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Division III
State of Washington
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COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

BRASHEAR ELECTRIC, INC.,

Appellant,

v.

NORCAL PROPERTIES, LLC, a Washington limited liability company,
COLUMBIA STATE BANK, a Washington chartered bank, BLUE
BRIDGE PROPERTIES, LLC, a Washington limited liability company,
WHEATLAND BANK, a Washington chartered bank, NELSON
ROOFING ENTERPRISES, INC., an Oregon corporation d/b/a PALMER
ROOFING COMPANY,

Respondents.

No. 373797

APPELLANT'S BRIEF

Bret Uhrich, WSBA #45595
Attorney for Brashear Electric, Inc., Appellant

1333 Columbia Park Trail, Suite 220
Richland, WA 99352
(509) 735-4444 – Telephone
(509) 735-7140 – Fax

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I. INTRODUCTION

In 1969, the Washington State Supreme Court held that labor required under a construction contract to repair “defective” work requested by the owners does not extend the time for filing a mechanic’s lien. *Wells v. Scott*, 75 Wn.2d 922, 925, 454 P.2d 378, 381 (1969). This was because “a labor and materialman’s lien is a creature of statute in derogation of common law, and that its statutory terms must be strictly construed.” *Id.* The distinction between initial “labor” and “warranty labor” appears nowhere within the statutory scheme. In 1991, the Washington Legislature superseded this decision by enacting Substitute Senate Bill 5497, which provides that the statutory scheme is “to be liberally construed to provide security for all parties intended to be protected by their provisions.” RCW 60.04.900; Laws of 1991, ch. 2281 § 25.

In this case, Appellant subcontractor Brashear Electric performed labor to repair defective work on two projects owned by the Respondents. The work was required under Brashear’s subcontract and was undertaken at the express direction of the prime contractor whom Respondents granted authority to control and direct the work. When Brashear was not paid for its work on the projects, it filed mechanics’ liens against the properties within 90 days of the labor performed. However, the trial court erred by finding that the liens were untimely because the labor occurring within the

last 90 days constituted warranty work. As a result, the Court should reverse the decision below granting Respondents' motion for summary judgment with instructions to enter summary judgment in favor of Appellant Brashear Electric.

II. ASSIGNMENT OF ERROR

1. Whether the trial court erred in denying Brashear Electric's Motion for Summary Judgment and Granting Respondents' Motion for Summary Judgment.

The issues pertaining to this error are:

a. Whether the enactment of RCW 60.04.900 superseded the Court's decision in *Wells v. Scott* concluding that warranty work under a construction contract does not extend the time for filing a mechanic's lien.

b. Whether under the Court's analytical framework in *Williams v. Athletic Field, Inc.* "[f]urnishing labor, professional services, materials, or equipment" is ambiguous as defined in RCW 60.04.011(4) and used in RCW 60.04.091.

c. If "[f]urnishing labor, professional services, materials, or equipment" is ambiguous as used in RCW 60.04.091, whether Brashear Electric as a subcontractor providing labor to the real property is a person intended to be protected by the statute's provisions.

III. STATEMENT OF THE CASE

The facts in this case are not genuinely in dispute. Appellant Brashear Electric, Inc. (Brashear) is an electrical subcontractor. *CP 2*. On or about February 27, 2017, Respondents Blue Bridge Properties, LLC (Blue Bridge) and Norcal Properties, LLC (Norcal) hired prime contractor Vandervert Construction (Vandervert) to construct two commercial retail buildings on adjacent properties. *CP 65; CP 74*. Blue Bridge and Norcal have common ownership. *CP 428; CP 484*. On April 4, 2017, Vandervert hired Brashear as the electrical subcontractor for the Blue Bridge project. *CP 229*. On April 28, 2017, Vandervert hired Brashear as the electrical subcontractor on the Norcal project. *CP 260*. As relevant to this action, both the owner-prime contracts and the prime-subcontractor contracts are identical. *Compare CP 65-73 with CP 74-82; compare also CP 228-241 with CP 259-272*.

Under each of the agreements, both Norcal and Blue Bridge granted Vandervert exclusive control over project as follows:

§ 8.3.1 The Contractor shall supervise and direct the Work, using Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work.

CP 69; CP 92. The "Work" is defined as "the construction and services required by the Contract Documents and includes all other labor, materials,

equipment and services provided, or to be provided, by the Contractor to fulfill the Contractor's obligation." *CP 77; CP 91*. Under these same agreements, Vandervert agreed to provide a one-year warranty on all work as follows:

§ 14.2 In addition to the Contractor's obligations including warranties under the Contract, the Contractor shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents.

CP 81; CP 95. In turn, Vandervert required Brashear to assume all warranty obligations under the prime contract. *CP 238; CP 269*. At no time did Blue Bridge nor Norcal terminate Vandervert as the contractor for these projects. *CP 35-36; CP 167*. Initial construction on the Blue Bridge project ended approximately October 1, 2017. *CP 358*. Initial construction on the Norcal property ended approximately July of 2017. *CP 485*.

In or around early January 2018, the tenant of the Norcal building noticed water leaking from the roof of the building. *CP 167; CP 174*. On or about January 8, 2018, a representative of Apollo Heating and Air Conditioning inspected the leak. *CP 167; CP 174*. After inspection, Apollo believed that Brashear had routed the electrical wiring for the HVAC unit incorrectly resulting in the leak. *CP 167-68; CP 171*. Based on this, the superintendent assigned to the project by Vandervert, Josh Miller, directed Brashear to send an electrician to fix the problem. *CP 167-68; CP 171*.

Early on January 17, 2018, Mr. Miller met Brashear's electrician Jerry Peal at the Norcal property to make the repairs. *CP 157-58; CP 168.* Mr. Peal performed the repair work on the roof and caulked the seals. *CP 158; CP 168.* As the subcontractors were trying to diagnose the cause of the leak, Mr. Peal took pictures of the roof and the inside of the HVAC unit. *CP 170; CP 181-82.* While on-site, Mr. Miller also directed Mr. Peal to perform repair work on the adjacent Blue Bridge project where one of the outside light sensors was not functioning. *CP 158; CP 168.* Mr. Peal fixed the loose connection on the light. *CP 158; CP 168.*

On February 2, 2018, Spokane County Superior Court appointed a general receiver over Vandervert Construction under Cause No. 18-2-00431-9. At the time the receivership was commenced, Brashear was still owed \$36,278.50 for the subcontract work on the Blue Bridge Project and \$12,830.81 on the Norcal project. *CP 184; CP 285-86; CP 289-90.* On January 30, 2018, Brashear recorded a claim of lien against the Norcal property under Benton County Auditor's File No. 2018-002817. *CP 285-87.* On January 31, 2018, Brashear recorded a claim of lien against the Blue Bridge property under Benton County Auditor's File No. 2018-003005. *CP 289-92.*

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Procedural History

On June 13, 2018, Brashear commenced an action to foreclose the liens on the Respondents' properties. *CP 1*. On November 8, 2019, the parties made cross-motions for summary judgment. *CP 17; CP 295; CP 416*. The gravamen of the arguments were whether the trial court should follow *Kirk v. Rohan*, 29 Wn.2d 432, 187 P.2d 607 (1947) which provides that work performed to remedy a defect extends the time for filing a mechanic's lien, or whether the court should follow *Wells*, 75 Wn.2d 922, which states that labor performed under a warranty does not extend the time for filing the mechanic's lien. *See CP 24-5; CP 426*.

In the initial hearing, the trial court identified there was a dispute between the parties whether legally, the mechanic's lien statute was to be strictly construed as a derogation of common law or whether subsequent amendments to the statute providing for liberal construction were applicable. *RP 12/6/2019, pgs. 27-30*. The court ordered supplemental briefing on the issue. *Id. at pg. 28*. The parties each submitted supplemental briefing as directed. *CP 597; CP 603*.

On December 20, 2019, the trial court heard additional argument and orally ruled in favor of Respondents. *RP 12/20/2019, pgs. 63-64*. On January 17, 2020, the court entered the order granting Respondents' motion for summary judgment, concluding that "warranty/guarantee work... is

insufficient to extend the time to file the claim of lien.” *CP 614*. This appeal followed.

IV. LEGAL ARGUMENT

The Court should reverse the trial court’s order denying Brashear’s motion for summary judgment and granting Respondents’ motion for summary judgment. In this matter, the trial court erred in concluding that Brashear’s labor under the contract was not intended to be covered by the statutory protections of the mechanic’s lien statute. This decision is inconsistent with both the express language of the governing statutes as well as the Washington Supreme Court’s analytical framework as set forth in *Williams v. Athletic Field, Inc.*, 172 Wn.2d 683, 261 P.3d 109 (2011).

RCW 60.04.011(5) unambiguously states that “[f]urnishing labor, professional services, materials, or equipment” means “the performance of any labor... for the improvement of real property.” Under RCW 60.04.091, the time for filing a mechanic’s lien runs from 90 days after “the person has ceased to furnish labor, professional services, materials, or equipment.” Because the statute is unambiguous, the Court should conclude that Brashear’s lien was timely filed. In the alternative, if the Court concludes the language is ambiguous, Brashear is entitled to liberal construction as an entity intended to be protected by the statutory scheme. As a result, the

Court should reverse the trial court's decision with instructions to enter an order granting Brashear's motion for summary judgment.

A. Standard of Review.

Summary judgment shall be granted if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. CR 56(c). An appellate court reviews a grant or denial of summary judgment de novo. *Green v. American Pharmaceutical Co.*, 136 Wn.2d 87, 94, 960 P.2d 912 (1998). In this matter, the case below was decided on cross-motions for summary judgment in which Brashear's motion was denied and Respondents' motions were granted. The facts material to this matter are not in genuine dispute. As a result, the standard of review is de novo.

B. The Court Should Conclude That Labor Performed Under A Construction Contract, Including Labor To Repair Defective Work, Constitutes Labor Under Chapter 60.04, And That *Wells v. Scott* Is Superseded By Statute.

The Court should conclude Brashear's warranty work constitutes labor under Chapter 60.04 and that said labor extends the time for filing of a lien under RCW 60.04.091. In this matter, the Court should conclude that the Washington State Legislature's enactment of RCW 60.04.900 supplants the court's decision in *Wells v. Scott*.

In *Wells v. Scott*, the court held that warranty work did not extend the time for filing a mechanic's lien against the improved property. This holding was unsupported by the statutory text, was inconsistent with prior case law and the explicit reasoning for this conclusion was that mechanic's liens are to be strictly construed. In 1991, the Washington State Legislature enacted RCW 60.04.900 which provides that the relevant statutes "are to be liberally construed to provide security for all parties intended to be protected by their provisions." This statute superseded the court's decision in *Wells v. Scott* which has not been cited by a Washington appellate court since. Because *Wells v. Scott* is superseded by statute and *Brashear* along with its labor is intended to be protected by the statutory provisions of the mechanic's lien statute, the Court should reverse the decision of the trial court.

1. Statutory Framework.

Under the mechanics' lien statute, "any person furnishing labor, professional services, materials, or equipment" to improve real property can establish a mechanics' lien for his labor, services, materials, or equipment upon the property itself. RCW 60.04.021.

"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.

RCW 60.04.011(4)(emphasis added). “Improvement” means “[c]onstructing, 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...” RCW 60.04.011(5). Under RCW 60.04.091, a party must file a notice of claim of lien “not later than ninety days after the person has ceased to furnish labor, professional services, materials, or equipment...”

Here, but for the discussion of *Wells v. Scott* discussed *infra*, there is no serious dispute that Brashear’s work under the subcontract constituted labor for the improvement of real property. The statute makes no distinction as to what kind of labor must be furnished to the project. Here, Brashear provided labor that was required under both the prime contract and its contract with Vandervert. *CP 238; CP 269*. Vandervert directed that the work be performed. *CP 167-68*. The property owners granted Vandervert exclusive control over the “construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work.” *CP 69; CP 92*. “Work” defined in the contract unambiguously included warranty work. *CP 77; CP 81; CP 91; CP 95*.

2. Relevant Statutory Law And Case Law Prior To Enactment of RCW 60.04.900 And The Effect Of RCW 60.04.900.

Prior formations of Washington's mechanic's lien statute predate Washington statehood. In 1854, the Legislative Assembly for the Territory of Washington enacted statutory authority providing "[t]hat mechanics, and all persons performing labor, or furnishing materials for the construction or repair of any building, may have a lien..." Laws of 1854, pg. 392, § 1. The initial law provided that a person seeking to acquire such a lien was required to record the lien with the county recorder's office "at any time within sixty days after the completion of such building or repairs." Laws of 1854, pg. 392, § 2. From these provisions and subsequent statutory amendments, case law began to develop regarding how to determine the last date of work.

In 1947, the court decided the case *Kirk v. Rohan*, 29 Wn.2d 432, 436-37, 187 P.2d 607 (1947). In *Kirk*, Cal Kirk was a builder and contractor who agreed to build a garage for Donald Rohan. *Kirk*, 29 Wn.2d at 433. Kirk built the garage from August to November 1945. *Id.* In early February, a heavy rainstorm hit which caused flooding in the garage. *Id.* Rohan contacted Kirk's foreman who went to the project on February 4, 1946 with repairmen to remedy the defect. *Id.* On May 3, 1946, Kirk filed a claim of lien against the project and brought suit. *Id.* Rohan argued that the last day of work was November 19, 1945 and therefore the lien was filed

more than ninety days past the completion of work. *Id.* The trial court disagreed and entered a judgment foreclosing the lien and awarding judgment in the amount claimed. *Id.* Rohan appealed, arguing that the lien period had lapsed because the project was completed in November. *Id.* at 433; 434-35.

On appeal, the Supreme Court for the State of Washington analyzed the previous case law regarding the type of work which extends the time for filing a mechanic's lien. *Id.* at 434. In support of his position that the time for filing the mechanic's lien commenced in November of 1945, Rohan cited to *Ellsworth v. Layton*, 37 Wash. 340, 79 P. 947 (1905) and *Swensson v. Carlton*, 17 Wn.2d 396, 135 P.2d 450 (1943). *Kirk*, 29 Wn.2d at 434. In *Ellsworth*, the court had merely affirmed the trial court's decision as to when the last date of work was completed as "the question of fact which determines the appellants' rights in this case" in a *per curium* opinion. *Ellsworth*, 37 Wash. at 343. In *Swensson*, the contractor admitted that he went back to the project "for the purpose of extending the time so [the owner] had time to make arrangements to pay us" and that the work "was entirely distinct from and had nothing to do with the work to be performed by appellants under the [] contract..." *Swensson*, 17 Wn.2d at 400; 405. The court in *Kirk* rejected the applicability of these cases noting:

[I]f the work is done or materials furnished at the request of the owner to complete the original contract, or to remedy some defect in the work done, then the time for filing the lien would run from the last furnishing of labor and material, provided the work is not done for the purpose of prolonging the time for filing a lien, or renewing the right to file a lien which had been lost by a lapse of time.

Kirk, 29 Wn.2d at 436-37 (emphasis added); *see also Friis v. Brown*, 37 Wn.2d 457, 460, 224 P.2d 330, 332 (1950) (where contractor’s time “making adjustments and becoming satisfied that the furnace was in proper working order” was in furtherance of original contract.).

In 1969, the court decided *Wells v. Scott*. 75 Wn.2d 922. In *Wells*, the primary dispute was a challenge to the sufficiency of the evidence whether a contractor could recover profit in a claim based on *quantum meruit*. *Id.* at 924-25. However, at the end of the opinion, the court addressed the contractor’s cross-appeal regarding the timeliness of filing the mechanic’s lien as follows:

Finally, plaintiff cross-appeals from the denial of his claimed right to foreclose a labor and materialman's lien. The substance of the claim was that, although construction of the buildings was completed in early September, 1965, plaintiff had guaranteed his work for a period of 1 year thereafter; that on request of defendants' agent, and as required by the guarantee, plaintiff had replaced two defective circuit breakers in one of the buildings on May 6, 1966; that the 90-day period during which to record his claim of lien therefore commenced to run on May 6, 1966; that his claim of lien was recorded on June 10, 1966, and was, therefore, timely filed.

The trial court correctly held that a labor and materialman's lien is a creature of statute in derogation of common law, and that its statutory terms must be strictly construed. It held that since construction of the buildings was completed on September 1, 1965, the 90-day filing period for a claim of lien commenced to run at that time; that since the claim was not filed until approximately 280 days thereafter, it was of no force and effect. We concur. The 1-year guarantee did not extend the statutory time within which the claim of lien could properly be recorded.

Id. at 925. This is the entirety of the court's decision and reasoning regarding the timeliness of the lien filing. *See id.* The court did not cite to or attempt to distinguish the decision from *Kirk*.

In 1991, the Washington State Legislature enacted Substitute Senate Bill 5497. This constituted a substantial overhaul from the previous statutory scheme. *See* Laws of 1991, ch. 2281. As part of the law, the Legislature provided that "RCW 19.27.095, 60.04.230, and sections 1 through 24 of this act are to be liberally construed to provide security for all parties intended to be protected by their provisions." Laws of 1991, ch. 2281 § 25. This provision was codified as RCW 60.04.900.

Prior to the enactment of Substitute Senate Bill 5497, multiple appellate and supreme court cases cited *Wells*. *See e.g. United Pac. Ins. Co. v. Lundstrom*, 77 Wn.2d 162, 459 P.2d 930, (1969); *Trane Co. v. Brown-Johnston, Inc.*, 48 Wn. App. 511, 739 P.2d 737 (1987). However, after the

enactment of Substitute Senate Bill 5497 twenty-nine years ago, no Washington appellate court has cited to the decision.

In construing statutes which reenact, with certain changes, or repeal other statutes, or which contain revisions or codification of earlier laws, resort to repealed and superseded statutes may be had, and is of great importance, in ascertaining the intention of the legislature, for, where a material change is made in the wording of a statute, a change in legislative purpose must be presumed.

Graffell v. Honeysuckle, 30 Wn.2d 390, 399, 191 P.2d 858, 863–64 (1948) (citing *In re Phillips' Estate*, 193 Wash. 194, 196, 74 P.2d 1015, 1016 (1938)). Under the *Wells* decision, the court's conclusion that the lien date is not extended by warranty work was based exclusively on the fact that the statute must be construed narrowly as a derogation of common law. *Wells*, 75 Wn.2d at 925. The Legislature thereafter enacted legislation requiring the statutory scheme to be construed liberally to provide security for protected contractors. As a result, the court's decision in *Wells* has been superseded by statute.

3. The Supreme Court's Decision In *Williams v. Athletic Field, Inc.*, Provides The Analytical Framework For Determining Whether Brashear's And It's Labor Was Intended To Be Protected Under The Statute.

The Court should conclude that under *Williams*, Brashear is an entity intended to be protected by the provisions of the mechanic's lien statute and is thus entitled to liberal construction of the statutory protections.

In its 2011 case *Williams*, the court consolidated two lower court cases regarding the sufficiency of the notarization of recorded liens. 172 Wn.2d at 686. In regard to the Ho lien, the lien followed the format set forth in RCW 60.04.091(2), but did not include an acknowledgement in the form set forth in RCW 64.08. *Id.* at 689. The Williams lien followed the same format as the Ho lien, with the additional issue of whether a lien filing agency could sign the lien on behalf of the contractor. *Id.* at 687.

To determine whether the acknowledgments at issue were compliant, the court began with the statutory language. “In interpreting statutes, we begin by considering the statute’s plain meaning.” *Id.* at 693 (citing *Dep’t of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11–12, 43 P.3d 4 (2002)). “If the statute is ambiguous, we may consider aids to interpretation.” *Id.* In reviewing the statutory language, the court concluded the statute was ambiguous because it provided a lien format within the statute with the language “[a] claim of lien substantially in the following form shall be sufficient...”, but said format did not comply with the same subsection’s requirement that the lien “be acknowledged pursuant to chapter 64.08 RCW...” *Williams*, 172 Wn.2d at 693 (citing RCW 60.04.091(2)).

Once the court decided that the language was ambiguous, the court addressed the parties’ dueling arguments whether the statute should be

narrowly construed or strictly construed. *Williams*, 172 Wn.2d at 694-95. The contractor plaintiff argued that “courts properly apply the rule of strict construction to determine whether the mechanics’ lien statutes encompass certain services or property.” *Id.* at 695 (citing *Estate of Haselwood v. Bremerton Ice Arena, Inc.*, 166 Wn.2d 489, 210 P.3d 308 (2009)). The property owner defendants argued that the rule of strict construction extended to the form of the lien as well. *Williams*, 172 Wn.2d at 696 (citing *Lumberman's of Washington, Inc. v. Barnhardt*, 89 Wn. App. 283, 286, 949 P.2d 382 (1997)). The court agreed with the contractor plaintiffs. *Williams*, 172 Wn.2d at 696.

While the specific facts of *Williams* (notary block format) do not shed much light on the matter before this Court, *Williams* does provide guidance on which previous cases correctly applied the rule of strict construction in the properly limited fashion:

Estate of Haselwood v. Bremerton Ice Arena, Inc., 166 Wn.2d 489, 210 P.3d 308 (2009) (whether mechanics' lien can attach to improvements on property but not the real property itself); *Dean*, 81 Wn.2d 215, 500 P.2d 1244 (whether subcontractor's labor in demolishing a building was a lienable service); *De Gooyer*, 130 Wash. 652, 228 P. 835 (whether pruning, spraying, cultivating, and irrigating orchard were lienable services); *Tsutakawa*, 53 Wash. 231, 101 P. 869, 102 P. 766 (whether provisions, groceries, and camp equipment were lienable materials); *Pac. Indus., Inc. v. Singh*, 120 Wn. App. 1, 86 P.3d 778 (2003) (whether property developer's work was a lienable service)

Id. at 695-96.

In *Haselwood*, the court applied the rules of construction to resolve an ambiguity between RCW 60.04.051 and RCW 60.04.061. *Estate of Haselwood v. Bremerton Ice Arena, Inc.*, 166 Wn.2d 489, 498, 210 P.3d 308, 312 (2009). In RCW 60.04.051, the statute provides the property subject to lien is that of the person (or person’s agent) whom requested the work. RCW 60.04.061, addressing priority of lien, only mentions priority in regard to attachment for real property, not improvements. The owner in *Haselwood* argued that since the lien was only in regard to the improvements, the contractor could not have priority over the deed of trust because the lien was not against the real property, “making the relation-back statute inapplicable.” *Haselwood*, 166 Wn.2d at 500. The Court disagreed, concluding that the statute intended to protect the contractor’s lien priority notwithstanding the fact that the case was an atypical situation where the lien could not attach to the real property. *Id.* at 501-02. Thus, the statute was construed liberally in favor of the contractor as a person intended to be protected by the statutory scheme. *See id.*

In *Dean*, the question was whether deconstruction and removal of debris constituted “improvement” to the property. *Dean v. McFarland*, 81 Wn.2d 215, 216-17, 500 P.2d 1244 (1972). At the time, RCW 60.04.040 only allowed for mechanics liens when a contractor “clears, grades, fills in

or otherwise improves” the real property. Laws of 1959, ch. 279 § 3 (“demolishing” has since been added to the definition of “improvement” under RCW 60.04.011(5)). The court concluded that improvement should be narrowly construed to not include demolishing old buildings. *Dean*, 81 Wn.2d at 223.¹

Since the court’s decision in *Williams*, there has been one additional case which applies the analytical framework. In *Guillen v. Pearson*, laborers employed by a “subcontractor”² were not paid wages due and the employees subsequently filed a lien on the property. 195 Wn. App. 464, 468, 381 P.3d 149, 151 (2016). The property owner sought to argue that it was ambiguous whether the “subcontractor” was the property owner’s construction agent in authorizing the employees to perform labor on the project. *Id.* at 474-75. The court rejected this argument at step-one, concluding that the statute was unambiguous and therefore step-two of the *Williams* framework was unnecessary. *Id.* at 475.

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¹ *De Gooyer, Tsutakawa and Singh* are adequately addressed by the Court’s parentheticals quoted in *Williams* and are substantively duplicative of the analysis in *Dean*.

² The facts of the opinion indicate that the employer was in fact a contractor who contracted directly with the property owner, but that the agreement between the contractor and the property owner was entitled a “Subcontract.” *Id.* at 469.

4. Applying The *Williams* Framework To The Case At Hand.

The Court should conclude that definition of “[f]urnishing labor, professional services, materials, or equipment” as defined in RCW 60.04.011(4) and as used in RCW 60.04.091 is unambiguous. Here, the statute provides an expansive definition of “the performance of any labor... for the improvement of real property” RCW 60.04.011(4) (emphasis added). In turn, “improvement” is expansively defined to include “[c]onstructing, altering, repairing, remodeling, demolishing, clearing, grading, or filling in, of, to, or upon any real property...” RCW 60.04.011(5). RCW 60.04.091 then utilizes this definition for the purposes of determining the time for filing of a mechanic’s lien.

Every person claiming a lien under RCW 60.04.021 shall file for recording, in the county where the subject property is located, a notice of claim of lien not later than ninety days after the person has ceased to furnish labor, professional services, materials, or equipment or the last date on which employee benefit contributions were due.

(emphasis added).

Here, the facts show that Brashear continued to furnish labor to the improvement of the property until January 17, 2018. *CP 157-58; CP 168*. This labor was not only performed, it was expressly required as part of the contracts between Vandervert and Blue Bridge/Norcal. *CP 69; CP 92*. This labor unambiguously constitutes the furnishing of labor for improvement of

the property. The statute provides no language indicating a threshold quantum of labor or that a gap in the time between when labor is performed is relevant. RCW 60.04.091; *see also Osten v. Curtis*, 133 Wash. 360, 362, 233 P. 643, 644 (1925) (two-and-a-half-month gap between work and small repair requested by the owner extended time to file lien). There is no basis in the statutory text for distinguishing between one type of work and another performed under the same contract. Under the *Williams* framework, the statute is unambiguous and the lien was timely filed.

However, even if the Court were to conclude that the statutory language is ambiguous, Brashear is nonetheless entitled to the benefit of liberal construction of the statute. As set forth in *Dean, De Gooyer, Tsutakawa* and *Singh*, the court determines whom falls into the intended protections of the statute by determining whether the type of work performed is covered by the statute. Here, there is no possible construction of the definition of improvement contained in RCW 60.04.011(5) which would not encompass the type of work performed by Brashear. The electrical subcontract labor is unquestionably “improvement” to the property even if the Court were to segregate work done under the contract into “initial” work and “warranty” work. Both of which would be covered by the statute’s definition of improvement. To the extent that the Court finds RCW 60.04.091 ambiguous, Brashear is entitled to the benefit of

liberal construction and the Court should conclude that the lien was timely filed. As a result, the Court should reverse the trial court's order granting summary judgment to Respondents with instructions to enter judgment in favor of Brashear.

C. Attorney's Fees.

Pursuant to RAP 18.1, Brashear requests an award of attorney's fees because this action arises under a statutory provision awarding attorney's fees to the prevailing party. RAP 18.1 is a procedural rule and does not provide a substantive basis for an award of attorney's fees.

Under RCW 60.04.181:

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.

Because the Court should reverse the ruling of the trial court as discussed *supra*, the Court should further conclude that Brashear is the prevailing party and award Brashear costs and attorney's fees incurred on appeal.

V. CONCLUSION

The Court should reverse the trial court's decision granting summary judgment to Respondents and instruct the trial court to enter judgment in favor of Brashear. Brashear performed labor for the

improvement of real property and timely filed a lien for its services. To the extent that previous case law concluded that such work was not covered by the statute, it has been superseded by the enactment of RCW 60.04.900 and the governing framework set forth by the court in *Williams v. Athletic Field*.

DATED this 23rd day of July, 2020.



BRET UHRICH, WSBA #45595

CERTIFICATE OF SERVICE

I, Julie Born, certify that at all times mentioned herein, I was and am a resident of the state of Washington, over the age of eighteen years, not a party to the proceeding or interested therein, and competent to be a witness therein. My business address is that of Walker Heye Meehan & Eisinger, PLLC, 1333 Columbia Park Trail, Ste 220, Richland, WA 99352.

On July 23, 2020, I caused a copy of the foregoing document to be served upon the following counsel of record in the manner indicated below:

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E-mail: <i>bmyre@lyon-law.com</i>	
<i>lpettit@lyon-law.com</i>	

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E-mail: <i>mshinn@halversonnw.com</i>	
<i>jfitzsimmons@halversonnw.com</i>	

DATED at Richland, Washington this 23rd day of July, 2020.



JULIE BORN

WALKER HEYE MEEHAN & EISINGER PLLC

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