

65608-2

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No. 65608-2

COURT OF APPEALS
DIVISION 1
OF THE STATE OF WASHINGTON

STONEWOOD DESIGN, INC.,

Plaintiff / Stonewood Design, Inc.,

v.

HERITAGE HOMES, INC. DBA OF WASHINGTON, D/B/A

INFINITY HOMES,

Defendant / Heritage Homes, Inc..

HERITAGE HOMES, INC.'S REPLY BRIEF

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I. ABSENCE OF JUDGMENT ON LIEN

Foreclosure of a lien involves three steps: (1) establishment of the lien's validity (RCW 60.04.021, 031 and 091); (2) timely filing of an action to foreclose the lien (RCW 60.04.141); and (3) foreclosure of the lien. Filing an action to foreclose a lien does not constitute foreclosure of the lien. A lien is foreclosed by obtaining a judgment on the lien, not by filing the action to foreclose the lien. In this case, Stonewood Design, Inc. failed to obtain a judgment on its lien.

Stonewood Design, Inc. emphasizes that the trial court entered findings of fact and conclusions of law (without differentiating which were which) that Stonewood Design, Inc.'s lien was valid. Actually, the trial court's undifferentiated findings of fact and conclusions of law only recited that Stonewood Design, Inc. "introduced the materialmen's lien and the release of lien bond and proved the facts necessary to support execution on the release of lien bond." The trial court then went on to make findings with regard to Stonewood Design, Inc.'s lien without entering any conclusion of law that the lien was valid or invalid. Even if the trial court had entered a conclusion of law that the lien was valid, that is only the start, but not the conclusion of the statutory process of foreclosing a mechanic's lien. The lien must actually be foreclosed by the

trial court's entry of judgment upon the lien and provision for the enforcement thereof. (RCW 60.04.171). The trial court's monetary judgment must be married or attached to the lien, i.e. judgment entered on the lien. The judgment must then provide for enforcement of the lien against the subject property (RCW 60.04.181(2)). In this case, neither of the trial court's orders entered judgment upon Stonewood Design, Inc.'s lien nor provided for the enforcement thereof. In fact, neither of the trial court's orders even mentions the lien.

Stonewood Design, Inc. asserts that the lien was "adjudicated". However, the word "adjudicate" nowhere appears in the Washington lien laws (RCW Ch. 60.04). Stonewood Design, Inc. asserts that RCW 60.04.161 only requires "adjudication" of Stonewood Design, Inc.'s lien. This is not correct. RCW 60.04.161 expressly states that the limited purpose of the statutory lien release bond is to "guarantee payment of any *judgment upon the lien.*" Stonewood Design, Inc. urges that the trial court's findings of fact and conclusions of law constitute an "adjudication" of Stonewood Design, Inc.'s lien. Then Stonewood Design, Inc. also urges that this "adjudication" of a lien is the legal equivalent of entering judgment on a lien. It is not. While it is appropriate for the trial court to determine that a lien claimant has satisfied the statutory steps to establish a valid lien, this does not foreclose a lien. Judgment must be entered on the

lien and the lien must be foreclosed. In neither of the trial court's orders is the lien even referred to, nor does either order provide for the enforcement or foreclosure of the lien.

II. LIMITED SECURITY OF LIEN RELEASE BOND

The lien release bond established by RCW 60.04.161 is not a general payment bond to secure judgments obtained in civil actions. The lien release bond established by RCW 60.04.161 serves only to guarantee limited payment “of any *judgment upon the lien* in favor of the lien claimant.” Here, the trial court granted Stonewood Design, Inc. access to Heritage Homes, Inc.'s lien release bond “because plaintiff prevailed in its breach of contract action.” This was error. A lien release bond only serves to guarantee payment of a “judgment upon a lien”. The lien release bond does not serve as a guarantee for payment of contract damages in an action for breach of contract.

III. CONCLUSION

Stonewood Design, Inc. failed to complete the lien foreclosure process by obtaining a judgment upon its lien and foreclosure of its lien. There is no statutory recourse against a lien release bond for general civil damages.

Respectfully submitted this 16th day of March, 2011.

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CERTIFICATE OF SERVICE

Kristin F. Kelly declares as follows:

1. I am now and at all times herein mentioned a citizen of the United States, a resident of the State of Washington, over the age of 18 years, not a party to or interested in the above-referenced action, and competent to be a witness therein.

2. On the 16th day of March, 2011, I caused to be served a copy of Heritage Homes, Inc.'s Reply Brief on counsel as follows:

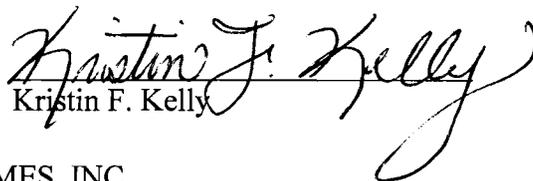
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- VIA U.S. MAIL
 VIA FACSIMILE
 VIA MESSENGER
 VIA EMAIL
 VIA ECF

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

Dated this 16th day of March, 2011, at Seattle, Washington.


Kristin F. Kelly