statute is wrong for three reasons. It is inconsistent with (a) the first antecedent rule of statutory construction, (b) the statutory history and framework of the lien laws, and (c) the liberal rules of construction that apply to lien laws.

Alternatively, as is discussed *infra,* even if the phrase, "other person having charge of any improvement to real property," applied to licensed contractors and subcontractors, contractors and subcontractors performing work within the scope of their contracts have charge over the improvement

that they were contracted to perform. ABSI is a construction agent for Milestone with regard to the framing of the buildings, even under an incorrect, narrow interpretation of "construction agent."

a. The Last Antecedent Rule

Milestone's argument conflicts with the last antecedent rule of statutory construction. Under the last antecedent rule "qualifying words and phrases refer to the last antecedent" except perhaps where a comma appears before the qualifying words. *City of Spokane v. County of Spokane*, 158 Wn.2d 661, 673, 146 P.3d 893 (2006). Here, the phrase "having charge of any improvement to real property" modifies its last antecedent, "other person." The phrase does not jump back and modify the words contractors, subcontractors, architects or engineers. The last antecedent of the sentence—"other person"—is the only noun restricted by the modifier. The term "other person" needs to be restricted. Otherwise every person who secures services or materials for a project is the owner's "construction agent." There is no similar need to restrict contractor or subcontractor. Indeed, doing so conflicts with the statutory framework and history.[7]

b. Statutory History and Framework

[7] The last antecedent rule was an accepted cannon of statutory construction in Washington when the lien statute was enacted, *see State v. Bailey*, 67 Wash. 336, 338, 121 P. 821 (1912), and when the modern version of the lien statute was adopted in 1992, *see Pasco v. PERC*, 119 Wn.2d 504, 509-10, 833 P.2d 381 (1992).

The last antecedent rule is especially appropriate in the present case. The pertinent language has existed in Washington lien law—without a comma—since at least 1893. *See* LAWS OF 1893, ch. 24, § 1.[8] The statute was designed to allow material and labor suppliers to have confidence in their ability to rely on lien rights when dealing with downstream subcontractors—not merely the general contractor who was is in charge of the overall construction project. Subcontractors have been included in the list of construction agents since at least 1854. *See* LAWS OF 1854, at 392.

The contractor registration provision, RCW 60.04.041, best illustrates how the statute is intended to operate in the context of multiple layers of subcontractors:

> [1] A contractor or subcontractor required to be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW, or otherwise required to be registered or licensed by law, shall be deemed the construction agent of the owner for the purposes of establishing the lien created by this chapter only if so registered or licensed. [2] **Persons dealing with** contractors or **subcontractors may rely, for the purposes of this section, upon a certificate of registration issued pursuant to chapter** 18.27 RCW . . . . [3] **No lien rights** described in this chapter **shall be lost** or denied **by virtue of the absence, suspension, or revocation of such registration or license with respect to any contractor or subcontractor not in immediate contractual privity with the lien claimant**.

[8] The 1893 law provided that "every contractor, subcontractor architect, builder or person having charge of the construction, alteration or repair of any property subject to the lien as aforesaid, shall be held to be the agent of the owner for the purposes of the establishment of the lien created by this act." LAWS OF 1893, ch. 24, § 1.

(Emphasis added.)

The first sentence is consistent with construing RCW 60.04.021 to provide that all licensed contractors and subcontractors on a project are "construction agents" for purposes of filing a lien. This is because there is no additional requirement of being in charge of the project.

The second sentence speaks of the statutory interest in promoting reliance by persons dealing with licensed contractors and subcontractors. That reliance is what makes the lien statute function—encouraging development today as it did in 1893.

The final sentence makes it clear that entities dealing with downstream subcontractors have a right to lien, even if some entity further up the chain (closer to the owner) fails to meet licensing requirements.[9] Lien claimants need not be concerned about the licensing status of upstream entities.

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[9] RCW 60.04.041 is of modern origin, first appearing in Laws of 1991, chapter 281, section 4. It was enacted to overrule *Fair Price House Moving Co. v. Pacleb*, 42 Wn. App. 813, 714 P.2d 321 (1986), in which the court held that a lien claimant who contracted with a licensed subcontractor lost its right to lien because the general contractor was unlicensed. RCW 60.04.041 demonstrates that the Legislature puts a premium on the ability of lien claimants to rely on the licensing status of subcontractors with whom they directly deal. The Senate Bill Report, SSB 5497 (1991), described the rule in *Fair Price House Moving Co.* as a "needless trap" which was "eliminated so that lien rights are not lost if the entity with which the lien claimant contracts is registered or licensed, if required to be." S.B. Rep. on Substitute S.B. 5497, 52nd Reg. Sess. (Wash. 1991). Of course, in the present case, ABSI directly contracted with the owner and was a licensed contractor acting as a subcontractor.

Lien claimants also do not need to be concerned with whether the entity with whom they contract meets a separate, additional test of "having charge of any improvement to real property." Indeed, if that were an additional requirement, there would be case law over the last 120 years elucidating the nature of that test. Ignoring the last antecedent rule would add a new requirement in lien law that would upset the expectations of the construction community, especially if "having charge of any improvement to real property" was interpreted as Milestone would have it.

Further, Milestone's argument would suggest engineers, architects, and subcontractors must be "the company in charge of the improvement." CP 64. Such an interpretation, however, yields unlikely and absurd results. "The court must . . . avoid constructions that yield unlikely, absurd or strained consequences." *Kilian v. Atkinson*, 147 Wn.2d 16, 21, 50 P.3d 638 (2002). Engineers, architects, and subcontractors, by their very nature, are not entities that are in charge of the entire improvement. The statute is quite clear that the legislature intended these entities be "construction agents" for purposes of lien laws.

Rather, so long as a subcontractor is licensed, that by itself is sufficient to find it is a "construction agent." This view is supported by lien

law treatises. AHLERS & CRESSMAN, LIEN AND BOND CLAIM MANUAL (2010)[10], states:

> **WHO CAN ORDER WORK THAT GIVES A RIGHT TO LIEN?**
>
> . . . .
>
> ***"CONSTRUCTION AGENTS"***
>
> ***Licensed and Registered Person:*** For lien purposes, every licensed or registered contractor or subcontractor, architect, engineer, or person in charge of the construction is treated as an agent of the owner.

(Emphasis in original; heading numerals deleted.) Another treaties similarly states:

> On a typical project, the owner first hires an architect . . . [who] hires one or more subconsultants . . . (e.g., a structural engineer) . . . [who] may in turn hire sub-subconsultants (lower tire subconsultants). . . . [T]he owner hires a general contractor . . . [who] may hire one or more subcontractors for particular kinds of work (*e.g.*, earthwork), and those subcontractors may in turn hire sub-subcontractors (lower tier subcontractors). **In this scenario, all designers at every tier and all contractors at every tier are deemed construction agents of the owner for purposes of the lien statute. Anyone who performs work on the project at the instance of one of these "construction agents" will be entitled to lien rights.**

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[10] *Available at* http://www.ac-lawyers.com/downloads/pdfs/pdf_downloads/Lien_and_Bond_Manual.pdf.

STOEL RIVES, THE CONSTRUCTION LIEN IN WASHINGTON 13-14 (2015)[11] (Emphasis added.)

In the present case, the laborers worked for ABSI, which was a licensed contractor that contracted directly with the owner, Milestone. Under RCW 60.04.021, material suppliers, 2nd tier subcontractors and laborers need only know that ABSI was licensed and, with that fact alone, they would know they have a right to lien if ABSI did not pay them. The statute, as written, states that duly licensed contractors and subcontractors are the construction agents of the owner. This type of certainty is what allows construction to flourish, because entities that contract with contractors and subcontractors know that the real property and the improvement serves as a security for payment. The moment that material suppliers or laborers have to look at additional tests, *e.g.*, control over any improvement and what that means, the reliance promoted by the lien statutes is undermined.

c. Any Ambiguity Must Be Construed Liberally to Provide Security to Persons and Services That Fit Within the Lien Statute's Protections.

RCW 60.04.900 provides:

[11] *Available at* http://www.stoel.com/construction-law-update-announcing-a-new-washington-lien-law-treatise.

> RCW 60.04.011 through 60.04.226 . . . are to be liberally construed to provide security of all parties intended to be protected by their provisions.

This reference to "RCW 60.04.011 through 60.04.226" embraces all of the substantive provisions of chapter 60.04 RCW. It includes all of the provisions arguably affecting the present appeal.[12]

In *Williams v. Athletic Field, Inc.*, 172 Wn.2d 683, 261 P.3d 109 (2011), the court reconciled two conflicting rules of lien law construction: the liberal construction rule provided for in RCW 60.04.900 (and its predecessors) and the rule of strict construction of statutes in derogation of common law. *Williams* held that the mechanics' lien statute is to be liberally construed, except when determining whether particular "persons or services" fit within the intended scope of the lien law. The Court stated:

> [T]he appropriate way to view the competing canons of strict and liberal construction is found in our early cases. The strict construction rule, at its origin, was invoked to determine whether persons or services came within the statute's protection. Expanding the rule of strict construction beyond this inquiry effectively nullifies RCW 60.04.900. . . . "[A]pplying a 'liberal construction' to RCW 60.04.091 only *after* a valid lien is deemed to attach would make no sense. At that point -- when by definition the claimant has a valid lien – nothing in RCW 60.04.091 would matter to the claimant." To the extent *Lumberman's* [*of Wash., Inc. v. Barnhardt*, 89 Wn. App. 283, 286, 949 P.2d 382 (1997)] or other cases suggest that the statute's mandate

[12] The right to lien is derived from RCW 60.04.021, with definitions affecting that right in RCW 60.04.011. Other sections that inform the issues before this court are the priority sections, RCW 60.04.181, and the contractor registration section, RCW 60.04.041. All of these are to be liberally construed under RCW 60.04.900.

> of liberal construction has been supplanted by a common law rule of strict construction, we disapprove them.

172 Wn.2d at 696-97 (quoting appellant's brief). In *Williams*, there was no dispute over whether the claimants "provided lienable services and claimed their liens against the appropriate property." *Id.* Rather the issue was whether their rather sloppy lien form notarization was sufficient to preserve their lien claims. On that issue, rules of liberal construction applied. The lien was upheld, reversing a Court of Appeals decision which struck the lien using a strict construction standard.[13] *See also Shelcon Construction Group, LLC v. Haymond*, 187 Wn. App. 878, 897 & 901, 351 P.3d 895 (2015) (noting that the mechanics' lien statute is to be "liberally construed . . . to provide security for lien claimants").

In the present case, the "persons and services," as discussed in *Williams*, in issue fit squarely within the scope of persons and services protected by the mechanics' lien statute. Laborers have been protected by the lien statutes since 1893. They have had first priority over all other lien

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[13] The Court set forth examples of "persons or services" issues warranting strict construction, as follows: whether landscaping tasks were lienable (*De Gooyer v. Nw. Trust State Bank*, 130 Wash. 652, 653, 228 P. 835 (1924), *aff'd on other grounds*, 132 Wash. 699, 232 P. 695 (1925)); whether labor to demolish a building was a lienable service (*Dean v. McFarland*, 81 Wn.2d 215, 500 P.2d 1244 (1972)); whether a property developer's work was a lienable service (*Pac. Indus., Inc. v. Singh*, 120 Wn. App. 1, 86 P.3d 778 (2003)); and whether "improvement on property but not the real property itself" was lienable (*Haselwood v. Bremerton Ice Arena, Inc.*, 166 Wn.2d 489, 210 P.3d 308 (2009) (holding that despite the rule of strict construction a lien could attach to ice rink on public land even though public land could not be liened and the rink owner had no interest in the land)). *Williams*, 172 Wn.2d at 698.

claimants throughout our state's history. Framing carpentry is the epitome of performing labor for the improvement of real property. *See* RCW 60.04.021 (right to lien for performing labor for the improvement of real property). Without framing a building cannot stand erect. Therefore, in the present case, the statutory provisions "are to be liberally construed to provide security of all parties intended to be protected by their provisions." RCW 64.04.900. This is not to say that the laborers can prevail only with a liberal construction. Indeed, their claims are fully embraced by chapter 60.04 RCW regardless of what rules of construction are applied.

3. Alternatively, If "Having Charge of Any Improvement to Real Property" Were Held to Be a Requirement for Being a Construction Agent, ABSI Meets That Requirement.

Even if this Court were to hold that every lien claimant must prove that a subcontractor with whom it contracted "ha[s] charge of **any** improvement to real property," ABSI would meet such a test. "Improvement" is broadly defined as:

> (a) **Constructing**, altering, repairing, remodeling, demolishing, clearing, grading, or filling in, of, to, or **upon any real property** or street or road in front of or adjoining the same; (b) planting of trees, vines, shrubs, plants, hedges, or lawns, or providing other landscaping materials on any real property; and (c) providing professional services upon real property or in preparation for or in conjunction with the intended activities in (a) or (b) of this subsection.

RCW 60.04.011(5) (emphasis added). ABSI was hired to "provide framing of [a] building" and could hire employees to do so. CP 68-70, 153, 157, 341, & 346. The Milestone-ABSI contract required ABSI to "[p]rovide labor, materials and equipment to frame [fourteen] buildings." CP 68. The contract's Terms and Conditions further stated:

> 2. **Subcontractor Responsible for Its Work.** Subcontractor shall be responsible for the design, engineering, construction details and all other aspects of its work hereunder, provided that Subcontractor shall comply with any plans, specifications and other Contract Documents.

CP 69, 157, & 346. ABSI in fact had control over "any" improvement, to wit: the framing of the building.

The present case is typical of a lien claimant who contracts with a subcontractor who has control over its work on a project. A plumbing subcontractor has control over the plumbing. An electrical subcontractor has control over the electrical system. A painting company has control over painting. A framing company has control over the framing. The material suppliers who sell pipes, wire, paint or lumber to these licensed subcontractors are dealing with subcontractors who have control over their part of the project. If the legislature sought to limit construction agent status to **the** entity that has over control over **the entire improvement**, it would have said so and it would not have included subcontractors among the list

of construction agents. Subcontractors by definition do not have control over the entire project.

While it would be a mistake to hold that "**other person having charge of any improvement to real property"** imposes a limitation on construction agent status for subcontractors, architects, and engineers, that mistake would have a lesser impact if the phrase, "charge of any improvement," is given its normal meaning to include the work that subcontractors, architects and engineers typically perform—their scope of work on the project. Such an interpretation would be consistent with RCW 60.04.900's instruction to liberally construe the lien statute for the benefit of the material suppliers and laborers it was designed to protect, consistent with *Williams*, 172 Wn.2d 683.

Milestone argued below that a construction agent must be "the company in charge of the improvement"—thereby virtually eliminating all subcontractors, architects and engineers from the possibility of being a construction agent. CP 64, 180, 274 & 403-04. Its argument has no merit for the above-stated reasons.

4. Milestone's Additional "Construction Agent" Arguments Lack Merit

a. The Milestone-ABSI Contract Provides No Defense

Milestone attempted below to build an argument based on one sentence of its contract with ABSI, which it took out of context. In context, its agreement with ABSI is absolutely typical of a subcontracting agreement. Milestone relied on the "Independent Contractor" paragraph in its agreement with ABSI to argue ABSI is not a "construction agent." The contract states:

> **15. Independent Contractor.** The Subcontractor shall under no circumstances be considered as the agent or employee of Builder and shall have no right or authority to in any manner, obligate the Builder to any other person or entity.

CP 69, 157 & 346. This provision is easily harmonized with lien law.

ABSI is an independent contractor—the usual status of a subcontractor. ABSI is not the common law agent or employee of Milestone—again, this is also the usual status of a subcontractor. ABSI does not have the right to obligate the Builder to any other person or entity. Once again, these provisions reflect the usual relationship between a developer and subcontractor—they are mature businesses that act in their own respective interests.

Lien claimants who deal with construction agents do not have a direct cause of action against the owner—as would be the case if they were dealing with a common law agent. Rather they have a claim only against

the real property which they improved. *See Blossom Provine Lumber Co. v. Schumacher*, 147 Wash. 369, 371-72, 266 P. 167 (1928) (construing similar language in former statute). The laborers have pled no direct cause of action against Milestone; they only have their lien claim, which is limited to a claim against the property. CP 2-7 & 107-14. ABSI's status as a "construction agent" under chapter 60.04 RCW arises by operation of the lien statute because ABSI is a licensed contractor—not because ABSI is a common law agent or employee of Milestone.[14]

Milestone's argument is also inconsistent with the statutory history of the lien laws. For a brief time during the territorial period, Washington experimented with allowing the property owner the power to prevent mechanics' liens by posting a conspicuous notice of non-responsibility.[15]

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[14] The other Terms and Conditions of the contract allow Milestone to protect itself from being liened by parties who contract with ABSI. Paragraph 6, entitled "Liens," allows Milestone to withhold payment to ABSI until satisfactory waivers of liens, release of liens or evidence of full payment is furnished from "all subcontractors, materialmen, **laborers or others who might be entitled to a lien on the premises**." (Emphasis added.) Paragraph 6 also provides that Milestone "is authorized to pay directly Subcontractor's materialmen, laborers or subcontractors and deduct said payments from monies owed Subcontractor hereunder." Under paragraph 7, Milestone could have required in the Contract Documents that ABSI post a payment bond. Whoever wrote this contract knew that parties who contracted with subcontractor ABSI had a right to lien and included ways that Milestone could have protected itself.

[15] Section 1965 of the Code of 1881 provided:

> Should the owner or owners of any land desire to prevent the lien from attaching as herein provided for in cases where he or they have not themselves contracted for the construction, alteration or repair of the works mentioned in section 1957, he or they may do so by given a notice in writing posted in some conspicuous place upon said land or improvement to the effect that he or they will not be responsible for said

That experiment ended with statehood and the Laws of 1893, chapter 24, which did not carry forward this provision. Just like landowners cannot prevent mechanics' liens from attaching by conspicuously posting a notice of non-responsibility, landowners cannot relive themselves of lien law responsibility by inserting an inconspicuous run-of-the-mill Independent Contractor clause into their subcontracting agreements. Paragraph 15 of the ABSI-Milestone subcontract is not an attempt to divest ABSI of construction agent status and, if it were, such an attempt would not override chapter 60.04 RCW rights.

b. *Henifin Construction v. Keystone Construction, 136 Wn. App. 268, 145 P.3d 402 (2006), Supports Enforcement of the Laborers' Lien Herein*

The Milestone defendants relied heavily on *Henifin Construction v. Keystone Construction*, 136 Wn. App. 268, 145 P.3d 402 (2006), in both of their reply briefs. CP 181-84 & CP 403-06. *Henifin*, however, supports enforcement of the laborers' lien herein.

In *Henifin*, an excavation subcontractor submitted bids on a project without reviewing soil engineering reports. *Id.* at 272. Later the

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improvement; said notice to be posted within 10 days after said owner or owners come to a knowledge of making of said improvements.

This provision did not make into the Laws of 1893. It has been over 120 years since an owner could exclude himself from operation of the lien laws. *See* Note, *Mechanics' Liens: The "Stop Notice" Comes to Washington*, 49 WASH. L. REV. 685 n. 2 (1974) (discussing statutory history of lien laws).

subcontractor convinced the general contractor to approve change orders relating to additional work of which it was unaware because it had not seen the soil engineering reports. *Id.* The change orders were not approved by the landowner as required by the contract between the general contractor and the landowner. *Id.* The trial court allowed judgment against the general contractor for the change order work, but held the lien claim invalid because the change order was obtained in breach of the owner-general contract and the excavation company was aware of the breach. *Id.* at 273.

The court of appeals in *Henifin* reversed, holding that under RCW 60.04.011(1) the general was the owner's construction agent and, therefore, the change order work could be liened. *Id.* at 277. The court noted the change order was enforceable against the real property under the mechanics' lien statute because "Keystone was McDonald's construction agent, any work done by Henifin at the instance of Keystone exposed [the landowner] to a lien claim for the contract price of those improvements performed by [the excavating company]." *Id.* at 275.

Initially, in this pre-*Williams*, 172 Wn.2d 683, case, the court of appeals in *Henifin* found that a strict interpretation of the lien statute applied, citing authority that was expressly criticized in *Williams*. *Id.* at 274 (citing *Schumaker Painting Co. v. First Union Mgmt., Inc.*, 69 Wn. App. 693, 698, 850 P.2d 1361 (1993)); *accord Williams*, 172 Wn.2d at 696-97

("disapprov[ing]" of *Schumaker*). Whatever is said in *Henifin* needs to be re-examined with an eye towards liberal construction.

In the present case, the Milestone-ABSI contract required ABSI to "[p]rovide labor, materials and equipment to frame [fourteen] buildings." CP 68. ABSI was "responsible for . . . construction details and all other aspects of its work hereunder," *i.e.*, framing. CP 69 (¶ 2), 157 (¶ 2) & 346 (¶ 2). ABSI was hired to "provide framing of [a] building" and could hire employees to do so. CP 152-53 & 340-41. Thus the owner, Milestone, put ABSI in "control over" the framing and framing labor thereby making ABSI its construction agent under even a restrictive interpretation of RCW 60.04.011(1). Unlike *Henifin*, (a) there is nothing suggesting that ABSI's employment agreements with the laborers were in any way in violation of any agreements between Milestone and ABSI, or, (b) that the laborers were aware of any improprieties—there were no improprieties here, other than ABSI's failure to pay the laborers.

Milestone relies on a sentence in *Henifin*, which is taken out of context. The court held that the general contractor was a construction agent, stating that the owner "placed general contractor Keystone Construction in charge of constructing its restaurant." 136 Wn. App. at 271. Milestone argued that this language in *Henifin* means to be a construction agent "a party must be the party placed in charge of the construction project directly

by the owner," CP 183, and "there is only one statutory agent on any construction job," CP 403.

Henifin, however, involved a lien claim based on a lien claimant's contract with a general contractor. Therefore, it is not surprising that the court noted the general contractor was in charge of the project, as is typical of general contractors. The statute, however, has provided for over 120 years that subcontractors are also construction agents for purposes of the mechanics' lien law. Subcontractors, like ABSI, typically have control over their part of the project—just like ABSI was in control of the framing and framing labor. Even if RCW 60.04.011(1) is interpreted strictly, ABSI had control over the framing and was Milestone's construction agent in that regard.[16]

The laborers respectfully submit that this Court should look at the construction agent definition through the liberal construction principles of *Williams*, should apply the last antecedent rule, and should view "construction agent" in the context of the lien statute as a whole. With that approach, all licensed contractors and licensed subcontractors should be

[16] If Milestone's argument was correct, then material suppliers who wanted to preserve lien rights would be required to contract directly with the general contractors, *i.e.*, they would have no lien rights if they sold pipes to the plumbers, wood to the framers or wire to the electricians. That would not only contravene the statutory language, but it would undermine the reliance factor that the lien laws were designed to promote, enabling laborers and suppliers to deal freely with licensed subcontractors knowing they were not limited to relying on the subcontractors' ability or willingness to pay.

treated as RCW 60.04.011(1) construction agents. That is consistent with the statutory language and purpose of encouraging material suppliers and laborers to deal freely with licensed contractors and subcontractors on construction projects. Adding a second criterion is not warranted under the law. However, even if that second criterion is added—the laborers herein easily meet that standard in that they were performing framing work which, in this case, the owner put ABSI in control of in its contract with ABSI.[17]

F. Laborers Do Not Need to Be Licensed Subcontractors to Bring Lien Claims.

Milestone also argued below that laborers can bring lien claims only if they are also licensed as contractors or subcontractors. CP 65, 184-85, 274-276, & 400-01. Milestone's argument is based on the statutory definition of "potential lien claimant," which states:

> "Potential lien claimant" means any person or entity entitled to assert lien rights under this chapter who has otherwise complied with the provisions of this chapter and is registered or licensed *if required to be licensed or registered by the provisions of the laws of the state of Washington.*

[17] One unusual aspect of the present case is that the owner contracted directly with the subcontractor, ABSI. However, while that puts ABSI closer to the subcontractor, this should make no difference. Any licensed subcontractor—one who contracts with a general or 2nd or 3rd tier subcontractor—is a construction agent under RCW 60.04.011(1). This is true even if the upstream contractor or an upstream 2nd or 3rd tier subcontract is unlicensed. RCW 60.04.041 (final sentence). This language in RCW 60.04.041 would be superfluous if *only* one upstream contractor could be a construction agent on a project.

RCW 60.04.011(11) (emphasis added). The term "potential lien claimant" is used only in RCW 60.04.031 and RCW 60.04.221, sections involving notices to property owners and construction lenders, which trigger certain withholding or bonding obligations.[18] The "potential lien claimant" definition is inapplicable to the issues before the Court in the present case.

The definition requires that a potential lien claimant—who wants to notify a lender or property owner of overdue payment—must be "registered or licensed *if required to be licensed or registered*." RCW 60.04.011 (emphasis added). Milestone has not argued—nor could it argue—that every laborer on every job site must be licensed as a subcontractor or contractor, *i.e.*, register as a business and obtain a construction license, which requires obtaining a contractor's bond and liability insurance.

Contrary to Milestone's position below, the licensing requirement extends only to "contractors," who are defined as persons or entities "which in the pursuit of an independent business undertakes to, or offers to undertake, or submits a bid to, construct, alter, repair, add to, subtract from, improve, develop, move wreck, or demolish any building." RCW 18.27.020. The laborers here were simply employees. CP 174-76 & 385-87. There is nothing in the record suggesting in any way that they were

[18] Under these doctrines, if you are an unlicensed contractor you have no right to give a notice to property owners or project lenders telling them that you have not been paid.

engaged in any activities that would have required them to be licensed or registered as contractors or subcontractors.

G. The Laborers Timely Commenced Their Action and Met Their Service of Process Obligation Under RCW 60.04.141.

In the second summary judgment motion, Milestone 2 and Red Canoe argued that the laborers' claims were time barred under RCW 60.04.141, due to an alleged failure to serve Milestone and Milestone 2 within 90 days of filing the action. CP 275-77. RCW 60.04.141 provides in pertinent part:

> No lien created by this chapter binds the property subject to the lien for a longer period than eight calendar months after the claim of lien has been recorded unless an action is filed by the lien claimant within that time in the superior court in the county where the subject property is located to enforce the lien, and service is made upon the owner of the subject property within ninety days of the date of filing the action . . . This is a period of limitation.

(Emphasis added.) In the present case, suit was filed on June 4, 2014, and service upon Milestone was completed on August 27, 2014—84 days later—by service upon the Secretary of State under RCW 25.15.025.[19]

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[19] RCW 25.15.025(2) states:

> The secretary of state shall be an agent of a limited liability company upon whom any such process, notice, or demand may be served if:
> (a) The limited liability company fails to appoint or maintain a registered agent in this state; or
> (b) The registered agent cannot with reasonable diligence be found at the registered office.

Thus, the owner of the subject property was served within 90 days of filing the action.

Milestone 2 argued below that the laborers were required to serve **Milestone 2**—the subsequent purchaser—within 90 days of the complaint. CP 276. This argument, however, is contrary to RCW 60.04.141, which does not impose any obligation with regard to service of an entity that first acquires an interest in the property *after* the action is filed. In *John Morgan Construction Co., Inc. v. McDowell*, 62 Wn. App. 79, 813 P.2d 138 (1991), the liening party filed suit against a current owner, but failed to file a notice of lis pendens or join a subsequent purchaser who purchased the property while the lien action was pending. The Court of Appeals refused to add a *lis pendens* requirement to the statutory lien requirements of liening within 90 days of completion of work and suing within 8 calendar months of filing the lien, stating:

> When a claimant follows the requirements of RCW 60.04, including the timely recording of a claim of lien, and then commences an enforcement action within 8 months of the claim of lien, the lien binds the property from the time labor was first performed and has priority over "any lien, mortgage or other incumbrance which may attach subsequently to the time of the commencement of the performance of the labor."

(Emphasis added.) Here, service was obtained through the Secretary of State because Milestone's registered agent's office address was an empty lot, *i.e.*, a building that Milestone vacated and had since been torn down. CP 287-297, 318, 328-29 & 336-37.

Id. at 83 (quoting Former RCW 60.04.050); *accord* RCW 60.04.061 (current equivalent language to former RCW 60.04.050 quoted above). The court further held that the lien gave the subsequent purchaser constructive knowledge sufficient to defeat bona fide purchaser status. *Id.*

Here, Milestone 2 acquired its interest in the property through a quit claim deed from Milestone, which was recorded on July 21, 2014—7 weeks after the present action was filed. CP 2, 318, 339, & 350-51. Under *John Morgan*, the laborers had no obligation to supplement the complaint or to file a *lis pendens*. Milestone 2, as a subsequent purchaser, is held to have had notice of the lien—which in the present case is quite reasonable since Brandon Smith was the managing member of both Milestone and Milestone 2. CP 66 & 339-40. The laborers, however, decided to include Milestone 2 and Red Canoe in this action by supplemental complaint, which they did not need to do.[20]

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[20] While RCW 60.04.141 does not require joining or serving post-suit purchasers, the laborers herein joined Milestone 2 and Red Canoe within 8 calendar months of filing the lien. The supplemental complaint was filed November 12, 2014, less than 7 calendar months after the lien was filed. *See* CP 107-14 (supplemental complaint). Milestone 2 and Red Canoe were each served less than 90 after the supplemental complaint was filed. CP 197; *see also* CP 236-39 (Milestone 2 served on January 27, 2015, and Red Canoe served on December 30, 2014). So, even if RCW 60.04.141 required supplemental complaints to join post-suit purchasers—which it does not—the laborers joined and served Milestone 2 and Red Canoe within the framework of RCW 60.04.141.

Milestone's argument would produce absurd results. What if the owner sold the property 80 days (or 90 days) after a lien action was filed? Would the lien action be time barred under RCW 60.04.141 if the new owner is not joined and served within 90 days from when the suit against the original owner was filed?

Milestone 2's and Red Canoe's sole authority on the RCW 60.04.141 issue was *Schumacher Painting Co. v. First Union Management,* 69 Wn. App. 693, 850 P.2d 1361 (1998). *Schumacher*, however, does not involve a subsequent purchaser. The plaintiff therein failed to name the correct property owner in its lien and in the legal action it filed. It tried to correct the deficiency by a series of amended complaints, doing so well after the 8 month/90-day periods provided for in the lien statute. The court held that the amended complaints did not relate back under CR 15 relation back principles. The present case involves a supplemental complaint against a post-suit owner and security interest. *Schumacher Painting* is inapposite.[21]

VI. CONCLUSION

For the reasons discussed above, the laborers request that this Court reverse the summary judgment decisions of the Superior Court and remand for further proceedings.

RESPECTFULLY SUBMITTED this 4th day of December, 2015.

/s/ David N. Mark
David N. Mark, WSBA #13908

[21] Moreover, *Williams*, 172 Wn.2d at 697-97, criticized *Schumacher Painting* for applying the principal of strict construction to a service of process issue. *Schumacher Painting* is not only inapposite, but its holding needs to be reexamined in light of *Williams* in a proper case. The present case provides no occasion to consider the continuing vitality of *Schumacher Painting.*

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Throughout 2015, the parties have been serving each other through email.

This brief is being served via email and US Mail postage prepaid this 4th day of December, 2015.

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STATUTORY APPENDIX

In according with RAP 10.4(c), appellants provide the following texts of relevant statutes.

RCW 60.04.011 Definitions. (Portions)

RCW 60.04.021 Lien authorized.

RCW 60.04.041 Contractor registration.

RCW 60.04.141 Lien—Duration—Procedural limitations.

RCW 60.04.181 Rank of lien—Application of proceeds—Attorneys' fees.

RCW 60.04.900 Liberal construction—1991 c 281.

RCW 60.04.011

Definitions.

Unless the context requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Construction agent" means any registered or licensed contractor, registered or licensed subcontractor, architect, engineer, or other person having charge of any improvement to real property, who shall be deemed the agent of the owner for the limited purpose of establishing the lien created by this chapter.

. . . .

(4) "Furnishing labor, professional services, materials, or equipment" means the performance of any labor or professional services, the contribution owed to any employee benefit plan on account of any labor, the provision of any supplies or materials, and the renting, leasing, or otherwise supplying of equipment for the improvement of real property.

(5) "Improvement" means: (a) Constructing, altering, repairing, remodeling, demolishing, clearing, grading, or filling in, of, to, or upon any real property or street or road in front of or adjoining the same; (b) planting of trees, vines, shrubs, plants, hedges, or lawns, or providing other landscaping materials on any real property; and (c) providing professional services upon real property or in preparation for or in conjunction with the intended activities in (a) or (b) of this subsection.

. . . .

(7) "Labor" means exertion of the powers of body or mind performed at the site for compensation. "Labor" includes amounts due and owed to any employee benefit plan on account of such labor performed.

. . . .

(11) "Potential lien claimant" means any person or entity entitled to assert lien rights under this chapter who has otherwise complied with the provisions of this chapter and is registered or licensed if required to be licensed or registered by the provisions of the laws of the state of Washington.

. . . .

[1992 c 126 § 1; 1991 c 281 § 1.]

RCW 60.04.021

Lien authorized.

Except as provided in RCW 60.04.031, any person furnishing labor, professional services, materials, or equipment for the improvement of real property shall have a lien upon the improvement for the contract price of labor, professional services, materials, or equipment furnished at the instance of the owner, or the agent or construction agent of the owner.
[1991 c 281 § 2.]

RCW 60.04.041

Contractor registration.

A contractor or subcontractor required to be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW, or otherwise required to be registered or licensed by law, shall be deemed the construction agent of the owner for the purposes of establishing the lien created by this chapter only if so registered or licensed. Persons dealing with contractors or subcontractors may rely, for the purposes of this section, upon a certificate of registration issued pursuant to chapter 18.27 RCW or license issued pursuant to chapter 19.28 RCW, or other certificate or license issued pursuant to law, covering the period when the labor, professional services, material, or equipment shall be furnished, and the lien rights shall not be lost by suspension or revocation of registration or license without their knowledge. No lien rights described in this chapter shall be lost or denied by virtue of the absence, suspension, or revocation of such registration or license with respect to any contractor or subcontractor not in immediate contractual privity with the lien claimant.
[1992 c 126 § 4; 1991 c 281 § 4.]

RCW 60.04.141

Lien—Duration—Procedural limitations.

No lien created by this chapter binds the property subject to the lien for a longer period than eight calendar months after the claim of lien has been recorded unless an action is filed by the lien claimant within that time in the superior court in the county where the subject property is located to enforce the lien, and service is made upon the owner of the subject property within ninety days of the date of filing the action; or, if credit is given and the terms thereof are stated in the claim of lien, then eight calendar months after the expiration of such credit; and in case the action is not prosecuted to judgment within two years after the commencement thereof, the court, in its discretion, may dismiss the action for want of prosecution, and the dismissal of the action or a judgment rendered thereon that no lien exists shall constitute a cancellation of the lien. This is a period of limitation, which shall be tolled by the filing of any petition seeking protection under Title Eleven, United States Code by an owner of any property subject to the lien established by this chapter.
[1992 c 126 § 8; 1991 c 281 § 14.]

RCW 60.04.181

Rank of lien—Application of proceeds—Attorneys' fees.

(1) In every case in which different construction liens are claimed against the same property, the court shall declare the rank of such lien or class of liens, which liens shall be in the following order:

(a) Liens for the performance of labor;

(b) Liens for contributions owed to employee benefit plans;

(c) Liens for furnishing material, supplies, or equipment;

(d) Liens for subcontractors, including but not limited to their labor and materials; and

(e) Liens for prime contractors, or for professional services.

(2) The proceeds of the sale of property must be applied to each lien or class of liens in order of its rank and, in an action brought to foreclose a lien, pro rata among each claimant in each separate priority class. A personal judgment may be rendered against any party personally liable for any debt for which the lien is claimed. If the lien is established, the judgment shall provide for the enforcement thereof upon the property liable as in the case of foreclosure of judgment liens. The amount realized by such enforcement of the lien shall be credited upon the proper personal judgment. The deficiency, if any, remaining unsatisfied, shall stand as a personal judgment, and may be collected by execution against any party liable therefor.

(3) The court may allow the prevailing party in the action, whether plaintiff or defendant, as part of the costs of the action, the moneys paid for recording the claim of lien, costs of title report, bond costs, and attorneys' fees and necessary expenses incurred by the attorney in the superior court, court of appeals, supreme court, or arbitration, as the court or arbitrator deems

reasonable. Such costs shall have the priority of the class of lien to which they are related, as established by subsection (1) of this section.

(4) Real property against which a lien under this chapter is enforced may be ordered sold by the court and the proceeds deposited into the registry of the clerk of the court, pending further determination respecting distribution of the proceeds of the sale.
[1992 c 126 § 12; 1991 c 281 § 18.]

RCW 60.04.900

Liberal construction—1991 c 281.

RCW 19.27.095, 60.04.230, and 60.04.011 through 60.04.226 and 60.04.261 are to be liberally construed to provide security for all parties intended to be protected by their provisions.
[1991 c 281 § 25.]

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