No. 93610-2

SUPREME COURT
STATE OF WASHINGTON

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

Petitioners,

and

BENJAMINE PEARSON, VULCAN MOUNTAIN CONSTRUCTION, ABSI BUILDER, INC., GRAVELLY LAKE TOWNHOMES, LLC, CBIC, AND RLI INSURANCE,

Defendants,

v.

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

Respondents.

PETITION FOR REVIEW

VSI LAW GROUP, PLLC
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I. IDENTITY OF PETITIONERS

Petitioners Milestone at Wynnstone LLC, Milestone at Wynnstone 2 LLC, and Red Canoe Credit Union, (collectively "Milestone") submit the following Petition for Discretionary Review under RAP 13.4(b)(1) and (4).

II. COURT OF APPEALS DECISION

The Court of Appeals decision for which Milestone requests review was filed on August 16, 2016, under Cause No. 48058-1-II. A copy of the decision appears in the attached Appendix. No Motion for Reconsideration was filed.

III. ISSUES PRESENTED FOR REVIEW

1. Does the language of the contract between Milestone and ABSI prevent ABSI from be considered a "construction agent" under RCW 60.04.021 and RCW 60.04.011(1)?

2. Are previous Supreme Court rulings regarding strict construction concerning who is protected under lien statutes no longer applicable?

3. As a matter of law, does RCW 60.04.021, in conjunction with RCW 60.04.011(1), allow for any laborer employee of any level of subcontractor to have an unrestricted lien right against the owner of a property?

IV. STATEMENT OF THE CASE

Milestone at Wynnstone, LLC (hereafter "Milestone"), is the owner of a parcel of property, and the general contractor in charge of an improvement to that real property (the construction of apartment buildings), that is the subject of this lawsuit (CP 66). There were numerous subcontractors on the job, and Milestone, as the general contractor, was in charge of all of the subcontractors (CP 66-67).

ABSI Builders, Inc. (hereafter "ABSI"), was hired as a subcontractor to do the framing of the apartment buildings (CP 67). ABSI allegedly hired the Respondents, Francisco Guillen, Roberto Guillen, Hector Fierro, Martin Guillen, and Jose Timoteo (hereafter "Laborers") as employees (CP 174-175).[1] Laborers allege they performed the framing work on Milestone's property, at the direction and behest of their employer, ABSI. (CP 2-3).

The contract between Milestone and ABSI enumerated the specific relationship between Milestone and ABSI, as well as what specific authority ABSI had. Section 15 of the contract states:

> **Independent Contractor.** The subcontractor shall under no circumstances be considered as the agent or employee of builder and shall have no

[1]This case was decided at the trial court level on Petitioners Milestone's Motion for Summary Judgment. The trial court decided in favor of Milestone, before any discovery occurred. For the sake of this appellate argument, Milestone treats the assertions of facts by the Laborers as the trial court did on summary judgment, "viewing the facts and reasonable inferences most favorably to the nonmoving party." CR 56(c), *Versuslaw, Inc. v. Stoel Rives, LLP,* 127 Wash.App. 309, 111 P.3d 866 (2005). However, for all matters outside of this appellate argument, nothing stated in this argument shall be taken as an admission or concession by Milestone of any fact asserted by Laborers.

> right or authority to in any manner obligate the builder to any other person or entity.
> (CP 67, 69.) (*Emphasis in original.*)

The Laborers do not argue that the contract is unenforceable, or that Section 15 is invalid or void.[2]

ABSI performed the contracted framing work and was paid for this work by Milestone (CP 67-70). After ABSI received payment, the Laborers allege that ABSI failed to pay them for that work performed by them as employees of ABSI (CP 175). The Laborers acknowledge that they performed their services solely as employees of ABSI, and that they have no contractual privity with Milestone.[3] Nonetheless, the Laborers claim they individually have lien rights against the Milestone property.[4] As such, they filed a mechanics' lien against the Milestone property in May 2014 (CP 71).

IV. ARGUMENT AND AUTHORITY

The focus of this case is the interpretation of RCW 60.04.021, and definition 1 in RCW 60.04.011.

RCW 60.04.021 states:

> 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 of the contract price of labor, professional services, materials, or equipment

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[2] Laborers' *Brief of the Appellants*, *Guillen, et al v. Pearson, et al*, 48058-1-II, filed with Division II Court of Appeals December 4, 2015.
[3] CP 174-175 & Laborers' *Reply Brief of Appellants*, pg. 7, *Guillen, et al v. Pearson, et al*, 48058-1-II, filed with Division II Court of Appeals February 24, 2016.
[4] *Id.*

furnished at the instance of the owner, or the agent, or construction agent of the owner. (*Emphasis added.*)

RCW 60.04.011(1) defines the term "construction agent:"

> "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.

A. The decision of the court of appeals is in conflict with prior decisions of the Supreme Court

The decision of the court of appeals is in conflict with every previous Supreme Court decision regarding the application of the strict construction rule when determining whether persons or services come within the scope of a lien statute.

1. Strict construction is always used to determine whether persons come within a lien statute's protections, whether the statute is ambiguous or not

The court of appeals in this case determined that RCW 60.04.021 and RCW 60.04.011(1) are unambiguous, and therefore, claimed the strict construction rule is inapplicable when determining whether persons come within a lien statute's protections.[5] It cites this Court's ruling in *Williams v. Athletic Field, Inc.*, 172 Wash.2d 683, 695, 261 P.3d 109 (2011), however, nothing in *Williams* says that the strict construction rule does not apply if the statute is unambiguous.

[5] *Published Opinion*, pgs. 9-10, *Guillen et al v. Pearson et al*, 48058-1-II

The *Williams* Court arrived, instead, at the conclusion that lien statutes should be construed strictly, period.[6]

The court of appeals' assertion that the rule of strict construction only applies if a statute is ambiguous is in conflict with all of the Supreme Court's prior decisions regarding the interpretation of lien statutes. One of the oldest Washington Supreme Court cases on the subject, *Tsutakawa v. Kumamoto,* cited favorably by this Court in *Williams*, explained that "Statutes creating liens are in derogation of the common law and are to receive a strict construction." *Tsutakawa v. Kumamoto,* 53 Wash. 231, 101 P. 869, *modified on another issue by* 102 P. 766 (1909).

A few years later, the Washington Supreme Court affirmed *Tsutakawa's* holding that statutes creating liens receive strict construction, and further explained that "[The lien statutes'] operation will not be extended for the benefit of those who do not clearly come within the terms of the act." *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).

Then in *Williams* itself, this Court said

> "We agree with Hos that the 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 with the statute's protection." *Williams* at 696.

[6] *Id.* at 696.

None of these cases hold, or even suggest, that the strict construction rule only applies to statutes that are first found to be ambiguous. In addition, this Court held in 1972 that "strict construction...**must** be employed, when determining whether one is within a class authorized to have a statutory lien." *Dean v. McFarland*, 81 Wash.2d 215, 222, 500 P.2d 1244 (1972). (*Emphasis added.*)

In this instance, RCW 60.04.021, unambiguously applies only to laborers who work at the instance of the owner, agent, or contract agent. As a lien statute, RCW 60.04.021 must be strictly construed when determining of a person or service falls under its protection. The court of appeals said that strict construction did not apply, and then liberally construed the meaning of the statute and the definition of "construction agent" to include ABSI, even though ABSI was contractually prohibited from being considered any type of agent, under any circumstance.

A strict construction reading of RCW 60.40.021 and RCW 60.40.011(1) under these facts leaves the only conclusion that can be reached which is consistent with *Williams, Tsutakawa, De Gooyer,* and *Dean* is that ABSI was <u>not</u> a construction agent, and therefore, the Laborers are not within a class authorized to have a statutory lien.

2. The legislative history and rules of grammar conclude there is no unrestricted laborer lien right

Over time, the construction lien statutes in Washington have grown more restrictive. Remington's Compiled Statute Section 1131 (RRS § 1131 (1893)) stated:

> "Any person who, at the request of the owner of any real property, his agent, contractor or subcontractor, clears, grades, fills in or otherwise improves the same, or any street or road in front of, or adjoining the same, has a lien upon such real property for the labor performed, or the materials furnished for such purposes."

Therefore, any laborer had a lien right, regardless of how large or small the (sub)contractor's authority was.

In 1951, the RCW was created and RRS § 1131 became (former) RCW 60.04.040, which said:

> Any person who, at the request of the owner of any real property, or his agent, [not contractor or subcontractor as in the RRS version] clears, grades, fills in or otherwise improves the same…rents, leases, or otherwise supplies equipment, or furnishes materials…otherwise improving any real property or any street or road in front of or adjoining the same…has a lien upon such real property for the labor performed…

In this 1951 recodification, the Legislature removed the language "contractor or subcontractor," thus starting the trend of restricting the construction lien statutes.

While discerning a statute's plain meaning, the Court employs the traditional rules of grammar. *Gray v. Suttell & Assocs.*, 181 Wash.2d 329, 339, 334 P.3d 14 (2014). The current wording in RCW

60.04.011(1) is: "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..." (*Emphasis added.*) The court of appeals, in its analysis of this case, completely ignored the implication of the presence of the word "other" as it affected the meaning of the statute.[7] In doing this, the court of appeals adopted an interpretation of the statute that renders statutory language meaningless or superfluous, which is to be avoided. *Wash. Dept. of Transp. v. City of Seattle,* 192 Wash.App. 824, 838, 368 P.3d 251 (2016).

The deliberate addition by the Legislature of the "other" qualifier, which grammatically ties "having charge of any improvement to real property" to anyone attempting to qualify as a construction agent, is a direct action by the Legislature to narrow and restrict who qualifies as a construction agent under this statute, and thus, who has standing to file a lien.

"Other" is not defined in the statute, and its presence greatly changes the meaning of the sentence. The dictionary defines one meaning of "other" as ""additional"; in addition to the person or thing that has already been mentioned" *Merriam-Webster.com,* 2016.[8]

Consider the following sentence:

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[7] Published Opinion, pg. 9

[8] If a statutory term is undefined, the Court may use a dictionary to determine its meaning. *Nissen v. Pierce County,* 183 Wash.2d 863, 881, 357 P.3d 45 (2015).

"Allowed participant" means China, France, the United States, or other country having a membership to the U.N. Security Council."

Here, the word "other" clearly applies the description "country having a membership to the U.N. Security Council" to the previously listed entities. To remove the concept of "in addition to the things that have already been mentioned" renders the word "other" meaningless and completely changes the context of the sentence within RCW 60.04.011(1).

Such is the case with RCW 60.04.011(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." The word "other" here establishes an element that is in addition to the persons already mentioned. It indicates that "person having charge of any improvement to real property" is a common denominator between the jobs listed. It is a requirement of all of the jobs listed that they be a "person having charge of any improvement to real property" to qualify as a "construction agent."

While the court of appeals is correct in its analysis of the last antecedent rule,[9] it fails to take into account the implications of the rule of *ejusdem generis* when applying the rules of grammar. The *ejusdem generis* rule requires that general terms appearing in a statute

[9] Published Opinion, pgs. 8-9

in connection with specific terms are to be given meaning and effect only to the extent that the general terms suggest items similar to those designated by the specific terms. In short, specific terms modify or restrict the application of general terms where both are used in sequence. *Dean v. McFarland*, 81 Wash.2d 215, 221, 500 P.2d 1244 (1972).

This Court has noted that "[t]he *ejusdem generis* rule is generally applied to general and specific words clearly associated in the same sentence in a pattern such as '[specific], or [general]'..."[10] as is the case with RCW 60.04.011(1).

When it was asked to interpret former RCW 82.04.430(1), which stated in relevant part:

> Amounts derived by persons, other than those engaging in banking, loan, security, or other financial businesses, from investments or the use of money as such...

this Court, under the *ejusdem* generis rule, held in *Sellen* that "the generic term "other financial businesses" must be read in conjunction with the terms "banking, loan, and security." *John H. Sellen Const. Co. v. Dep't of Revenue*, 87 Wash. 2d 878, 884, 558 P.2d 1342 (1976). Similarly here, under RCW 60.04.011(1), the generic term "other person having charge of any improvement to real property" must be read in conjunction with the terms "registered or licensed contractor, registered or licensed subcontractor, architect, [and] engineer." The

[10] *Southwest Wash. Ch., Nat'l Elec. Contractors Ass'n v. Pierce County*, 100 Wash.2d 109, 116, 667 P.2d 1092 (1983).

terms must be read in conjunction, with the specific terms modifying the generic one. They cannot be read as separate units, as the court of appeals did.[11]

B. The petition involves issues of substantial public interest that should be determined by the Supreme Court

Construction is an essential component to sustaining a population and growing any economy. This petition, and the question of whether or not employees of any subcontractor have a lien right against the property, regardless of whether the subcontractor is a construction agent, is one that effects construction of all types, from skyscrapers to single-family homes, from shopping malls to corner stores, from universities to playgrounds. A matter of law that affects the backbone of the Washington State economy is of substantial public interest and should be addressed and determined by the Supreme Court.

1. The contract between Milestone and ABSI is dispositive

It is clear from RCW 60.04.021 that to have a lien right, the Laborers must have completed the work at the instance of either the owner, agent, or construction agent. If they cannot establish that, their claim fails.

The Laborers do not dispute that they did the work at the instance of their employer, ABSI. (CP 174-175). They also do not

[11] Published Opinion, pgs. 8-9

dispute that ABSI is not the owner of the property.[12] In addition, the Laborers expressly disavow that ABSI was a common-law agent of Milestone.[13] Instead, they claim that ABSI was the construction agent of the owner.[14] But the definition of "construction agent" in RCW 60.04.011(1), when harmoniously applied to the plain wording of the Milestone/ABSI contract, shows this to be incorrect.

In interpreting contracts, Washington continues to follow the objective manifestation theory of contracts. *Hearst Communications, Inc. v. Seattle Times Co.,* 154 Wash.2d 493, 115 P.3d 262 (2005). The Court imputes an intention which corresponds to the reasonable meaning of the words used.[15] Thus, when interpreting contracts, the subjective intent of the parties is generally irrelevant if intent can be determined from the actual words used.[16] Therefore, the Court generally gives words in a contract their ordinary, usual, and popular meaning unless the entirety of the agreement clearly demonstrates a contrary intent.[17] The Court does not interpret what was intended to be written but what was written.[18] Under this approach, the Court attempts to determine the parties' intent by focusing on the objective

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[12] *Reply Brief,* pg. 7, *Guillen, et al v. Pearson, et al*, 48058-1-II
[13] *Id.*
[14] *Brief of Appellants,* pg. 9, *Guillen, et al v. Pearson, et al*, 48058-1-II.
[15] *Id., quoting Lynott v. Nat' l Union Fire Ins. Co. of Pittsburgh, Pa.,* 123 Wash.2d 678, 684, 871 P.2d 146 (1994)
[16] *Id.,* at 504, *quoting City of Everett v. Sumstad's Estate,* 95 Wash.2d 853, 855, 631 P.2d 366 (1981)
[17] *Id., quoting Universal/Land Const. Co. v. City of Spokane,* 49 Wash.App. 634, 637, 745 P.2d 53 (1987)
[18] *Id., quoting J.W. Seavey Hop Corp. of Portland v. Pollock,* 20 Wash.2d 337, 348–49, 147 P.2d 310 (1944)

manifestations of the agreement, rather than on any unexpressed subjective intent of the parties.[19]

The contract between Milestone and ABSI, specifically Section 15, can only be read as one that does not intend that ABSI be the owner's agent or construction agent. Section 15 states:

> 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 67, 69.) (Emphasis added.)

The contract expressly contemplates the idea that ABSI could be considered an agent of Milestone, and expressly rejects it.

"Construction agent" means…[one] **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.) Under the rules of statutory construction, use of the word "shall" makes the interpretation of "construction agent" as "the agent of the owner" to be a mandatory obligation. *State v. Martin,* 137 Wash.2d 149, 969 P.2d 450 (1999).

The Legislature could have used the word "may", which would have allowed the defining of "construction agent" as "the agent of the owner" to be merely "directory" (*Id.,* at 155). Instead, the Legislature chose to use "shall", making the interpretation an

[19] *Id.,* at 503, *quoting Max L. Wells Trust v. Grand Cent. Sauna & Hot Tub Co. of Seattle,* 62 Wash.App. 593, 602, 815 P.2d 284 (1991)

imperative obligation.[20] As such, this Court must conclude that the use of "shall" was done to create a mandatory reading that a "construction agent" must be intended to be "the agent of the owner," as opposed to just an entity with a connection to the project.

The language of the contract is unambiguous, stating expressly that under no circumstances would ABSI be considered the agent, and it is undisputed by the parties that the contract is enforceable as written. To declare ABSI a construction agent would be to patently ignore both the plain language of the contract and RCW 60.04.011(1). To reinforce the notion that ABSI could not be considered an agent, of any sort, under any circumstances, Section 15 of the contract also expressly states that ABSI did not have the right or authority to obligate Milestone to any other person. If the contract's language of "shall under no circumstances be considered as the agent" is interpreted by this Court to mean ABSI is still the "construction agent", such an interpretation would not only ignore the mandatory obligation in RCW 60.04.011(1), but it would also render the second half of Section 15 to be meaningless.

The actual words used in the contract clearly demonstrate the intent of the parties not to allow ABSI to be considered the agent of the owner in any circumstance, and thus the Court should construe the contract under the principles laid out in *Hearst.* However, even if the

[20] The Legislature is presumed to know the rules of statutory construction. *State v. Blilie*, 132 Wash.2d 484, 492, 939 P.2d 691 (1997)

Court wished to use a more context based approach, as reflected in *Berg v. Hudesman*[21] and the Washington Pattern Civil Jury Instructions for Contract Interpretation[22], where "any determination of meaning should be made in light of the relevant evidence of the situation and relations of the parties, the subject matter of the transaction...usages of trade, and the course of dealing between the parties",[23] the result is still the same.

Any attempt by the Laborers to explain away the plain meaning of Section 15, claiming that Milestone "took it out of context",[24] is irrelevant because the Laborers were not a party to that contract. The contract was exclusively negotiated and executed between ABSI and Milestone. Therefore, the Laborers have no standing to make any argument as to what the "context" of the contract was, nor the parties' intent, because they were not there and do not know. The only party who can testify as to the intent of the contract is Milestone, and Milestone presented direct evidence of that intent, stating via declaration that "ABSI was not the agent of Milestone for any purpose." (CP 67.)

Under both the objective, plain meaning rules of contract construction, and the subjective context analysis of the contract, ABSI

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[21] 115 Wash.2d 657, 801 P.2d 222 (1990)
[22] 6A Wash. Prac., Wash. Pattern Jury Instr. Civ. WPI 301.05 (6th ed.)
[23] *Berg*, at 667.
[24] Laborer's *Brief of the Appellants, Guillen, et al v. Pearson, et al*, 48058-1-II *filed with Division II Court of Appeals, December 4, 2015*

was not the owner, agent, nor construction agent of the property, and as such, the Laborers do not have a lien right under RCW 60.04.021.

2. RCW 60.04.021 does not allow for an unrestricted lien right to all construction laborers

The Laborers' interpretation of the statute would give lien rights to every employee of every entity attached to a job, no matter how many tiers removed from the owner. No Supreme Court ruling or prior appellate court ruling has ever agreed with this position. To adopt such an interpretation would mean that an owner would be required to get a lien release from each and every employee of every entity, each and every pay period, to protect against double payment. To require a lien release from each one for each monthly draw on a construction project would make it impossible for large projects to proceed and there is no evidence, in statutes or the legislative history that the Legislature intended such a result.

3. To be a construction agent, one must be in charge of the construction

In this case, the improvements to real property were the apartment buildings that were being constructed. The party having charge of that improvement was Milestone. Milestone was the construction agent, and if the Laborers had contracted with Milestone or been employees of Milestone, they would have had lien rights, but the Laborers were employees of ABSI. (CP 174-175.) ABSI did not have authorization or charge of the construction of the apartment

buildings, and therefore, was not, and is not, the construction agent.

This notion that the person in question must have charge of the improvement to be a construction agent is also reflected in the seminal treatise on the subject.

> A construction agent is the person having charge of the improvement to real property, including but not limited to a registered or licensed contractor, subcontractor, architect, or an engineer and is deemed to be the agent of the owner only for the purposes of establishing a construction lien.

27 Marjorie Dick Rombauer, *Washington Practice Creditors' Remedies-Debtors' Relief* (2015).

Washington's courts have ruled in a similar fashion. In *Henifin Construction v. Keystone Construction,*[25] the Court found that Keystone Construction was the construction agent for the project, not because Keystone Construction was hired by the owner as a general contractor, but because the owner placed Keystone in charge of constructing an entire restaurant on the property. ("It is undisputed that Keystone is a registered and licensed contractor that [the owner] placed in charge of constructing its restaurant." (*Emphasis added.*) *Henifin* at 274. All of the language in *Henifin* that specifically talks about the fact that Keystone was "placed in charge" by the owner, and thus the construction agent becomes superfluous and meaningless if, as the Laborers argue, every contractor or subcontractor is automatically the construction agent of the owner with the power to

[25] 136 Wash.App 268, 145 P.3d 402 (2006)

bind the owner to lien rights. This would stop nearly every construction project in its tracks and is clearly not what the Legislature intended.

The emphasis placed on the necessity for a construction agent to have been "placed in charge" is also reflected in an earlier decision, *McCombs Construction, Inc. v. Barnes* 32 Wash.App. 70, 645 P.2d 1131 (1982). There, the Court said the son of the owners of the property was not the construction agent because the owners never gave the son authority to effect the improvements and never put him in charge of the project. It was irrelevant whether the son was a contractor, subcontractor, or anything else. What the Court focused on was "Did the owners direct or order the son to do any work? Did he "have charge of the construction?" and the decision to declare him not a construction agent rested on the answers to those questions being No. (*Id.,* at 74.) It is the paramount keystone that one must be authorized by the owner/owner's agent to have charge of the construction to be considered a construction agent.

V. CONCLUSION

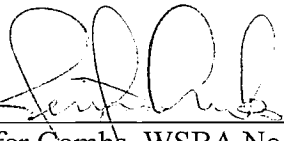
This case involves a court of appeals opinion that is in conflict with all prior Supreme Court opinions on the subject, as well as an issue of substantial public interest and impact that should be addressed by the Supreme Court. The court of appeals misconstrues this Court's analysis

in *Williams v. Athletic Field* and all previous Supreme Court opinions regarding the application of strict construction to lien statutes, and in doing so, creates a new rule strict construction is only applied if the statute is ambiguous. This is in conflict with this Court's previous rulings.

The court of appeals' opinion also creates a brand new and overbroad right for all construction laborers to be able to encumber the property itself, with no regard to the permissions and authorities required by RCW 60.04.021. This opinion allows laborers to ignore the requirements of the RCW, while unjustly forcing the owner of the property to pay for work twice, once to the contractor/subcontractor who hired the laborers, and then again to the laborers themselves. The ramifications of such an overbroad lien right which will affect all levels of construction across the entire state of Washington makes this issue one of substantial public interest that should be addressed by this Court. For these reasons, the Petitioners Milestone respectfully request the Supreme Court to grant this Petition for Discretionary Review.

RESPECTFULLY SUBMITTED this 15th day of September, 2016.

VSI LAW GROUP, PLLC



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Attorneys for Petitioners

SUPREME COURT NO.:_____
COURT OF APPEALS NO. 48058-1-II

SUPRME COURT
OF THE STATE OF WASHINGTON

MILESTONE AT WYNNSTONE LLC, MILESTONE AT WYNNSTONE 2 LLC, AND RED CANOE CREDIT UNION Petitioners, and BENJAMINE PEARSON, VULCAN MOUNTAIN CONSTRUCTION, ABSI BUILDER, INC., GRAVELLY LAKE TOWNHOMES, LLC, CBIC, AND RLI INSURANCE, Defendants, v. FRANCISCO GUILLEN, ROBERTO GUILLEN, HECTOR FIERRO, MARTIN GUILLEN, AND JOSE TIMOTEO, Respondents.	**DECLARATION OF SERVICE**

I Jennifer Combs, state that on the 15th day of September, 2016, I caused a true and correct copy of this *Petition for Review* to Diego Alonso Rondón Ichikawa and David N. Mark at diego@wabeclaimproject.org, and david@wageclaimproject.org

Dated this 15th day of September, 2016.

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APPENDIX A

Filed
Washington State
Court of Appeals
Division Two

August 16, 2016

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FRANCISCO GUILLEN, ROBERTO GUILLEN, HECTOR FIERRO, MARTIN GUILLEN AND JOSE TIMOTEO, Appellants, v. BENJAMIN PEARSON, VULCAN MOUNTAIN CONSTRUCTION, ABSI BUILDERS, INC., CBIC, RLI INSURANCE CO., GRAVELLY LAKE TOWNHOMES, LLC, Defendants, and MILESTONE AT WYNNSTONE LLC, MILESTONE AT WYNNSTONE 2 LLC, AND RED CANOE CREDIT UNION, Respondents.	No. 48058-1-II PUBLISHED OPINION

MAXA, J. – Francisco Guillen, Roberto Guillen, Martin Guillen, Hector Fierro, and Jose Timoteo (collectively the laborers) were employees of ABSI Builders, Inc., which was a framing subcontractor on an apartment construction project owned by Milestone at Wynnstone, LLC (Milestone). When ABSI did not pay the laborers their wages, they filed a construction lien under RCW 60.04.021 against Milestone's property and then sued to foreclose the lien. After suit was filed, Milestone transferred ownership of the property to Milestone at Wynnstone 2,

LLC (Milestone 2), and Red Canoe Credit Union recorded a deed of trust regarding the property. The laborers later filed and served a supplemental complaint adding lien claims against Milestone 2 and Red Canoe.

Under RCW 60.04.021, any person furnishing labor for the improvement of real property is entitled to a lien on that property for the contract price of labor furnished at the instance of the owner's "construction agent." RCW 60.04.011(1) defines "construction agent" as a contractor, subcontractor, architect, engineer, or other person having charge of any improvement to real property. Milestone argued on summary judgment that ABSI was not its construction agent, and the trial court granted summary judgment in favor of all defendants.

We hold that (1) the plain language of RCW 60.04.021 entitles individual laborers to construction liens for their labor if their work was furnished at the instance of the owner or the owner's agent or construction agent; (2) the laborers are entitled to a lien under RCW 60.04.021 because they furnished work at the instance of ABSI, which (a) as a subcontractor was Milestone's "construction agent" under RCW 60.04.011(1), or in the alternative, (b) was Milestone's construction agent because it had charge of an improvement to Milestone's real property; and (3) based on the laborers' unchallenged argument, Milestone 2 and Red Canoe were timely added as defendants and timely served after Milestone 2 acquired the property.

Accordingly, we reverse the trial court's summary judgment orders and remand for further proceedings.

FACTS

Milestone owned real property in Puyallup on which it planned to construct apartment buildings. Milestone contracted with ABSI to "[p]rovide labor, material and equipment" to

frame the buildings. Clerk's Papers (CP) at 68. The contract was entitled "Subcontract" and described ABSI as a "subcontractor," and made ABSI "responsible for the design, engineering, construction details, and other aspects of its work hereunder." CP at 68-69. The scope of work included construction of exterior and interior walls, floors and roofs, and installation of trusses, sheeting, windows, and sliding doors.

ABSI employed the laborers to perform framing work on the Milestone project. The laborers worked on the Milestone project from April 11 to April 26, 2014. They alleged that ABSI failed to pay $9,914 in wages for the work they performed.

On May 27, the laborers filed a construction lien against the Milestone property in the amount of the owed wages. On June 4, they filed their complaint against Milestone in superior court, seeking to foreclose the lien.[1] After the laborers had filed their lien and complaint, Milestone transferred ownership in the property to Milestone 2 by quitclaim deed and Red Canoe recorded a deed of trust on the property. The trial court granted the laborers' motion to supplement their complaint to add Milestone 2 and Red Canoe as parties and the laborers filed a "supplemental complaint" on November 12. Red Canoe was served on December 30 and Milestone 2 was served on January 27, 2015.

Milestone moved for summary judgment on the lien foreclosure claim, arguing that ABSI was not Milestone's construction agent as a matter of law. The trial court granted summary judgment in favor of Milestone. Milestone 2 and Red Canoe later moved for summary judgment

[1] The laborers' complaint named a number of other defendants who are not party to this appeal. The complaint also asserts other causes of action, but only the lien foreclosure on the Milestone property is at issue in this appeal.

on the lien foreclosure claim, arguing that ABSI was not Milestone's construction agent as a matter of law and that the laborers did not timely commence the action against or timely serve Milestone 2. The trial court granted summary judgment in favor of Milestone 2 and Red Canoe.

The laborers appeal the trial court's orders granting summary judgment in favor of Milestone, Milestone 2, and Red Canoe.

ANALYSIS

A. LEGAL PRINCIPLES

1. Standard of Review

When a summary judgment order is based on an issue of statutory interpretation, we review de novo the trial court's interpretation of the statute and its application to the case facts. *Blue Diamond Grp., Inc. v. KB Seattle 1, Inc.*, 163 Wn. App. 449, 453-54, 266 P.3d 881 (2011). We review the evidence and all reasonable inferences from the evidence in the light most favorable to the nonmoving party. *Keck v. Collins*, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015). Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); *Keck*, 184 Wn.2d at 370.

2. Construction Lien Statute

RCW 60.04.021 describes who is entitled to a construction lien:

> 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*.

(Emphasis added.) "Labor" means the "exertion of the powers of body or mind performed at the site for compensation." RCW 60.04.011(7). "Improvement" includes "constructing" upon any real property. RCW 60.04.011(5)(a).

The key issue here is whether ABSI was Milestone's "construction agent." RCW 60.04.011(1) defines "construction agent" as "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."

3. Principles of Statutory Interpretation

Statutory interpretation is a matter of law that we review de novo. *Jametsky v. Olsen*, 179 Wn.2d 756, 761, 317 P.3d 1003 (2014). The purpose of statutory interpretation is to determine and give effect to the legislature's intent. *Gray v. Suttell & Assocs.*, 181 Wn.2d 329, 339, 334 P.3d 14 (2014). To determine legislative intent, we first look to the plain language of the statute, considering the text of the provision, the context of the statute, related provisions, and the statutory scheme as a whole. *Id.*

When discerning a statute's plain meaning, we employ traditional rules of grammar. *Id.* If the statute defines a term, we must rely on that provided definition. *Blue Diamond*, 163 Wn. App. at 454. If a statutory term is undefined, we may use a dictionary to determine its plain meaning. *Nissen v. Pierce County*, 183 Wn.2d 863, 881, 357 P.3d 45 (2015).

A statute is unambiguous if the plain language of the statute is susceptible to only one reasonable interpretation. *See Gray*, 181 Wn.2d at 339. When a statute is unambiguous, we

apply the statute's plain meaning as an expression of legislative intent without considering other sources of such intent. *Jametsky*, 179 Wn.2d at 762.

B. PERSONS ENTITLED TO CONSTRUCTION LIEN

It is undisputed in this case that the laborers furnished labor for the improvement of Milestone's real property as required under RCW 60.04.021. But Milestone argues that only licensed contractors who contract to perform work on real property have construction lien rights under RCW 60.04.021 and employees of such contractors do not. We disagree.

RCW 60.04.021 states that "any person furnishing labor" is entitled to a lien. The statute does not define the term "person," so we look to the dictionary for the word's plain meaning. *Nissen*, 183 Wn.2d at 881. The dictionary definition of person is "an individual human being." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1686 (2002). Labor is defined by statute as "exertion of the powers of body or mind performed at the site for compensation." RCW 60.04.011(7).

Here, a plain reading of RCW 60.04.021 indicates that the laborers are "any person furnishing labor." The laborers are individual human beings who constructed the framing of the buildings in exchange for compensation from ABSI. The statute does not define "person" as a licensed contractor, nor does the statute indicate that "person" excludes employees of a licensed contractor. And Milestone cites no authority supporting such a limitation. Milestone's argument that the laborers are not entitled to a lien because they are unlicensed employees would require us to read into the statute requirements that do not exist in the plain language.[2]

[2] In addition, RCW 60.04.011(11) defines a "[p]otential lien claimant" as someone who is registered or licensed "*if required* to be licensed or registered by the provisions of the laws of the

Accordingly, we hold that the laborers are persons who are entitled to a lien under RCW 60.04.021.

C. SUBCONTRACTOR'S STATUS AS CONSTRUCTION AGENT

The laborers argue that they were entitled to a construction lien under RCW 60.04.021 because ABSI was Milestone's construction agent as defined in RCW 60.04.011(1). We agree.

1. Inapplicability of "Having Charge of Any Improvement" Requirement

RCW 60.04.011(1) defines construction agent as "any registered or licensed contractor, registered or licensed subcontractor, architect, engineer, or other person *having charge of any improvement to real property*." (Emphasis added.) The parties dispute whether the italicized language modifies each of the categories of persons listed (Milestone's argument) or only modifies "other person" (the laborers' argument).

Milestone argues that RCW 60.04.011(1) should be interpreted as if the italicized language applied to each category of potential construction agents: "any registered or licensed contractor [having charge of any improvement to real property], registered or licensed subcontractor [having charge of any improvement to real property], architect [having charge of any improvement to real property], engineer [having charge of any improvement to real property], or other person having charge of any improvement to real property." Under this interpretation, a registered or licensed subcontractor must have charge of any improvement to real property in order to meet the definition of construction agent.

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state of Washington." (Emphasis added.) No statute requires that laborers be licensed or registered.

The laborers argue that RCW 60.04.011(1) should be interpreted as identifying five separate categories of persons who constitute construction agents: "any (1) registered or licensed contractor, (2) registered or licensed subcontractor, (3) architect, (4) engineer, or (5) other person having charge of any improvement to real property." Under this interpretation, a registered or licensed subcontractor is a construction agent without an additional requirement of having charge of any improvement to real property.

We agree with the laborers and hold that all subcontractors that contract to work on a project fall within the definition of construction agent in RCW 60.04.011(1).

a. Last Antecedent Rule

In determining whether the plain language of RCW 60.04.011(1) is ambiguous, we consider the rules of grammar. *Gray*, 181 Wn.2d at 339. One such grammatical rule is the "last antecedent rule." *Id.*; *City of Spokane v. Spokane County*, 158 Wn.2d 661, 673, 146 P.3d 893 (2006). This rule states that a qualifying phrase following a list of terms modifies only the last antecedent term, unless the context suggests a contrary intent. *Spokane*, 158 Wn.2d at 673. If there is a comma before the qualifying phrase, the last antecedent rule does not apply and the qualifying phrase modifies all the antecedent terms. *Id.* Although the laborers rely on this rule, Milestone does not address it.

In this case, the language of RCW 60.04.011(1) contains five antecedent terms – contractor, subcontractor, architect, engineer, and other person – followed by the qualifying phrase "having charge of any improvement." Because there is no comma before that phrase, the last antecedent rule indicates that the phrase only modifies the last antecedent – "other person."

Applying the qualifying phrase only to "other person" yields a reasonable result. The specifically listed categories of potential construction agents are all by their nature parties that are involved with some aspect of property improvement. In fact, RCW 60.04.011(16) defines "subcontractor" as a contractor who "contracts for the improvement of real property." We avoid an interpretation that renders statutory language meaningless or superfluous. *Dep't of Transp. v. City of Seattle*, 192 Wn. App. 824, 838, 368 P.3d 251 (2016). On the other hand, the term "other person" is a broad descriptor that requires some kind of restriction in order to avoid rendering the rest of the definition superfluous.

Based on a traditional rule of grammar, the plain meaning of RCW 60.04.011(1) is that a licensed subcontractor is not required show that it is in charge of any improvement to real property to satisfy the definition of construction agent.

b. Inapplicability of Strict Construction Rule

Milestone argues that we must strictly construe RCW 60.04.011(1) and RCW 60.04.021 in determining whether ASBI was its construction agent. We disagree.

RCW 60.04.900 states that the lien statutes – expressly including RCW 60.04.011 and RCW 60.04.021 – "are to be liberally construed to provide security for all parties intended to be protected by their provisions." However, the common law rule is that lien statutes must be strictly construed because they are in derogation of common law. *Williams v. Athletic Field, Inc.*, 172 Wn.2d 683, 695, 261 P.3d 109 (2011). The Supreme Court in *Williams* confirmed that the strict construction rule applies to determine whether persons or services come within the scope of the statutory lien. *Id.* at 696-97.

But the strict construction rule applies only if a statute is ambiguous. *See id.* at 694 (finding the statute ambiguous before considering which canon of construction to apply); *Estate of Bunch v. McGraw Residential Ctr.*, 174 Wn.2d 425, 432-33, 275 P.3d 1119 (2012) (noting that "[n]either a liberal construction nor a strict construction may be employed to defeat the intent of the legislature, as discerned through traditional processes of statutory interpretation"). As stated above, we hold that RCW 60.04.011(1) is unambiguous based on the last antecedent rule of grammar. Therefore, we hold that strict construction is inapplicable here.

c. Inapplicability of *Henifin*

Milestone relies on *Henifin Constr., LLC v. Keystone Constr., G.W., Inc.*, 136 Wn. App. 268, 145 P.3d 402 (2006) to support its interpretation of construction agent as a subcontractor who has charge of any improvement to real property. In that case, Henifin was a subcontractor who filed a lien against improvements made to a McDonald's restaurant after performing work pursuant to change orders approved by Keystone, the project's general contractor. *Id.* at 271-72. The trial court held that Keystone was not the construction agent of McDonald's regarding the change orders because McDonald's did not approve them. *Id.* at 273.

On appeal, Division One of this court held that Keystone was the construction agent of McDonald's. *Id.* at 271. The court repeatedly stated that Keystone was a construction agent because McDonald's placed Keystone in charge of the construction project.

> Because McDonald's Corporation placed general contractor Keystone . . . in charge of constructing its restaurant, RCW 60.04.011(1) deems Keystone to be McDonald's statutory construction agent.

Id.

> It is undisputed that Keystone is a registered and licensed contractor that McDonald's placed in charge of constructing its restaurant. This being the case,

> according to RCW 60.04.011(1), Keystone is "deemed the agent of the owner for the limited purpose of establishing the lien created by this chapter."

Id. at 274.

> [H]ere, McDonald's placed Keystone in charge of the construction project. This factual difference is critical because, when McDonald's placed Keystone in charge of the construction project, the statutes deemed Keystone to be McDonald's construction agent for the purposes of establishing a lien.

Id. at 275.

Milestone argues that these excerpts show that the court in *Henifin* read the qualifying phrase "having charge of any improvement to real property" in RCW 60.04.011(1) as modifying "licensed contractor." However, the court in *Henifin* did not specifically address this issue and did not analyze the plain meaning of RCW 60.04.011(1). The court was concerned with the *scope* of Keystone's authority. There was no question that Keystone was a construction agent for most purposes; the issue was whether Keystone lost that status for change orders that McDonald's did not approve.

Further, the court's statements are not inconsistent with the laborers' interpretation of RCW 60.04.011(1). It is difficult to conceive of a situation where a general contractor of a project does not "have charge" of that project. Therefore, there would be no need for a separate "having charge of any improvement" requirement for a general contractor.

We hold that *Henifin* is not controlling with regard to interpretation of RCW 60.04.011(1).[3]

[3] Milestone also cites a *Washington Practice* section on construction liens that paraphrases the statutory definition of construction agent as "the person having charge of the improvement to real property." 27 MARJORIE DICK ROMBAUER, WASHINGTON PRACTICE: CREDITORS' REMEDIES—DEBTORS' RELIEF § 4.52, at 348 (1998). But this paraphrase does not track the

d. Summary

We hold that under the plain language of RCW 60.04.011(1), a licensed subcontractor on an improvement to real property is the owner's construction agent without having to show that it had charge of that improvement.

2. Satisfaction of "Having Charge of Any Improvement" Requirement

Even if we adopted Milestone's interpretation that ABSI must have charge of any improvement in order to be a construction agent, the result here would be the same. We hold that ABSI's framing work qualifies as "any improvement" to real property and that ABSI had charge of that improvement.

a. Plain Language Analysis

As discussed above, RCW 60.04.011(1) defines construction agent as "any registered or licensed contractor, registered or licensed subcontractor, architect, engineer, or other person having charge of *any improvement* to real property." (Emphasis added.) RCW 60.04.011(5) defines "improvement" 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.

The dictionary defines "construct" as "to form, make, or create by combining parts or elements" and does not reference a finished product. WEBSTER'S at 489.

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statutory language and instead rewords the statute. We disregard this statement and rely on the statutory language and our own analysis.

This case involves the construction of apartment buildings. There is no question that framing apartment buildings constitutes constructing upon real property and therefore falls within the definition of "improvement." And Milestone's subcontract placed ABSI fully in charge of the framing work, making ABSI "responsible for the design, engineering, construction details, and other aspects of its work hereunder." CP at 69. Under the plain language of RCW 60.04.011(1), this means that ABSI had charge of any improvement to real property.

Milestone argues that an improvement under RCW 60.04.011(5) is the finished product and therefore that only the finished apartment buildings and not the framing qualifies as the relevant improvement to the property. But this argument is inconsistent with the language of both RCW 60.04.011(5) and RCW 60.04.011(1). First, Milestone does not explain how the language of RCW 60.04.011(5) supports its argument. RCW 60.04.011(5) does not refer to a "finished product" or to the entire construction project. Instead, the statute identifies many different ways in which real property can be improved. All of those types of improvements most frequently constitute component parts of a larger project.

Second, RCW 60.04.011(1) refers to "any" improvement. This indicates that there are multiple types of improvements that may qualify as the relevant improvement for determining whether an entity is a construction agent. But if RCW 60.04.011(1) referred only to the entire construction project – of which there could be only one – the legislature logically would have referred to "the" improvement. Use of the word "any" means that an entity having charge of any portion of a larger project is a construction agent if that portion meets the definition of improvement.

Milestone again relies on *Henifin*, where the court referred to McDonald's placing Keystone "in charge of constructing its restaurant" and "in charge of the construction project" in determining that Keystone was a construction agent. 136 Wn. App. at 274-75. However, the court did not state that *only* licensed contractors who have control over an entire construction project qualify as a construction agent. Instead, the court stated that Keystone, being a licensed contractor in control of a project, clearly met the definition of construction agent. Therefore, we limit the language of *Henifin* to the facts of that case.

b. Public Policy Argument

Milestone makes the policy argument that providing construction lien rights to all employees of contractors or subcontractors no matter how far removed from the owner would make large scale construction projects impossible. We disagree.

Milestone claims that accepting the laborers' interpretation of the statute would mean that on a large construction project multiple employees working for various contractors and subcontractors, the owner would be required to get a lien release from each employee to protect against double payment. But project owners can avoid lien liability in a variety of ways. In fact, Milestone's contract with ABSI contains an express provision addressing liens and providing for Milestone's protection. The contract provides:

> **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 and deduct said payments from monies owed Subcontractor hereunder.

CP at 69 (emphasis added). Under this provision, Milestone could have withheld ABSI's payment until given evidence that ABSI had fully paid its workers or Milestone could have paid the laborers directly and deducted that amount from ABSI's compensation.

c. Summary

We reject Milestone's argument that to qualify as a construction agent under RCW 60.04.011(1) a subcontractor must have control over an entire construction project. Accordingly, we hold that ABSI was a subcontractor "having charge of any improvement to real property" and therefore was Milestone's construction agent.

D. ADDING SUBSEQUENT PURCHASERS TO LIEN FORECLOSURE ACTION

In their summary judgment motion, Milestone 2 and Red Canoe asserted that the claims against them were not timely filed or timely served under the lien statutes. On appeal, the laborers argue that Milestone 2 and Red Canoe were properly added and served as parties after Milestone 2 acquired the property from Milestone. Milestone 2 and Red Canoe do not address this issue on appeal. When a respondent elects not to address an issue the appellant raises, we are entitled to make our decision based on the argument and record before us. *See Adams v. Dep't of Labor & Indus.*, 128 Wn.2d 224, 229, 905 P.2d 1220 (1995).

RCW 60.04.091 requires that a person seeking to file a lien under RCW 60.04.021 record the lien claim within 90 days of ceasing labor. Once a lien claim is filed, under RCW 60.04.141 the claimant must file an action on the lien in superior court within eight months and then properly serve the complaint within 90 days of filing. As the laborers point out, (1) they added Milestone 2 and Red Canoe as defendants in the supplemental complaint they filed within eight months of filing their lien, and (2) both Milestone 2 and Red Canoe were served within 90 days

after filing the supplemental complaint. Therefore, in the absence of any argument from Milestone 2 and Red Canoe, it appears that the laborers complied with the requirements of RCW 60.04.141 with regard to their claims against Milestone 2 and Red Canoe.

Based on the laborers' unchallenged argument, we hold that the claim against Milestone 2 and Red Canoe was timely filed and timely served under RCW 60.04.141.

CONCLUSION

We hold that (1) RCW 60.04.021 entitles individual, unlicensed laborers to construction liens for their labor if their work was furnished at the instance of the owner or the owner's agent or construction agent, (2) the laborers are entitled to a lien because their labor was furnished at the instance of ABSI, which as a subcontractor was Milestone's construction agent, and (3) based on the laborers' unchallenged argument, the laborers timely filed and timely served their lien action against Milestone 2 and Red Canoe. Accordingly, we reverse the trial court's summary judgment orders and remand for further proceedings.

MAXA, J.

We concur:

JOHANSON, J.

BJORGEN, C.J.

APPENDIX B

STATUTORY APPENDIX

In accordance with RAP 13.4(b)(9), Petitioners provide the following texts of relevant statues:

RCW 60.04.011(1) Definitions. "Construction agent"
RCW 60.04.021 Lien authorized
RCW 60.04.040 (former) Lien for improving real property

RCW 60.04.011(1)

Definitions. "Construction agent"

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.

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 60.04.040 (former) Repealed. (Effective April 1, 1992.)

60.04.040 Lien for improving real property. Any person who, at the request of the owner of any real property, or his agent, clears, grades, fills in or otherwise improves the same, or any street or road in front of, or adjoining the same, and every person who, at the request of the owner of any real property, or his agents, rents, leases, or otherwise supplies equipment, or furnishes materials, including blasting powder, dynamite, caps and fuses, for clearing, grading, filling in, or otherwise improving any real property or any street or road in front of or adjoining the same, and every trustee of any type of employee benefit plan, has a lien upon such real property for the labor performed, contributions owed to the employee benefit plan on account of the labor performed, the materials furnished, or the equipment supplied for such purposes. [I975 c 34 § 4; 1971 ex.s. c 94 § 3; 1959 c 279 § 3; 1929 c 230 § I; 1893 c 24 § 3; RRS § 1131. Prior: Code 188I § 1958; 1877 p 220 § 20.]

Effective date--1971 ex.s. c 94: See note following RCW 60.04.060.

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Effective date--1971 ex.s. c 94: See note following RCW 60.04.060.

VSI LAW GROUP PLLC

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