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SUPREME COURT OF THE STATE OF WASHINGTON

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(Court of Appeals No: 56513-7-II)

VELAZQUEZ FRAMING, LLC,

Appellant,

v.

CASCADIA HOMES, INC,

Respondent.

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RESPONDENT'S ANSWER TO PETITION FOR REVIEW

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THOMAS F. GALLAGHER, WSBA #24199  
GALLAGHER LAW, PLLC  
Attorney for Respondent  
417 South G Street  
Tacoma, Washington 98405  
Telephone: (253) 328-4254  
Email: tom@tgallagherlaw.net

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## I. Introduction

Velazquez Framing's Petition for Review should be denied when Division II's opinion in this case does not conflict with any of the four Supreme Court decisions or the one Court of Appeals decision cited by Velazquez Framing, LLC, each of which cases were decided based on interpretations of prior lien statutes that *were repealed and replaced by our legislature in 1991*.

Furthermore, the following facts that were undisputed at both the trial court and on appeal before Division II make it clear that the trial court's dismissal of Velazquez Framing's lien was correct:

1. Velazquez Framing, LLC ("Velazquez Framing") was a second-tier subcontractor who was hired by Cascadia Homes, Inc.'s ("Cascadia Homes") framing subcontractor, High End Construction, LLC to perform its contracted framing work on Cascadia Homes' house.
2. When Velazquez Framing was not paid by High End Construction, LLC, it filed a lien against Cascadia Homes'

house for *a combination of labor, materials and equipment* used in framing Cascadia Homes' house.

3. Velazquez Framing's lien was not a laborer's lien as all of its employees had been fully paid and Velazquez Framing was not a "laborer" under the lien statutes.

4. Velazquez Framing does not fit within any of the exceptions to pre-lien notice requirements under RCW 60.04.031(2).

5. Velazquez Framing's interpretation of the lien statutes would render RCW 60.04.031(2)(b) superfluous.

6. Velazquez Framing did not provide Cascadia with a pre-lien notice under RCW 60.04.031.

7. The failure to provide a required pre-lien notice renders a lien unenforceable under RCW 60.04.031(6).

## **II. STATEMENT OF THE CASE**

The present lawsuit arises out of a \$24,975.11 contractor's lien recorded by Velazquez Framing against a

home (the “Wildair Road house”) being constructed by Cascadia Homes.<sup>1</sup> Cascadia Homes is a licensed general contractor.<sup>2</sup>

Cascadia Homes had used High End Construction, LLC, a framing contracting firm, in the past, and asked its owner to provide bids to frame houses Cascadia Homes planned to build.<sup>3</sup> High End Construction, LLC bid for the cost to frame the Wildaire Road house totaled \$19,982.50 for framing the entire home.<sup>4</sup>

On or about Monday, September 30, 2019, Mr. Hecker, the principal of Cascadia Homes, texted the owner of High End Construction to let him know that lumber would be dropped off on Thursday of that week so High End Construction, LLC could proceed with the framing work on the Wildaire Road house according to its bid.<sup>5</sup> Cascadia Homes asked High End

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<sup>1</sup> CP 1-4; CP 14

<sup>2</sup> CP 30

<sup>3</sup> Id.

<sup>4</sup> CP 31; CP 38

<sup>5</sup> Id.



Construction, LLC to provide a generator for the jobsite as part of its subcontract work to run the saws and a compressor for the pneumatic framing nail guns.<sup>6</sup>

An underfloor framing inspection on the Wildaire Road house was approved by the City of Lakewood inspection on October 11, 2019.<sup>7</sup> On or about October 14, 2019, High End Construction, LLC provided Cascadia Homes with an initial invoice for 50% of the framing work, along with generator costs of \$50 per day, for a total of \$10,21601.25.<sup>8</sup> High End Construction, LLC received payment in full for this invoice.<sup>9</sup>

On or about November 7, 2019, High End Construction, LLC invoiced Cascadia Homes for the completion of the framing work on the Wildaire Road house and for the additional costs for the generator.<sup>10</sup> High End Construction,

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<sup>6</sup> Id.

<sup>7</sup> CP 32; CP 41

<sup>8</sup> CP 32; CP 43. The underfloor framing inspection on October 11, 2019, and High End Construction's initial invoice dated October 14, 2019, predated Velazquez Framing's stated commencement of work on the Wildaire Road house on October 15, 2019, as set forth in its lien. CP 56.

<sup>9</sup> CP 32; CP 44

<sup>10</sup> CP 33; CP 45

LLC was paid for the balance of the framing work on the house.<sup>11</sup>

Unbeknownst to Cascadia Homes, High End Construction, LLC contracted with another subcontracting company (a second-tier subcontractor), Velazquez Framing, to perform framing on the Wildaire Road house.<sup>12</sup> Mr. Hecker did not realize that Velazquez Framing and its employees, rather than High End Construction, LLC with which Cascadia Homes had contracted, was performing work on Cascadia Homes' house.<sup>13</sup>

On December 4, 2019, Mr. Hecker of Cascadia Homes was first contacted by Filiverto Lopez, the owner of Velazquez Framing, who claimed that his company had done framing work on the Wildaire Road house and that it had not been paid.<sup>14</sup> Mr. Hecker let Mr. Lopez know that Cascadia Homes

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<sup>11</sup> CP 33; CP 46

<sup>12</sup> Id.

<sup>13</sup> CP 33

<sup>14</sup> CP 34

had paid High End Construction, LLC for all the framing work.<sup>15</sup> Prior to that first contact in December 2019, Cascadia Homes had never received any notice that Velazquez Framing was performing any work on the Wildaire Road house.<sup>16</sup>

In January 2020, Velazquez Framing recorded a lien against the Wildaire Road house Cascadia Homes was building in the amount of \$24,975.11.<sup>17</sup> That claim of lien greatly exceeded the \$19,982.50 bid Cascadia Homes had received from High End Construction, LLC for framing the entire home.<sup>18</sup> Moreover, in that claim of lien, Velazquez Framing claims that it “furnished labor, professional services, materials and/or equipment to the subject property beginning on 10/15/2019 and ending on 11/1/2019 at the request of Cascadia Homes, Inc.”<sup>19</sup>

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<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> CP 52; CP 55-56

<sup>18</sup> CP 38

<sup>19</sup> CP 56

The statement that Cascadia Homes requested that Velazquez Framing perform work is simply not true.<sup>20</sup> Cascadia Homes never contracted or requested any work from Velazquez Framing.

In his deposition, Mr. Lopez confirmed that Velazquez Framing did no work before October 15, 2019, and no work after November 1, 2019, as stated in its claim of lien.<sup>21</sup>

However, the City of Lakewood permit inspection records for the Wildaire Road house show that the underfloor framing had already passed inspection on October 11, 2019,<sup>22</sup> before Velazquez Framing's admitted starting date on the project.

Importantly, the lien Velazquez Framing recorded was not a lien for unpaid laborers' wages.<sup>23</sup> Mr. Lopez confirmed in his deposition that all of the employees who worked on the

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<sup>20</sup> CP 34

<sup>21</sup> CP 22; CP 77-78

<sup>22</sup> CP 41

<sup>23</sup> CP 23

Wildaire Road house had been paid.<sup>24</sup> Mr. Lopez confirmed that he paid his employees nearly \$7000 for the work on the Wildaire Road house, and that the remaining balance of the claim of lien (approximately \$17,000) would represent profit to Velazquez Framing.<sup>25</sup> Mr. Lopez also confirmed that not only did Velazquez Framing provided laborers to frame the Wildaire Road house, it also provided materials in the form of nails to frame the house, and equipment in the form of a generator to provide power to the jobsite.<sup>26</sup>

It is undisputed that at no time did Velazquez Framing provide Cascadia Homes with any pre-lien notice under RCW 60.04.031 of its right to claim a lien which is required of second- tier subcontractors who are hired by other subcontractors.<sup>27</sup>

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<sup>24</sup> CP 82

<sup>25</sup> CP 83-84

<sup>26</sup> CP 23; CP 78

<sup>27</sup> CP 37

Cascadia Homes filed its motion for summary judgment to dismiss Velazquez Framing's lien claim, arguing that Velazquez Framing did not meet any of the three (3) exceptions in RCW 60.04.031(2) to providing the pre-lien Notice to Owner set forth in RCW 60.04.031.<sup>28</sup> Those three exceptions for providing pre-lien notice are as follows:<sup>29</sup>

- (2) Notices of a right to claim a lien shall not be required of:
  - (a) Persons who contract directly with the owner or the owner's common law agent;
  - (b) Laborers whose claim of lien is based solely on performing labor;
  - (c) Subcontractors who contract for the improvement of real property directly with the prime contractor, except as provided in subsection (3)(b) of this section.

In responding to Cascadia Homes' Motion for Summary Judgment, Velazquez did not contest the fact it did not meet the exceptions in subsections (a) or (c) because (i) it did not contract with the owner, Cascadia Homes, or contract with its

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<sup>28</sup> CP 13-29

<sup>29</sup> RCW 60.04.031(2)

common law agent, and because (ii) it did not contract with the prime contractor.<sup>30</sup>

At oral argument, in a colloquy with the trial court, Velazquez Framing’s counsel conceded that Velazquez Framing also did not meet the exception in subsection (b) of RCW 60.04.031(2) as it was not a “laborer,” as follows:

MR. LINVILLE: I don't think Velazquez is a laborer. I think what the legislature is getting at there is an employee of a contractor.

THE COURT: Right. And it's not the employees who are making this claim, it's Velazquez that's making this claim.<sup>31</sup>

Furthermore, the trial court questioned the position advocated by Velazquez Framing’s counsel that any time any labor is involved in a construction project, no pre-lien notice need be given, which would render the exception to pre-lien

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<sup>30</sup> CP 87-96 *passim*

<sup>31</sup> RP 21-22.

notices for “laborers” in RCW 60.04.031(2) meaningless,

stating as follows:

THE COURT: If Subsection 1 meant that laborers -- or anybody supplying labor, to broaden the definition here -- never had to file a lien, why would they even put this exception in?

MR. LINVILLE: I'm sorry. Would you repeat the question?

THE COURT: Sure. Because by your analysis, because in the first line of Subsection 1 of .031 the word labor does not appear, that would mean by your analysis that any time labor is provided, or some part thereof, no notice is required and they're entitled to lien under .21. So why even have this business about notice should not be required of the laborer whose claim is based solely on performing labor? They already would not be required to file a notice; right? Your interpretation completely eliminates any meaning for that subsection of the statute. It doesn't need to be there.<sup>32</sup>

The Court of Appeals Division II's December 6, 2022, Opinion (“Division II's Opinion”) affirmed the trial court's dismissal of Velazquez Framing's lien.

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<sup>32</sup> RP 24



In reaching its decision, Division II noted that Velazquez Framing's reliance on lien cases dating from 1913 through 1991 was not "relevant or helpful" as those cases all "predate the extensive legislative amendments" in 1991.<sup>33</sup>

Division II's opinion further noted that Velazquez Framing concedes that the pre-lien notice exception for "laborers" does not apply to it, nor does Velazquez Framing fall within the other two exceptions to those who must provide pre-lien notices.<sup>34</sup> Finally, Division II's Opinion notes that Velazquez Framing's interpretation of the pre-lien notice statute would render RCW 60.04.031(2)(b) superfluous.<sup>35</sup> Division II's Opinion interpreted the lien statutes at RCW 60.04.021 and RCW 60.04.031 to render all portions of those statutes meaningful.

Division II did not err in affirming the trial court's dismissal of Velazquez Framing's lien.

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<sup>33</sup> See Division II's Opinion at p. 11, fn 5.

<sup>34</sup> See Division II's Opinion at p. 13,fn 6.

<sup>35</sup> See Division II's Opinion at p. 9, fn 4.

### III. ARGUMENT

#### 1. Velazquez Framing does not meet the criteria necessary for review to be accepted by the Supreme Court.

RAP 13.4(b) sets forth four (4) possible grounds, one of which must be met, before the Supreme Court will accept review of a decision of the Court of Appeals. Velazquez Framing relies only the criteria in RAP 13.4(b)(1) and (2) as a basis for acceptance of review, claiming that Division II's Opinion conflicts with four Supreme Court decisions and a published decision of the Court of Appeals.<sup>36</sup> However, no such conflict exists.

Velazquez Framing cites to the cases of *Hallett v. Phillips*, 73 Wn. 457, 132 P. 51(1913); *Culbert v. Lindvall*, 73 Wn. 643, 132 P. 729 (1913); *Whitney v. McKay*, 54 Wn.2d 672, 344 P.2d 497 (1959); *Neil F. Lampson Equip. Rental & Sales v. West Pasco Water Sys.*, 68 Wn.2d 172, 412 P.2d 106 (1966);

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<sup>36</sup> See Petition for Review at p. 7 and pgs 12-16.

*Northlake Concrete Prods. v. Wylie*, 34 Wn. App. 810, 663 P.2d 1380 (1983), *Pacific Erectors, Inc. v. Gall Landau Young Const. Co., Inc.*, 62 Wn. App. 158, 813 P.2d 1243 (1991); and *CKP, Inc. v. GRS Const. Co.*, 63 Wn. App. 601, 821 P.2d 63 (1991) as examples of cases that conflict with Division II's Opinion.<sup>37</sup>

Each of the cases relied upon by Velazquez Framing were decided based on lien laws that ceased to exist in 1991 when the Legislature repealed and replaced Washington's mechanic's and materialman's lien statutes. In enacting Chapter 281 of the Laws of 1991, at Section 31, the Legislature repealed the mechanic's and materialman's lien laws of the State of Washington that were codified as RCW 60.04.010 through RCW 60.04.220. At Chapter 281, Sections 1 through 26, the Legislature enacted new lien laws.<sup>38</sup>

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<sup>37</sup> See Petition for Review at pgs 12-16.

<sup>38</sup> Laws of 1991, Chapter 281

Division II’s Opinion correctly notes that because none of the case relied upon by Velazquez Framing interpret the lien statutes after the 1991 changes, those cases are not relevant or helpful ascertaining the legislative intent in enacting new lien laws.<sup>39</sup>

Because Velazquez Framing fails to establish any actual conflict between Division II’s Opinion and Supreme Court precedent or any published decision of the Court of Appeals, the Petition for Review should be denied.

**2. Division II’s Opinion that second-tier subcontractors like Velazquez Framing must give pre-lien notice is amply supported by the legislative history leading to the repeal and replacement of the lien laws in 1991.**

- a. The Legislature expressly intended to make and did in fact make what it described as “major substantive changes” to the lien laws related to pre-lien notices.**

When the Legislature makes a material change to a statute, a change in legislative purpose is presumed. *State v.*

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<sup>39</sup> Division II’s Opinion at p. 11, fn 5.

*Russell*, 84 Wn. App. 1, 4, 925 P.2d 633 (1996). As set forth above, in 1991, Substitute Senate Bill 5497 became law which repealed and replaced Washingtons’ mechanic’s and materialman’s lien laws.<sup>40</sup> The Legislative history behind Senate Bill 5497 and Substitute Senate Bill 5497, which became codified as Chapter 281 of the Laws of 1991, shows that the Legislature was indeed making substantive changes to lien laws in Washington.<sup>41</sup>

In drafting the Senate Bill Report re SB 5497, the Legislature noted that lien laws had not been updated in the 20<sup>th</sup> Century.<sup>42</sup> The Senate Bill Report also noted that “[d]ue to the length and complexity of this bill, a full description of every section is not provided here.”<sup>43</sup> The Senate Bill Report for SB

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<sup>40</sup> Laws of 1991, Chapter 281.

<sup>41</sup> See Appendix 1 Senate Bill Report re SB 5497, Appendix 2 Senate Bill Report re Substitute Senate Bill SSB 5497, and Appendix 3, Final Bill Report re SSB 5497. See also Division II’s Opinion at page 11 acknowledging that there were “several major changes” in the lien laws.

<sup>42</sup> Appendix 1 Senate Bill Report re SB 5497 and Appendix 2, Senate Bill Report re SSB 5497.

<sup>43</sup> *Id.*

5497 then lists 12 paragraphs of what it described as “major substantive changes” in the lien laws. Similarly, the Senate Bill Report for Substitute Senate Bill SSB 5497 lists 13 paragraphs of “major substantive changes” in the lien laws. Paragraphs 2 and 3 of both Senate Bill reports describe the major substantive changes regarding parties who are, or who are not, required to provide pre-lien notices:

2. Anyone who contracts directly with an owner is not required to give advance notice of a right to claim a lien. For new residential construction, participants who do not contract directly with the owner may give notice of their involvement at any time, but their right to claim a lien is limited to activity following a date which is 10 days prior to the time the notice is mailed or served. In commercial construction, those who contract directly with the owner are not required to give preclaim notice. Subcontractors who contract directly with prime contractors are not required to give preclaim notice. **All other participants are required to give preclaim notice**, which may be given at any time, but only protects lien rights for activity occurring after a date which is 60 days prior to giving notice.<sup>44</sup>

3. Laborers are not required to give preclaim lien notice, as in current law.

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<sup>44</sup> See Appendices 1 and 2 (emphasis added).

Thus, as set forth in the Senate Bill Reports, the Legislature intended that all persons involved in the improvement of real property which it described as “participants” provide preclaim notice to the property owner unless they contract directly with the owner on a residential project, or unless they contract with either the owner or the prime contractor on a commercial project. The only other exception to preclaim notice was for “[I]aborers [who] are not required to give preclaim lien notice, as in current law.”<sup>45</sup>

**b. Canons of statutory construction hold that portions of a statute should not be rendered superfluous or meaningless.**

“[I]t is a fundamental principle of statutory construction that courts must not construe statutes so as to nullify, void or render meaningless or superfluous any section or words” of a statute. *In re Dependency of K.D.S.*, 176 Wn. 2d 644, 656, 294 P.3d 695 (2013)(quoting from *Taylor v. City of Redmond*, 89

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<sup>45</sup> See Appendices 1 and 2 at paragraph 3.

Wn.2d 315, 319, 571 P.2d 1388 (1977)). However, at the trial court level and on appeal, Velazquez Framing argued that the legislature’s enactment of RCW 60.04.031(2)(b) exempting “laborers whose claim of lien is solely based on performing labor” from the pre-lien notice requirements of RCW 60.04.031 was entirely superfluous, because under Velazquez Framing’s interpretation of the lien statutes, no pre-lien notice of any kind need be given if a lien is based, at least in part, on providing labor.<sup>46</sup>

The trial court expressly rejected Velazquez Framing’s interpretation that RCW 60.04.031(2)(b) was superfluous.<sup>47</sup> Division II’s Opinion reviewed the legislative history of the repeal and replacement of the lien statutes in 1991, and likewise rejected Velazquez Framing’s interpretation that RCW 60.04.031(2)(b) was superfluous.

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<sup>46</sup> See Division II’s Opinion at p.9, fn 4.

<sup>47</sup> RP 24



- c. **Both the lien granting statute at RCW 60.04.021 and the pre-lien notice statute at RCW 60.04.031 make it clear that compliance with the pre-lien notice provisions is a condition precedent to maintaining lien rights.**

The current RCW 60.04.021 grants lien rights to persons furnishing labor, professional services, materials, or equipment for the improvement of real property. However that grant of lien rights begins with an important caveat:

**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.

RCW 60.04.021 (emphasis added).

Thus, RCW 60.04.021 specifically contemplates that the lien rights granted under that statute may be limited or even lost if a lien claimant fails to comply with the provisions of RCW 60.04.031.

Thereafter, RCW 60.04.031(1) provides as follows:

**(1) Except as otherwise provided in this section,** every person furnishing professional services, materials, or equipment for the improvement of real property shall give the owner or reputed owner notice in writing of the right to claim a lien.

RCW 60.04.031(1)(emphasis added).

Thus, unless a contractor falls within an exception later provided in RCW 60.04.031, a contractor must provide a “Notice to Owner” to the property owner pre-lien notice.

The requirement to provide pre-lien notice, and the three narrow exceptions to those who are required to provide pre-lien notice, were codified in RCW 60.04.031(2):

- (2) Notices of a right to claim a lien shall not be required of:
- (a) Persons who contract directly with the owner or the owner's common law agent;
  - (b) Laborers whose claim of lien is based solely on performing labor;
  - (c) Subcontractors who contract for the improvement of real property directly with the prime contractor, except as provided in subsection (3)(b) of this section.<sup>48</sup>

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<sup>48</sup> RCW 60.04.031(2)

In the event required pre-lien notice is not given, RCW 60.04.031(6) invalidates any lien rights, stating: “[a] lien authorized by this chapter shall not be enforced unless the lien claimant has complied with the applicable provisions of this section.” Velazquez Framing does not allege that it meets any of the exceptions to pre-lien notice in RCW 60.04.031(2).

**3. Because Velazquez Framing was a second-tier subcontractor providing a combination of material, equipment and labor, it was required to provide Cascadia Homes with pre-lien notice**

As stated above, Cascade Homes contracted with High End Construction, LLC for the framing of the Wildaire Road house. Unbeknownst to Cascade Homes, High End Construction, LLC in turn contracted with Velazquez Framing to frame the Wildaire Road house.

RCW 60.04.021 grants lien rights to persons furnishing labor, professional services, materials, or equipment for the

improvement of real property, provided they comply with the provisions of RCW 60.04.031. RCW 60.04.021.

Thereafter, RCW 60.04.031(1) provides as follows:

(1) Except as otherwise provided in this section, every person furnishing professional services, materials, or equipment for the improvement of real property shall give the owner or reputed owner notice in writing of the right to claim a lien.

RCW 60.04.031(1)(emphasis added).

Velazquez Framing concedes two important points.

First, Velazquez Framing admits that it provided materials in the form of nails, and equipment in the form of a generator to provide electricity to the job site. RCW 60.04.031(1) expressly requires pre-lien notice be given whenever a contractor is providing materials and equipment for the improvement of real property, unless one of the exceptions to pre-lien notice is met. RCW 60.04.031(1).

Second, Velazquez Framing concedes that it does not fall within any of the exceptions under RCW 60.04.031(2) to those who must give pre-lien notice.

Thus, unless a contractor falls within an exception set forth in RCW 60.04.031, a contractor must provide pre-lien notice to the property owner where the construction work is proceeding. The failure to provide pre-lien notice when required renders any lien unenforceable. RCW 60.04.031(6).

Velazquez Framing admits that it provided materials in the form of nails, and equipment in the form of a generator to provide electricity to the job site, the provision of which required a pre-lien notice under RCW 60.04.031(1) yet it provided no pre-lien notice to the owner, Cascadia Homes.

**4. The repeal of the prior mechanic' lien statutes does not mean that prior decisions that were based on interpretations of now non-existent statutes must be given deference or that such interpretations continue in force and effect following the repeal.**

Velazquez Framing spends a significant portion of its Petition for Review providing a compendium of cases that interpreted the former RCW 60.04.010 and the former RCW

60.04.020.<sup>49</sup> Those historical cases have no bearing on the issues at hand when the cases relied upon statutes that were not only repealed, but were also replaced by new lien statutes that are significantly different.

For example, the former RCW 60.04.010<sup>50</sup> which authorized liens encompasses nearly a half a page of text. No mention was made in RCW 60.04.010 regarding the requirement of pre-lien notices. However, unlike the former RCW 60.04.010, the current RCW 60.04.021 which authorizes liens consists of a single sentence and specifically references compliance with the pre-lien notice provisions of RCW 60.04.031 in order to maintain a valid lien. RCW 60.04.021 provides as follows:

*Except as provided in RCW 60.04.031, any person furnishing labor, professional services, materials, or equipment for the improvement of real property*

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<sup>49</sup> See Petition for Review at pages 12-16.

<sup>50</sup> Copies of the relevant portions of the repealed RCW 60.04.010 through RCW 60.04.050 from the 1989 Revised Code of Washington are attached at Appendix 7. Copies of the current RCW 60.04.011 through RCW 60.04.031 are attached at Appendix 6.

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.

RCW 60.04.021 (emphasis added).

Similarly, the pre-lien notice provisions of RCW 60.04.020 are significantly different from the current pre-lien notice statute found at RCW 60.04.031. For example, the failure to comply with the pre-lien notice provisions of the former RCW 60.04.020, acted only to limit the enforcement of materialman's liens when it provided that "[n]o **materialmen's** lien shall be enforced unless the [pre-lien notice] provisions of this section have been complied with...."<sup>51</sup>

However, the failure to comply with the current pre-lien notice statute, RCW 60.04.031, affects far more than just materialmen's liens. Instead, the failure to provide required pre-lien notice under RCW 60.04.031 affects the right to

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<sup>51</sup> Former RCW 60.04.020 (emphasis added).

enforce *any lien of any kind* under RCW 60.04 when it states that “[**a**] **lien authorized by this chapter** shall not be enforced unless the lien claimant has complied with the applicable provisions of this section. RCW 60.04.031(6) (emphasis added). Thus, while the former RCW 60.04.020 invalidated *materialman’s* liens where there was no compliance with the pre-lien notice provision of that statute, the current RCW 60.04.031(6) invalidates *any* authorized lien (which includes labor, professional services, materials or equipment<sup>52</sup>) if the contractor fails to comply with the pre-lien notice provisions of RCW 60.04.031.

Another important distinction between the former RCW 60.04.020 and the current 60.04.031(2) is that the current lien statute provides only three (3) exceptions to pre-lien notice requirements:

Notices of a right to claim a lien shall not be required of:

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<sup>52</sup> The provision of labor, professional services, materials and equipment for the improvement of real property are authorized categories of lien rights under RCW 60.04.021.



- (a) Persons who contract directly with the owner or the owner's common law agent;
- (b) Laborers whose claim of lien is based solely on performing labor; or
- (c) Subcontractors who contract for the improvement of real property directly with the prime contractor, except as provided in subsection (3)(b) of this section.<sup>53</sup>

None of these exceptions to pre-lien notice are mentioned in the former RCW 60.04.020.

**5. Legal educators, and even Velazquez Framing’s counsel’s office are in agreement with Division II’s Opinion that under the current lien laws, second-tier subcontractors, like Velazquez Framing, must provide a pre-lien notice to the owner of property.**

As persuasive authority on appeal, Cascadia Homes cited to continuing legal education seminar materials as well as a law firm’s information about lien claims disseminated to the public

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<sup>53</sup> RCW 60.04.031(2). Velazquez Framing does not argue that (i) it is a “person” who contracted with the owner or the owner’s common law agent, (ii) it is a “Laborer” whose claim of lien is solely based on performing labor, or (iii) that it is a “subcontractor” who contracted directly with the prime contractor to meet any of the exceptions to pre-lien notice in RCW 60.04.031(2). Instead, Velazquez Framing argues that no pre-lien notice was required at all, simply because part of its claim of lien involved the provision of labor.

that are consistent with the decision reached in Division II's Opinion.

The following passage is from a 2008 Lorman Education Services Continuing Legal Education Seminar put on by attorneys David Linville<sup>54</sup>, Heather Pearce, and Christopher Wright regarding the need for second-tier subcontractors to provide pre-lien notice to the property owner:

Assuming that the work has been authorized by a proper agent, the next potential requirement for subcontractors is that: (1) professional, material and equipment suppliers who do not contract directly with the owner (or the owner's agent); and **(2) second tier or lower tier subcontractors must give a "Notice to Owner" in order to preserve their lien rights. See, RCW 60.04.031 (1).** The purpose of this Notice is to advise the owner of the existence of persons or entities not necessarily present on the site that have lien rights against the Owner's property. As such, equipment and material suppliers who are not on site **or lower tier contractors that the owner is unlikely to know of, must provide this notice.**<sup>55</sup>

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<sup>54</sup> Velazquez Framing's current counsel.

<sup>55</sup> See Appendix 4 (emphasis added). The quoted passage was written by attorney Christopher Wright of the Stanislaw Ashbaugh law firm in Seattle.

Even Velazquez Framing counsel's own law firm's current webpage advises persons browsing that website under the "Frequently Asked Questions" section regarding construction,<sup>56</sup> that second-tier subcontractors are required to provide pre-lien notice, stating in material part as follows:

**Are there any prerequisites to filing a construction lien?**

...

**If you are a supplier of materials to a contractor or a second-tier subcontractor (subcontractors contracting with subcontractors), you must give the property owner notice that you have a right to claim a lien against the property.<sup>57</sup>**

Thus, legal advice given to both lawyers at seminars, and to the general public via the internet advises that under the current lien statutes, that second-tier subcontractors like Velazquez Framing

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<sup>56</sup> See <http://www.linvillelawfirm.com/areas/constructionfaqs.htm>

<sup>57</sup> See Appendix 5 (emphasis added). Appendix 5 is a screen shot of the Linville Law Firm PLLC web page Frequently Asked Questions regarding construction, followed by the print version of that same page.

are required to provide pre-lien notice in order to pursue a lien claim.

#### **IV. CONCLUSION**

The Court of Appeals properly construed and interpreted RCW 60.04.020 and RCW 60.04.031 that require second-tier subcontractors like Velazquez Framing to provide pre-lien notice in order to maintain a lien claim. Accordingly, Cascadia Homes requests that the Court deny Velazquez Framing's Petition for Review.

#### **V. APPENDIX**

1. Senate Bill report re SB 5497
2. Senate Bill Report re SSB 5497
3. Final Bill Report SSB 5497
4. Excerpt from 2008 Lorman Education Services materials titled "Construction Lien Laws"
5. Linville Law Firm PLLC Frequently Asked Questions- Construction-- screen shot followed by print version
6. Current RCW 60.04.011 through RCW 60.04.031

7. 1989 Revised Code of Washington- Former RCW  
60.04.010 through RCW 60.04.050.

**Certificate of Compliance.**

I hereby certify pursuant to RAP 18.7(b) that the foregoing  
Answer to Petition for Review contains 4946 words.

RESPECTFULLY SUBMITTED this 2<sup>nd</sup> day of  
February 2023.

GALLAGHER LAW, PLLC

*s/ Thomas F. Gallagher*

Thomas F. Gallagher, WSBA # 24119

Attorney for Respondent Cascadia

Homes, Inc.

417 South G Street

Tacoma, WA 98405

Telephone: (253) 328-4254

Fax: (253) 573-1115

E-mail: Tom@tgallagherlaw.net

1. **Declaration of Service**

2. 1. On February 2, 2023, I served a copy of the above Respondent's Answer to Petition  
3. for Review to the following:  
4.

5. David E. Linville, WSBA No: 31017 6. Linville Law Firm, PLLC 7. 800 Fifth Avenue 8. Suite 3850 9. Seattle, Washington 98104 10. <i>dlinville@linvillelawfirm.com</i>	11. <u>X</u> Washington State Appellate Courts' 12. Portal 13. <u>X</u> Via Email
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14. I declare under penalty of perjury under the laws of the State of Washington that the  
15. foregoing is true and correct.

16. DATED this 2<sup>nd</sup> day of February 2023, at Tacoma, Washington.

17.   
18. Alison Landry  
19. Paralegal to Thomas F. Gallagher  
20. 417 S. G Street  
21. Tacoma, WA 98405  
22. Phone: (253) 328-4254  
23. Fax: (253) 573-1115  
24. E-mail: *alison@tgallagherlaw.net*

**GALLAGHER LAW, PLLC**

**February 02, 2023 - 3:26 PM**

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**Appellate Court Case Number:** 101,591-7  
**Appellate Court Case Title:** Velazquez Framing, LLC v. Cascadia Homes, Inc.  
**Superior Court Case Number:** 20-2-07531-6

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