

Consolidate No. 42845-8

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON



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SHELCON CONSTRUCTION GROUP, LLC,

Respondent

v.

SCOTT M. HAYMOND and JANE DOE HAYMOND; A-3 VENTURE LLC; A-4  
VENTURE; A-111 VENTURE LLC; 14224 PIONEER LIVING TRUST and  
ANCHOR MUTUAL SAVINGS BANK,

Appellants.

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APPELLANT ANCHOR MUTUAL SAVINGS BANK'S OPENING BRIEF

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## I. INTRODUCTION

Shelcon Construction Group LLC (“Shelcon”) filed this lawsuit to foreclose on a \$309,369.58 mechanics lien that it recorded in 2009 against real property located at 14224 Pioneer Way East (referred to as “the Farm”). Shelcon, a site development contractor, was hired by the property owner, defendant A-1111 Venture LLC (“A-4”) and the LLC owner Haymond. Shelcon sued A-4 and Haymond for payment for earthwork and infrastructure development on the Farm property and to foreclose on its lien. Appellant Anchor Mutual Savings Bank (“Anchor Bank”) was named in the lawsuit because it is the beneficiary of a deed of trust recorded against the Farm property on August 22, 2008, which deed of trust secures a \$3,900,000 loan to A-4 that refinanced a prior \$1.5 million secured loan and funded new building construction on the Farm property.

The question before this Court is which lien has priority. Pivotal to this question is the fact that, prior to recording the lien upon which it now sues, Shelcon recorded in 2008 an earlier lien in the similar amount of \$303,291.29. Without receiving payment, Shelcon affirmatively and voluntarily released its lien through a publicly recorded written release, without any stated limitations, conditions or

reservation of rights and without disclosing that the claim remained unpaid.

Shelcon recorded the lien release before Anchor Bank approved a \$3.9 million construction refinance loan to A-4. It did so to induce Anchor Bank to close the loan. Shelcon became aware that its lien was an impediment to closing this new loan that was critical for Shelcon to receive further payment from A-4 for past or future work. Shelcon knew that the Anchor Bank loan represented its best, and likely only opportunity for payment. As a result, Shelcon elected to record the written lien release without any stated limitations or conditions and without advising Anchor Bank that it was not paid.

The subsequently recorded lien upon which Shelcon now sues is largely comprised of the same amounts claimed (for the same work) in the first lien that Shelcon voluntarily released. Unfortunately, even though the trial court found that Anchor Bank relied on the release and was without fault, it concluded that the release had no legal consequence. The trial court concluded that the lien release did not limit Shelcon's claim in any way. Shelcon was permitted to foreclose a claim of lien for the same work included in the released lien and, further, and its lien was given priority over the deed of trust Anchor

Bank recorded to secure its \$3.9 million loan – a loan that resulted in substantial payments to Shelcon.

Determination of the consequences of the lien release should be based on the plain language of this unconditional release and its acknowledged purpose. To date, no Washington case has addressed circumstances such as are present here – circumstances in which the prior lien may negatively impact the priority of a third party lien (as opposed to a payment dispute between contractor and property owner), and the liening contractor benefited from and facilitated approval of the third party loan by affirmatively recording a written release with no stated limitations. The plain language of the release should have been construed to bar all or most of Shelcon's lien claim. Independently, the substantial evidence in the record and the trial court's own factual findings lead to the conclusion that equity should intervene to estop Shelcon from claiming priority over Anchor Bank.

Independent of the release, the trial court should have concluded that the Shelcon lien is subrogated and subordinate to the Anchor Bank lien at least to the extent the Bank refinanced a \$1.5 million prior lien. Though Shelcon's owner, in anticipation of future site work, was inspecting the Farm property the day the first, refinanced deed of trust recorded, his activities do not qualify as lienable work for

purposes of establishing lien priority.

This Court should conclude that the Shelcon lien is subordinate to the Anchor Bank deed of trust lien and reverse the judgment entered by the trial court.

## II. ASSIGNMENTS OF ERROR

Anchor Bank generally assigns error to the trial court's decisions that Shelcon's mechanic's lien is wholly superior to Anchor Bank's deed of trust lien and that Shelcon's lien release was without legal consequence and did not limit Shelcon's subsequent lien claim as set forth in the trial court's partial summary judgment order (Clerk's Paper's ("CP") 324-25), Findings of Fact and Conclusions of Law (CP 617-34) and Judgment (CP 635-37).

Appellants specifically assign error to the trial court's Findings of Fact and Conclusions of Law, entered on May 21, 2013 (CP 617-34) and attached as Appendix A, as follows.

1. Finding of Fact ("FOF") 6 only regarding the finding that "Scott Haymond accepted Shelcon's bid sometime after receiving it, but before Shelcon commenced work on the Subject Property."

2. FOF 9 to the extent that it may be construed as a finding that Shelcon conducted a survey and definitively determined the legal boundary lines of the Subject Property.

3. FOF 10 to the extent that it may be construed as a finding that Shelcon conducted a survey and definitively determined the legal boundary lines of the Subject Property.

4. FOF 13 to the extent that it may be construed as a finding that Shelcon conducted a survey and definitively determined the legal boundary lines of the Subject Property.

5. FOF 14 in its entirety.

6. FOF 17 in its entirety.

7. FOF 18 to the extent it may be construed as a finding that Haymond and Shelcon entered any change order agreements.

8. FOF 28 to the extent it may be construed as a finding that Shelcon reasonably believed, in light of its prior history with Haymond, that it would receive full payment from Haymond for its unpaid work or that Shelcon's reliance on promises by Haymond was reasonable.

9. FOF 33 to the extent it may be construed that Haymond made the additional funding request to pay Shelcon's lien or that Haymond communicated to Anchor Bank that it was requesting additional funds to satisfy Shelcon's lien.

10. FOF 39 with regard to representations made to Anchor Bank through the submitted invoices.

11. FOF 45 to the extent it may be construed as a finding that Anchor Bank did not verify that the work described in submitted invoices was sufficiently complete before disbursing loan proceeds for payment.

12. FOF 46 in its entirety. Anchor Bank requested from Haymond and received from Shelcon a lien release prior to approving the loan and disbursing funds.

13. FOF 56 in its entirety.

14. FOF 57 in its entirety.

15. FOF 60 in its entirety.

16. FOF 61 in its entirety.

17. FOF 67 in its entirety.

18. FOF 70 to the extent it may be construed as an obligation secured by a lien superior to Anchor Bank's lien.

19. The trial court's conclusions that Shelcon's activities on July 5, 2006 constituted improvements to the Subject Property and, as a result, equitable subrogation does not apply to subordinate Shelcon's lien to the position of the refinanced Washington First International deed of trust. (Conclusion of Law "COL" Nos. 2 and 4.)

20. The trial courts conclusions that the effect of Shelcon's recorded lien release was to release the previously recorded lien

without waiving or releasing Shelcon's rights to record a subsequent lien for work performed prior to the release. (COL Nos. 5-6 and partial summary judgment order at CP 325.)

21. The trial court's conclusions that Anchor Bank did not meet its burden of proof to demonstrate that Shelcon is equitably barred from asserting its lien is superior to Anchor Bank's lien. (COL Nos. 13-15.)

22. The trial court's conclusions that Shelcon's lien (comprised of \$262,828.26, prejudgment interest and attorneys' fees incurred by Shelcon in its trial against Haymond) is superior to Anchor Bank's deed of trust lien. (COL Nos. 16, 7-9.)

### III. ISSUES PRESENTED

1. Did the lien release voluntarily recorded by Shelcon fully release all claims and lien rights asserted in its previously recorded lien, thereby limiting the amount that may be claimed in a subsequent lien, since the publicly recorded release stated no limitations and did not disclose that the asserted debt remained unpaid and was intended to entice Anchor Bank to lend? (Assignments of Error 1, 8, 12, 13-14, 19-20, 22.)

2. Is Shelcon equitably estopped from asserting lien rights superior to Anchor Bank notwithstanding its recorded lien release,

since the trial court found that (a) Shelcon was aware that Anchor Bank would not lend to Haymond unless Shelcon's lien was released; (b) Shelcon recorded the release for the purpose of enabling Haymond to obtain financing from Anchor Bank and receiving payments from the loan proceeds; (c) the publicly recorded lien release contained no limiting language; (d) Anchor Bank relied on the recorded lien release when it approved the loan; (e) Shelcon submitted invoices representing described work was 100% complete for the purpose of receiving loan proceeds and received full payment for those invoices; and (f) Anchor Bank was without fault in its protocol and procedures for approving the loan to Haymond? (Assignments of Error 1, 8-14, 19, 21, 22.)

3. Did Shelcon's minor preparatory activities conducted on site the day the deed of trust securing the prior refinanced loan was recorded amount to improvement to the realty such that the activities qualify as lienable labor for purposes of establishing lien priority and determining if equitable subrogation applies? (Assignments of Error 1-8, 15-19, 22.)

#### IV. STATEMENT OF THE CASE

##### A. The Property And The Competing Anchor Bank and Shelcon Liens.

The Anchor Bank deed of trust lien and the Shelcon mechanics lien were both filed against real property referred to as the Farm and

located at 14224 Pioneer Way East. (Trial Exhibits (“Ex.”) 60, 64, CP 620.) The Farm property was being developed for commercial purposes. More specifically, it was to be developed with two commercial buildings – one 28,000 sf warehouse style building with a 14,000 sf mezzanine for offices, and another 2,400 sf building – and a contractor’s yard. (Exs. 10, 11, 50.) Shelcon was the site development general contractor hired by the property owner, defendant A-4 and the LLC owner Haymond for earthwork and infrastructure development on the Farm property. (Report of Proceedings (“RP”)<sup>1</sup> at 82-83.)

Both liens are associated with this development effort. As noted earlier, the \$309,369 mechanics lien upon which Shelcon sues (Ex. 68) is not the first lien it recorded against the Farm property. Shelcon recorded another lien in the similar amount of \$303,291 on June 20, 2008. (Ex. 48.) Shelcon subsequently recorded a release of that first lien on July 16, 2008. (Ex. 52.) (A copy of the prior lien claim and the lien release are attached as Appendix B and Appendix C, respectively.) On the face of both liens, Shelcon claims to have commenced work on the Farm on July 5, 2006. (Exs. 48, 68.)

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<sup>1</sup> Multiple transcripts have been filed in this case. Unless otherwise indicated, all citations to RP will be to the Verbatim Transcript of Proceeding before the Honorable Vicki L. Hogan prepared by Raelene Semago, which includes the trial testimony in the trial of Shelcon’s claims against Anchor Bank.

Anchor Bank's \$3.9 million deed of trust lien was recorded on August 22, 2008, after Shelcon released its first lien. (Ex. 60.) The Anchor Bank loan included a refinance of a prior \$1,540,000 construction loan, which was also secured by a deed of trust recorded against the Farm property on July 5, 2006. (Ex. 61, 101-102.)

The history leading to these two competing liens is below.

**B. Shelcon's Work On The Farm.**

Prior to commencing work on the Farm, Shelcon had previously worked with Scott Haymond and his various entities on other projects. Shelcon worked on a Haymond project known as Pacific Village for which Haymond still owed Shelcon \$125,000 when Shelcon started its work on the Farm. (RP 120-21, 185, 288-89.) Haymond eventually paid Shelcon for its work on Pacific Village, but the payment came approximately a year after it was due. (*Id.*) Shelcon was also working on a residential project known as Beaver Meadows and Haymond was substantially behind in payment on that project as well. (*Id.*)

In light of Haymond's prior payment history, Shane Martin, owner of Shelcon, made sure that Haymond had construction financing before he commenced work on the Farm, going so far as to listen to phone conversations between Haymond and his banker. (RP 262-64.) This financing was the \$1,540,000 loan from WA 1<sup>st</sup>, which loan was

secured by the deed of trust recorded on July 5, 2006. (Ex. 61.) After confirming that Haymond procured financing, Shelcon commenced work on the Farm, though it did so based upon unsigned bids and without the benefit of a signed contract. (RP 252-54.)

Shelcon's activity at the Farm site on July 5, 2006, the day WA 1<sup>st</sup> recorded its deed of trust was reconnaissance by Shane Martin before Shelcon began its clearing work. Martin described his activity on a timesheet<sup>2</sup> as follows:

Walk project. Flag @ clearing limits. Can't find storm outfall pipe.

Site issues:

1. Cyclone fence on east property line looks like it is in the way of storm pipe (need to move the storm pipe west 20')
2. Pipe is on wrong side of berm
3. Wetland pond berm pipe is installed wrong "no covie"
4. Looks like Scott @ cleared too far south approx 50 feet (no[t] his property)

Comments: Some guy from trailer court told me he is suing Scott because of fence. He told me if I moved it he would sue us.

(Ex. 13. See also Ex. 12, RP 94-102.) Martin's inspection of the Farm property occurred prior to the "pre-construction meeting" with Pierce

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<sup>2</sup> Notably, this is the only timesheet Martin submitted for the Farm, or any other Haymond project, despite that he supervises the project and is at the site regularly. (RP 266-70.) This time sheet was not initially produced, but was finally provided through a supplemental production by Shelcon. (See Ex. 129 at p. 101, RP 267-70.)

County. (See Trial Ex. 115 at p. 7, June 12, 2006 entry; RP 307-08, 266-67.) Shelcon had no other activity on the site on or before July 5, 2006. Shelcon began mowing the site on July 10, 2006, and picked up a bobcat to start excavation on July 12, 2006. (Exs. 14-16, RP 98-99.)

Shelcon began invoicing A-4 on August 31, 2006. A-4 paid the first invoice (\$126,756) in full (Exs. 19, 32), but only paid \$150,000 toward the second October 26, 2006 invoice for \$265,038.74<sup>3</sup> (Exs. 20, 33). Thereafter, Shelcon issued three more invoices; two of which were fully paid and one for \$33,600 was not paid. (Exs. 21-23, 34-35.)

According to Martin, Shelcon's work on the Farm progressed in "kind of herks and jerks." (RP 110.)

We started the project and Scott ran out of money. So it stopped....

(*Id.*) Martin provided further explanation for stopping work:

He was out of money, and – he was out of money.  
He didn't have any more to pay us, and I just

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<sup>3</sup> Scott Haymond instructed Shelcon to apply \$115,000 from a Beaver Farm payment to this invoice for the Farm (Ex. 20) and this transfer, along with the \$150,000 cash payment would have satisfied all but \$38.74 of this invoice. One of the spreadsheets produced by Shelcon reveals that Shelcon initially followed Haymond's instruction. (Ex. 116.) However, Shelcon later unilaterally reapplied the \$115,000 to the Beaver Meadows project, leaving the October 26, 2006 Farm invoice unpaid by that amount. (RP 175-76, 188-93.)

couldn't afford to keep paying him on this project and another one.

(RP 112.)

**C. Shelcon's First Lien Recorded On June 20, 2008.**

After stopping work on the project, Shelcon recorded a lien on June 20, 2008 under recording number 200806200326 because he "didn't want [his] lien rights to run out." (RP 111, Ex. 48.) At the time Shelcon recorded its lien, it had invoiced Shelcon \$506,061.27 (Exs. 19-23) and received payments totaling \$357,421.76 (Exs. 32-35), leaving an unpaid balance of \$148,639.51 for work performed and invoiced. (Exs. 19-23, 32-35.)

The balance that Shelcon claimed on its lien claim, however, was more than double that of the unpaid invoices – \$303,291.29. (Ex. 48.) Well after this litigation commenced, Shelcon explained a portion of the discrepancy as being comprised of "extras" for fill import (\$71,050) and rock (\$32,464.84) and installation of irrigation sleeves (\$1,110),<sup>4</sup> though Shelcon never invoiced for these claimed extras until it sent its final statement on April 2009, a year later and long after

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<sup>4</sup> Shelcon included another extra – \$3,976.93 for spreading hay – in its post litigation justification of the first lien claim amount. (See Ex. 94.) However this extra was invoiced to A-4 and paid before the first lien was recorded. (See Exs. 23, 35.)

Shelcon completed all work on the project.<sup>5</sup> (Exs. 94, 69, RP 255-61, 116-17, 239-50.) The remainder of the discrepancy was supposedly comprised of interest accrued at a rate of 18%, even though the extras were never invoiced, none of the invoices sent for other work noted interest as due and owing and there was no signed contract or bid sheet authorizing such interest. (*Id.*, Ex. 94, RP 117, 195-97, 252-54.) In event, Shelcon claimed that, at the time of its June 20, 2008 lien, it was owed \$303,291 for previously performed work. (Ex. 48.)

**D. The Lien Release Shelcon Recorded To Facilitate The Anchor Bank Refinance.**

Before Shelcon recorded its lien, Haymond had commenced a refinance application with Anchor Bank to pay off the WA 1<sup>st</sup> loan and obtain additional funding to complete construction. (RP 345-46, Trial Ex. 56.) When the Shelcon lien appeared on a title report issued to Anchor Bank, the loan process came to a halt. (Ex. 103, RP 347-49.) The Bank, through its loan office Kate Dixon, advised Haymond that the loan would not close unless the Shelcon lien was resolved and removed from title. (RP 347-49.)

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<sup>5</sup> Two of these extras are listed on what appears to be an October 31, 2008 invoice (Ex. 28), however, Martin testified that this "invoice" was generated for internal purposes and he did not believe it was ever sent to Haymond. (RP 201, 203-05, 224-25.)

Haymond advised Martin that the Shelcon lien was interfering with his efforts to refinance. Martin described the conversation:

He wasn't very happy about it. He came to me several times, and I think he even wrote a couple of letters to me.

\* \* \*

Asking me to release the lien because it was going to mess up his financing. He thought he had financing from a bank, and it was going to stop his financing.

(RP 119-120.) Martin testified that Haymond told him payment would come through the loan refinance:

He would pay me whatever he could before the loan closed,<sup>6</sup> and out of the next two or three draws he would catch the 303 up and pay me for the rest of the work to finish the project.

(RP 120.)

At this point Martin was worried about getting paid for Shelcon's work on the Farm. It took Haymond almost a year before he paid Shelcon \$125,000 owed in arrears on Pacific Village and "he was several hundred thousand dollars behind" on Beaver Meadows. (RP 120.) Other issues with Haymond began to "pop up," including potential criminal investigations, at the time he requested the lien release." (RP 122, 124-26.) Martin was considering all of this in

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<sup>6</sup> Haymond wrote a personal check to Shelcon providing an additional \$17,000 payment on July 11, 2006, five days before the lien release was recorded. (See Ex. 36.) No other payments were made before the release was recorded.

rendering a decision regarding Haymond's lien release request. (RP 126.) Ultimately, Martin decided to record a lien release as Haymond requested, even though he had not received payment for the associated debt, so that he could obtain the financing and Shelcon could get paid. Martin testified:

Yeah, I figured that I was worried about getting paid, but I also knew I had less chance at getting paid if he didn't have a loan on the project to complete the building and complete the site work.

(RP 122. See also RP 271.) The release was recorded on July 16, 2008. (Ex. 52.) The written release stated that Shelcon "releases the lien on the property ... which lien was filed on the 20THday of JUNE, 2008, in the office of the Auditor of Pierce County, Washington, under Recording #200806200326." (*Id.*) There were no conditions or limitations stated on the recorded release. (*Id.*)

As soon as the lien release was recorded, it was forwarded to Anchor Bank. (Trial Ex. 54, RP 349.) Anchor Bank confirmed with the title company that, as a result of the release, the Shelcon lien was removed as an "exception" or defect to the Farm property's title. (Ex. 104, RP 349-50.) Anchor Bank also requested Haymond to provide an

explanation for the lien, which he did.<sup>7</sup> (RP 350-54, Ex. 55.) Having issues like liens arise in the course of a loan review is not necessarily unusual. When such issues arise they are investigated and the loan will close if the issue is adequately resolved. (RP 360-61.) As a result of the combined actions in this case, Anchor Bank believed there was no cause for further concern regarding the Shelcon lien. The Bank had a lien release provided by the actual lien claimant, an explanation from the borrower (which appeared corroborated by a lien release) and a clear title report from the title company. (RP 355, 349-52.)

Moreover, at this point in time, Anchor Bank's only experience with Haymond was a ten-year positive loan history in which he borrowed money and paid it back consistent with the loan terms. (RP 340, 361.) There were no significant problems with Haymond's credit report. (RP 341-42.) Anchor Bank did not share any of Shelcon's experience. It was wholly unaware of the issues that were causing Shelcon concern when Shelcon nonetheless decided to affirmatively release its lien to facilitate Haymond's efforts to obtain new financing and make further payments to Shelcon. (RP 361, 122-26.)

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<sup>7</sup> Haymond advised Anchor Bank that the debt claimed on the lien was for the Beaver Meadows project, not the Farm. (Ex. 55.) Haymond also advised Anchor the debt was paid and that he would obtain a lien release. (*Id.*) Martin testified that the information Haymond communicated to Anchor Bank regarding the lien was false. (RP 131-33.) Anchor Bank, however, had no reason to doubt Haymond's information since he did, in fact, obtain a lien release from the lien claimant. (RP 355, Ex. 52.)

- E. **In Reliance On The Lien Release, Anchor Bank Closed The Loan, Paid \$1,554,767 To Satisfy The WA 1<sup>st</sup> Deed Of Trust Lien, And Disbursed \$79,200 To Pay Invoices Shelcon Generated After It Released Its Lien.**

Relying on the lien release as resolving the Shelcon lien (RP 374), Anchor Bank closed the \$3,900,000 loan and recorded its deed of trust on August 20, 2008. (Exs. 60, 100, RP 361-62.) Anchor Bank disbursed \$1,554,767 of the loan proceeds to fully pay WA 1<sup>st</sup>; and WA 1<sup>st</sup> filed a full reconveyance of its 2006 deed of trust so that Anchor Bank would hold a first position lien. (RP 361-63, Exs. 61, 101, 102.) Anchor Bank also disbursed the first loan draw in August 2008, which loan disbursement included \$79,200 to pay Shelcon invoices generated and submitted to the bank after Shelcon released its lien, but before the Anchor Bank loan closed. (RP 332-34, 356-59, Exs. 105, 107, 110, 126.)

Prior to closing the loan, Haymond requested that certain work be authorized to be fully paid when the first draw funded at closing. The request included three invoices dated July 21, 2008, totaling \$79,200 for work that Shelcon represented was 100% complete. (RP 332-34, 356-59, Exs. 105, 107, 126.) Shane Martin testified that he provided the invoices at Haymond's request to facilitate payment from the first draw. Unlike the prior invoices, Martin testified that Shelcon

prepared these three invoices based on descriptions and amounts dictated by Haymond.

Scott came to my office and said I need three invoices for these amounts saying "retention pond, a hundred percent complete." The first one was waterline, all three of them. I think he came to our office.

(RP 137, Exs. 24, 25, 26.) Martin testified that "all three of those invoices was how much he [Haymond] could get me out of the first draw." (RP 143.)

He said that's what he needed for the bank to get a draw, get the first draw going, and that is what - the amount he was going to give the bank so that [they] would start paying us up, along with a future order.

(RP 138.) Shelcon generated the invoices consistent with Haymond' request. (RP 276, 137-38.) Martin testified that he assumed that the Shelcon invoices would be submitted to Anchor Bank with a request for payment. (RP 276.) There were no indications on any of these bills that Shelcon had invoiced any prior amounts for work on the Farm property, much less that that Shelcon held accounts on this project that were in arrears. (RP 276-78, Exs. 24-26.)

Based upon information provided by Haymond and Shelcon and upon verification that the identified work was complete, Anchor Bank

disbursed funds and Shelcon received full payment for the invoices. (RP 332-34, 356-59, Exs. 105, 107, 108, 110, 126, 24-26, 37-39.)

**F. Shelcon's Undisclosed Side Agreement With A-4 And Haymond.**

Unbeknownst to and without disclosure to Anchor Bank, Shelcon and Haymond had an agreement that was very different from the picture created by the publicly recorded lien release and the invoices for discreet work that was represented as 100% complete.

Shane Martin testified at trial that he believed the only information Shelcon provided to Haymond that would also be transmitted to Anchor Bank was the June 20, 2008 lien (Ex. 48), the July 16, 2008 recorded lien release (Ex. 52) and the three July 2008 invoices totaling \$79,200 (Trial Exs. 24-26). (RP 136-37.) Martin did not believe that any other communications he had with Haymond "would have gotten to the bank." (RP 136.) These documents that Martin prepared and expected to be transmitted to Anchor Bank and hoped would produce disbursements for Shelcon indicate that (1) the Shelcon lien was released without condition and (2) the three July 21, 2008 invoices (totaling \$79,200) for work 100% complete represent the totality of funds owed to Shelcon. Martin, communicated a vastly different picture in correspondence directed exclusively to Haymond.

On September 8, 2008, after Shelcon publicly recorded the lien

release, and after Anchor Bank disbursed \$79,200 to pay the three July 2008 Shelcon Invoices (along with over \$1.54 million to remove the WA 1<sup>st</sup> lien), Shelcon wrote a “letter of understanding” to Haymond (RP 159, 270):

As you know, we are currently owned [sic] no less than **\$303,491.29** for work performed on your project. As you know, on or about 6-20-08, we filed a claim of lien for the amounts due. At your request, we released this claim of lien in order to assist you to obtain new financing for this project. We did this to assist you, and reserved all rights, including the right to re-file the claim of lien for these and other amounts which may become due.

You have advised that you are now able to pay **\$79,200** as partial payment for the amounts currently due, and we enclose a proposed release of claim of lien for this partial payment amount. We agree to accept this payment on the condition that it shall be applied to the oldest amounts due us, and with the understanding that we retain all lien and other rights regarding amounts still due and not yet paid. (Bold and underline in original.)

(Ex. 64.)<sup>8</sup> Martin testified that this was his effort to be “up front with Scott [Haymond] so he knows where we are at, why we are releasing the line, and what we expect to be paid in the future for the previous work.” (RP 159.) Martin clarified his purpose in writing the letter:

Q. ...What did you mean? I mean tell me, tell the Court.

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<sup>8</sup> Though Shelcon requested him to do so, Haymond never signed this letter of understanding – only Martin signed it. (RP 270-71.)

A. Basically it was, I did a letter of understanding. We are going to release the lien. I mean, it will help you get your loan, but this is what we expect to be paid, and this is what you told us you would pay us on the first draw.

Q. That's the 79,200?

A. That's the 79,2, and we will move forward after this. (Emphasis added.)

(RP 162.) The "letter of understanding" was not provided to Anchor Bank. (CP 629, Finding 58.)

The "release of claim" referenced in Martin's September 8, 2008 letter of understanding provided:

The undersigned agrees that upon receipt by the undersigned of a check in the amount of \$70,200 and payment of that check by the bank upon which it was drawn, this conditional release shall become effective to waive and release, pro tanto, any and all claims and liens which the undersigned may have with respect to the Project for labor, services, equipment and material ("Work") furnished to the extent of such payment; provided that, this conditional release does not cover Work furnished, or retainage, to the extent no yet paid. The individual signing below warrants that he/she has authority to sign this document on behalf of the undersigned.

(Trial Ex. 113.) Though Martin signed this conditional release, he did not record it, nor did he provide a copy to Haymond. (RP 282-85.) Again, the letter of understanding and unrecorded conditional release prepared after the release was recorded and Anchor Bank disbursed funds for payment to Shelcon, were not among the documents that

Martin expected would be transmitted to Anchor Bank. (RP 136.) In fact the documents were not provided to the Bank. (CP 629.)

Of course, the unrecorded and undisclosed conditional release that Martin retained in Shelcon's private files is vastly different from the publicly recorded lien release that was intended to be seen by and entice Anchor Bank to loan funds for the Farm project. The July 16, 2008 recorded release (Ex. 52) took the following form:

SHELCON CONSTRUCTION GROUP.  
**CLAIMANT**

VS.

**RELEASE OF LIEN**  
#200806200326

SCOTT RAYMOND, A-3 VENTURE LLC  
**DEFENDANT**

THE **UNDERSIGNED LIEN CLAIMANT** hereby releases the lien on the property owned or reputedly owned by: A-III VENTURE LLC, P.O. BOX 206, PACIFIC, WA. 98047-0206/ SCOTT HAYMOND, 136 STEWART RD SE, UNIT J, PACIFIC, WA. 98407-2143 / SCOTT HAYMOND, A-3 VENTURE L.L., P.O. BOX 206, PACIFIC, WA. 98047. Property described as follows:

**COMMONLY KNOWN AS: THE FARM, 14224 PIONEER WAY E, PIJYALLUP, WA.**

Which lien was dated the 20TH day of JUNE, 2008, and filed on the 20TH day of JUNE, 2008, in the office of the Auditor of Pierce County, Washington, under Recording #200806200326.

SHELCON CONSTRUCTION GROUP  
P.O. BOX 2016  
SNOQUALMIE WA. 98065  
425422-3570  
**CLAIMANT**

The recorded lien release was prepared by Lien Research Corp., which is the service that prepares and records Shelcon's liens based upon Martin's instructions. (RP 122.) Martin admitted that he did not instruct Lien Research Corp. to use any special lien release form to preserve any rights to re-lien the project for the same work, or provide

any other special instructions. Lien Research was not advised of the terms set forth in the letter of understanding written two months later. He simply faxed a form instructing the Lien Research Corp. to release the lien in the same manner it had originally instructed Lien Research Corp. to prepare and record the lien. (RP 127, 272-74, Exs. 53, 117.)

With regard to the publicly recorded lien release, Martin testified

Q. Is there anything on this release form that indicates that it is reserving other rights, conditioned on receiving payment, it's for partial payments, is there anything on that anywhere that indicates any limitations to the release?

A. No.

Q. Okay. And I believe that you even, when I talked about this with you in your deposition, you even said as far as you knew at the time, this would release the lien, correct?

A. I knew this would release the lien, yes.<sup>9</sup>

Q. And you knew this lien was interfering with the bank loan?

A. Well, the possible bank loan, correct?

Q. And you knew this release would help it go forward, help get that loan approved and go forward?

A. Correct.

(RP 273-74.)

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<sup>9</sup> Martin claims he was advised by counsel that he could release the lien he recorded on June 20, 2008 without impairing his ability to re-file the lien and seek payment of the same work claimed on the released lien. (RP 122-23, 272-73.) However, he did not testify that he had the July 16, 2008 release (Ex. 52) reviewed before it was recorded. Martin did testify that he had an attorney review his September 8, 2008 letter reviewed by an attorney before it was sent. (RP 288.)

Q. ... So you certainly acknowledge that the reason that you filed the release was so that Anchor Bank would fund the project?

A. Yeah, I don't know that I was aware at that point that it was Anchor Bank.

Q. But that a bank would fund the project?

A. They would hopefully fund the project, yes.

Q. All right. And that's why you did the release, is to get those funds?

A. To help Scott [Haymond] get a loan, or possible a loan.

Q. Right. And that would benefit you because that would be a source of funds to provide payment to you, correct?

A. Correct.

(RP 271.)

Anchor Bank relied upon the lien release. (RP 374.) Like Martin, Anchor Bank saw nothing on the lien release that caused them to conclude that it was limited in any way or anything less than a full and complete release. (RP 351, 360-61, 374.) Since the Bank was not privy to Haymond and Martin's side deal, there was no reason to question to place language in the recorded release.

**G. Shelcon's Claims Against A-4 and Haymond Were Adjudicated In A Separate Trial.**

The claims between Shelcon and A-4 and Scott Haymond were separately litigated in a bench trial to Judge Frederick Fleming that commenced on September 14, 2011. That litigation ended with a

judgment in favor of Shelcon and against A-4 and Haymond in the principal amount of \$245,151,42, together with prejudgment interest in the amount of \$167,480.60, attorneys' fees in the amount of \$140,432.97 and costs in the amount of \$784.78, for a total judgment of \$553,849.77. (CP 58-61.)

Anchor Bank did not, however, participate in that trial because it was dismissed on summary judgment before the trial occurred. When the Division II decision underlying the summary judgment dismissal was reversed,<sup>10</sup> Shelcon and Anchor Bank stipulated to an order vacating the summary judgment, which stipulated order was entered on October 19, 2011. (CP 52-57.) The stipulated order expressly provided at page 3: "Any findings of fact or conclusions of law entered as a result of the trial in this matter that commenced on September 14, 2011 shall not be binding on Anchor Mutual Savings Bank." (CP 54.) Thus, Anchor Bank retained the right to litigate all issues related to Shelcon's mechanics lien, including the validity and priority of the lien and the amount, if any, secured by the lien.

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<sup>10</sup> On November 19, 2010, almost a year earlier, Anchor Bank was dismissed from the case on summary judgment. Judge Terrance McCarthy held on summary judgment that the form of the mechanics lien was defective based upon the April 2010 Division II decision in *Williams v. Athletic Field, Inc.*, 155 Wn. App. 434, 228 P.3d 1297 (2010). (CP 67-68.) However, after the trial between Shelcon and A-4 commenced, the Supreme Court reversed Division II's decision, thus negating the basis for the summary judgment entered on November 19, 2010. *Williams v. Athletic Field, Inc.*, 172 Wn.2d 683, 261 P.3d 109 (2011).

Judge Fleming subsequently entered Findings of Fact and Conclusions of Law for the first trial on October 28, 2011. (CP 43-57.) Consistent with the Stipulated Order entered by Judge McCarthy, Judge Fleming's Findings and Conclusions expressly provide that the findings and conclusions "shall not be binding on Anchor Bank. All issues related to Shelcon's claims against Anchor Bank, to include the respective priorities of Shelcon's lien and Anchor Bank's Construction Deed of Trust lien and all defenses, shall be tried in a separate trial." (CP 50 at ¶ 10.)

Haymond and A-4 appealed Judge Fleming's Findings, Conclusions and Judgment (CP 62-63), though the appeal was held in abeyance until Shelcon's claims against Anchor Bank were fully litigated and judgment was entered as to all parties. Though this appeal was consolidated with the later appeal filed by Anchor Bank (Case No. 44951), the issues raised by A-4 and Haymond are separate and distinct from the issues raised by Anchor Bank.

**H. Though It Found That Anchor Bank Was Without Fault And Relied On The Release, The Trial Court Nonetheless Concluded That Shelcon's Release Did Not Affect Shelcon's Lien Rights And Priority As Against Anchor Bank.**

On September 12, 2012, Shelcon presented a motion for partial summary judgment requesting the Court to enter a finding that Shelcon's lien release did not affect or limit the amount of a second

lien recorded by Shelcon. (CP 88.) The motion advocated a fine distinction between inchoate lien rights and claims of lien, and was largely based upon California cases, where, unlike in this state, mechanic's lien rights are a constitutional right afforded by the California State Constitution. (See CP 99-103.)

Judge Garold Johnson accepted Shelcon's argument. Though he stated that his ruling did not "affect any of the affirmative defenses raised by the defense in this matter,<sup>11</sup> and that includes the estoppel argument specifically, and those related to estoppel," he held that, as a matter of law, "the release of that first lien is not encumbrance upon the second lien unless it affirmatively says that the lien was satisfied." (9/28/12 RP at 17, CP 325.)

The case between Shelcon and Anchor Bank thereafter proceeded to a bench trial before the Honorable Vicki Hogan and Findings of Fact and Conclusions of Law were entered. (Appendix A, CP 617-34.) Judge Hogan made several findings of fact favorable to Anchor Bank's position, including the following:

24. When Anchor Bank learned of Shelcon's lien, Anchor Bank informed Scott Haymond that Shelcon's lien would need to be released before Anchor Bank would lend.

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<sup>11</sup> Anchor Bank's affirmative defenses are stated in its Amended Answer at CP 86-87.

25. Scott Haymond contacted Shane Martin and requested Shelcon to release its lien.

26. Scott Haymond promised Shane Martin that if Shelcon released its lien that Shelcon would be paid what it was owed to Shelcon after refinancing occurred.

27. Shane Martin released Shelcon's lien with the purpose of enabling Scott Haymond to continue his application for refinancing through Anchor Bank and receive payment from the loan proceeds.

\* \* \*

31. The lien release did not contain any language indicating whether Shelcon had been paid any or all of the amount of the lien that was released. Shelcon's lien release also did not contain any language specifying whether the lien release was conditional or limited.

34. In July 2008, at the request of Scott Haymond, Shelcon submitted to Scott Haymond three invoices totaling \$79,200. Each of the three invoices was dated July 21, 2009. Invoice number 293 in the amount of \$61,000 states: "Waterline 100% Complete". Invoice number 294 in the amount of \$8,200 states: "Retention Pond 100% Complete". Invoice number 295 in the amount of \$10,000 states: "Utility Trenching 100% Complete". The invoices were prepared for the purpose of obtaining payment from loan disbursements.

35. Shelcon and Scott Haymond understood that these three invoices totaling \$79,200 represented part, but not all, of what was owed at the time that the invoices were submitted. Scott Haymond did not disclose this understanding to Anchor Bank.

36. Scott Haymond furnished these three invoices to Anchor Bank. Anchor Bank did not receive any other Shelcon invoices.

37. Shelcon and Scott Haymond understood that as of July 21, 2008, there existed prior invoices dating

back to 2006 that had not been fully paid to Shelcon. Scott Haymond did not disclose this understanding to Anchor Bank.

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47. Kate Dixon and Anchor Bank relied on the lien release and the title report showing that the lien had been released for the decision to proceed with the loan application.

\* \* \*

53. The Court cannot find fault with Anchor Bank, its protocols or procedures for their August 2008 loan of \$3,900,000 to Scott Haymond. It is easy under a Monday morning quarter back analysis to see that there were signs that might have suggested or prealerted Anchor Bank prior to the loan being funded. Some of those might have included that Scott Haymond had multiple projects and multiple lenders, or that Scott Haymond was seeking \$3,900,000 from Anchor Bank, but had just paid off the \$300,000 lien filed two months before the loan was funded and as suggested by the lien release equaling payment in full. (Emphasis added.)

Despite the above favorable findings, Judge Hogan concluded that Shelcon's lien priority was unaffected by the lien release and that Shelcon's release and other conduct would not equitably estop it from claiming lien priority over Anchor Bank's lien. The trial court held that Shelcon held a valid lien, comprised of \$262,828.26 in principal debt, \$127,598.87 in prejudgment interest and \$140,432 in attorneys' fees incurred prosecuting its claim against Haymond in the first trial, and Anchor Bank's lien was inferior to the Shelcon lien. (CP 630-33.) The trial court entered a decree of foreclosure consistent with its legal

conclusions. (CP 636-37.) It also entered judgment against Anchor Bank providing a separate award for attorneys' fees incurred by Shelcon to separately prosecute its lien claim against Anchor Bank. (CP 614-16.)

Anchor Bank appealed Judge Johnson's summary judgment order and Judge Hogan's Findings, Conclusions and Judgment. (CP 638-665.) Its appeal (Case No, 44951) was consolidated with Haymond's appeal.

## V. ARGUMENT

### A. Standard Of Review.

This appeal primarily presents legal issues since it challenges the conclusions drawn from the trial court's findings of facts as contrary to law. However, a few of the trial court's factual findings are also challenged.

This Court reviews the findings of fact to determine if they are supported by the substantial evidence in the record. *Irvin Water Dist. No. 6 v. Jackson Partnership*, 109 Wn. App. 113, 119, 34 P.3d 840 (2001). Substantial evidence is a "quantum of evidence sufficient to persuade a fair minded person the premise is true. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 879, 73 P.3d 369 (2003).

Conclusions of law are reviewed *de novo* to determine if they are supported by the findings of fact. *Bingham v. Lechner*, 111 Wn. App. 118, 127, 45 P.3d 562 (2002); *Robel v. Roundup Corp.*, 148 Wn.2d 35, 42, 59 P.3d 611 (2002). Put another way, the appellate court reviews conclusions of law to determine whether the trial court "derived proper conclusions of law" from its findings of fact. *State v. Solomon*, 114 Wn. App. 781, 789, 60 P.3d 1215 (2002).

Finally, an appellate court reviews a summary judgment order *de novo* and engages in the same inquiry as the trial court. *Kahn v. Salerno*, 90 Wn. App. 110, 117, 951 P.2d 321 (1998). Summary judgment is only appropriate if the evidence, viewed in the light most favorable to the non-moving party, shows that there is no genuine issue as to any material fact. CR 56(c); *Schmitt v. Langenour*, 162 Wn. App. 371, 404, 256 P.3d 1235 (2011).

**B. The Trial Court Erroneously Concluded That The Voluntarily Recorded Release Did Not Bar Or Limit Shelcon's Claims As Against Anchor Bank.**

1. The plain language of Shelcon's release should have been construed to unconditionally and fully release claims for work included in Shelcon's first lien.

The trial court held, as a matter of law, that "the release of that first lien is not encumbrance upon the second lien unless it affirmatively says that the lien was satisfied." (9/28/12 RP at 18, CP

325.) The court placed undue emphasis on the fact of nonpayment (a fact undisclosed and unknown to Anchor Bank); rather than interpret and give legal consequence to the written, publicly recorded release in light of the language employed by the lien claimant and the lien claimant's admitted purpose and intent in recording the release.

A release is a contract construed according to contract principles and interpreted in light of the language used.<sup>12</sup> *Nationwide Mut. Fire Ins. Co. v. Watson*, 120 Wn.2d 178, 187, 840 P.2d 851 (1992). The "touchstone of contract interpretation is the parties' intent," which starts with review of the plain language used in the contract documents. *Tanner Elec. Coop. v. Puget Sound Power & Light*, 128 Wn.2d 656, 674, 911 P.2d 1301(1996). In determining intent, the court focused on the objective manifestation of the parties in the written contract rather than any unexpressed subjective intent. *Hearst Communications, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 503, 115 P.3d 262 (2005); *Berg v. Hudesman*, 115 Wn.2d 657, 667-68, 801 P.2d 222 (1990). Courts "do not interpret what was intended

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<sup>12</sup> In its summary judgment motion to the trial court, Shelcon argued that the rule of statutory construction to protect the lien claimant applies to this case and "means permitting Shelcon to include in its second lien claim the unpaid amount for labor and materials included in its first lien." (CP 1-5.) However, Shelcon did not present any applicable statutory provisions to support its interpretation of the recorded release. This axiom exclusively addressing statutory construction has no application to the contract interpretation issues presented here.

to be written, but what was written.” *Hearst Communications*, 154 Wn.2d at 503. Extrinsic evidence and surrounding circumstances can be considered to “give[] meaning to words used in the contract” but not to “show an intention independent of the instrument” or “vary, contradict or modify the written word.” *Hollis v. Garwall, Inc.*, 137 Wn.2d 683, 695, 974 P.2d 836 (1999) (citations omitted). Court’s will consider “the contract as a whole, the subject matter and objective of the contract, all the circumstances surrounding the making of the contract, the subsequent acts and conduct of the parties to the contract, and the reasonableness of respective interpretations advocated by the parties.” *Berg*, 115 Wn.2d at 667 (quoting *Stender v. Twin City Foods, Inc.*, 82 Wn.2d 250, 254, 510 P.2d 221 (1973)). Issues of contract interpretation present factual questions. *Berg v. Hudesman*, 115 Wn.2d at 663.

Here, where the lien was voluntarily released without any stated limitations or conditions, it should have been construed as intended – to extinguish Shelcon’s lien rights. See *DKS Construction Management v. Real Estate Investment Improvement Co.*, 124 Wn. App. 532, 102 P.3d 170 (2004). The trial court’s findings of fact support this conclusion.

While the trial court found that the release did not indicate whether Shelcon had or had not been paid,<sup>13</sup> it also expressly found that the release “did not contain any language specifying whether the release was conditional or limited.” (CP 624, Finding 31.) Martin himself acknowledged that he could not point to any language limiting the release.<sup>14</sup> (RP 273-74.) As significant, the trial court made a finding regarding Shelcon’s intent. The trial court found that the Shelcon lien was interfering with the loan and Anchor Bank would not close the loan unless it was released. (CP 623, Finding 24.) Thereafter the court found: “Shane Martin released Shelcon’s lien with the purpose of enabling Scott Haymond to continue his application for refinancing through Anchor Bank and receive payment from the loan proceeds.” (CP 623, Finding 27 (emphasis added). See *also* RP 21.) Shelcon’s intention was to communicate a full and complete release

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<sup>13</sup> Notably, in Washington, a lien release is only required “upon payment and acceptance of the amount due to the lien claimant and upon demand of the owner or the person making the payment.” RCW 60.04.071. There is no requirement to release simply due to expiration. Recording a release in Washington thus implies payment was received.

<sup>14</sup> Moreover, Martin knew how to condition a lien release. Recall that in his September 8, 2008 letter, directed to Haymond after the release was recorded, Anchor Bank funded and payments were made to Shelcon, Martin provided and unrecorded lien release that had much more limiting language. (*Compare* Exs. 64, 113 to Ex. 52.) Martin elected not to employ such limiting language in Shelcon’s publicly recorded release which was provided for the purpose facilitating loan approval. When express limiting language is included in a lien release or waiver, it will be given effect. See, *A.A.R. Testing Laboratory, Inc. v. New Hope Baptist Church*, 112 Wn. App. 442, 449, 50 P.3d 650 (2002). The law does not, however, support implying such limitations where none are written.

so that it could receive the benefit of an approved loan in the form of payment from loan proceeds. The release should have been interpreted and given legal consequence consistent with this admitted intent. In any event, the trial court's findings of fact must control over its inconsistent conclusions of law. *Kane v. Klos*, 50 Wn.2d 778, 789, 314 P.2d 672 (1957); *Baker v. Advanced Silicon Material LLC*, 131 Wn. App. 616, 628, 128 P.3d 633 (2006).

Anchor Bank is aware no Washington case that has addressed circumstances such as are present here – circumstances in which the prior lien may negatively impact the priority of a third party lien (as opposed to a payment dispute between contractor and property owner), and the liening contractor benefited from and facilitated approval of the third party loan by affirmatively recording a written release that had no stated conditions or limitations. The case law emphasized by Shelcon on summary judgment is readily distinguished.

In the summary judgment below, Shelcon, and presumably the trial court, relied heavily upon *Geo Exchange Systems LLC v. Cam*, 115 Wn. App. 625, 65 P.3d 11 (2003). (CP 96-98.) In *Geo Exchange*, the court addressed a dispute between the project owners and a subcontractor that timely recorded a second lien after a previously filed first lien expired. Significantly, the first lien was not released, as is the

case here. Rather, the subcontractor simply did not sue on the first lien before the 8-month statute of limitations expired. Furthermore, the first lien was recorded before work was completed and the lien expressly noted on the lien that “claimant continues to perform at the site,” providing public notice of the status of the work. 115 Wn. App. at 627-28. The second lien included all work performed on the project, to include the yet to be completed work described in the first lien.

Addressing only the situation in which two separate liens were filed before work was complete and only one of the liens expired, the court held: “[A] lien claimant may file successive liens so long as the claimant is still working or providing materials; successive liens may include amounts previously claimed, but not yet paid, under expired liens.” *Id.* at 633 (emphasis added.) Again, there was no lien release presented as there is in this case. Significantly, the *Geo Exchange* court noted that nature of the dispute before them as a dispute between the owner and subcontractor, without involvement of innocent third parties. The court noted: “Here, there was no innocent third-party involved.” *Id.* at 632. The *Geo Exchange* decision has no application to this case, which involves a voluntarily recorded general lien release with no stated conditions or reservation of rights.

Shelcon also relied on *West v. Jarvi*, 44 Wn.2d 241, 266 P.2d 1040 (1954) to support its summary judgment motion. (CP 95.) While that case did address a release, it also involved a payment dispute between the property owner and the contractor. In that case, the claimant sent a demand letter advising that a lien had been filed and that, upon payment in the amount of \$262.23, the lien would be released. The identified payment was received and the lien was released. *Id.* at 249. The claimant later discovered that her letter and first lien mistakenly omitted other delivered materials that were valued at \$518.50, but for which no payment had been received. The claimant timely filed a second lien claiming the amount that was still owing for the materials omitted from the first lien. *Id.* at 249-50.

Under the circumstances of that case, the court held that the lien release did not preclude the filing of timely second lien for payment of materials not covered in the first lien. *Id.* at 250. The case did not address a claim for materials or labor included in a first lien that was released. Rather, it addressed only the right to assert a second lien for materials not included in the first lien. Moreover, the court expressly noted that, under appropriate circumstances, a lien claimant may be estopped from enforcing a subsequent lien following release of a prior lien. *Id.* at 250. The *West* case has extremely limited

application and cannot be extended to wholly negate a lien release and authorize inclusion of the same labor and materials in a second lien. It most certainly cannot be extended to facts as presented in this case, where the lien release was recorded for the purpose of inducing Anchor Bank to approve and fund the refinance loan and disburse funds that would be paid to Shelcon. Anchor Bank reasonably relied upon the release, just as Shelcon intended. The cited case law does not support Shelcon's claim.<sup>15</sup>

**2. The substantial evidence and the trial court's findings establish that equity should intervene to estop Shelcon from asserting priority over Anchor Bank's lien.**

The elements of equitable estoppel are (1) an act or omission by the first party; (2) an act by another party in reliance on the first party's act; and (3) injury that would result to the relying party if the first party were not estopped from repudiating the original act. *Kramarevcky v. Department of Social and Health Services*, 122 Wn.2d 738, 743, 863 P.2d 535 (1993). Equitable estoppel is based on the principal that "a party should be held to a representation made or position assumed where inequitable consequences would otherwise

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<sup>15</sup> Shelcon also cited California cases to support its summary judgment. (CP 98-103.) Those cases were decided in the unique situation in which the California State Constitution creates a constitutional right to lien. There is no such constitutional inchoate right in Washington and the cases have no application here.

result to another party who has justifiably and in good faith relied thereon.” *Id.*

Washington courts have long held that a lien holder may be estopped by his conduct from asserting his lien rights. See *Ostrander v. Okerland*, 165 Wash. 18, 20, 4 P.2d 828 (1931); *Nelson & Castrup v. Culver*, 94 Wash. 548, 550, 162 Pac. 978 (1917); *Stewart Lumber Co. v. Unique Home Builders, Inc.*, 160 Wash. 273, 294 Pac. 988 (1931). See also, *West v. Jarvi*, 44 Wn.2d 241, 250, 266 P.2d 1040 (1954). Courts in other jurisdictions have repeatedly held that a lien claimant’s execution of a lien release or waiver, when executed to induce action by the owner or a third party may serve to estop the claimant from enforcing the lien against the party prejudiced. See *Fountain Building & Supply Co., Inc. v. Washington*, 602 S0.2d 362, 364-66 (S.Ct. Al. 1992); *Richards Lumber & Supply Co. v. National Bank of Joliet*, 32 Ill. App.3d 835, 336 N.E.2d 820(1975); *Mountain Stone Co. v. H.W. Haymond Co.*, 39 Colo. App. 58, 564 P.2d 958, 960-61 (1977); *Hutchinson Bros. Excavation Co., Inc. v. Dworman*, 307 A.2d 760 ( D.C. CAP 1973); *Westinghouse Supply Co. v. Wesley Construction Co.*, 316 F. Supp. 490 (S.D. Fl. 1970); *Country Service & Supply Co. v. Harris Trust & Savings Bank*, 103 Ill. App.3d 161, 430 N.E.2d 631 (1981).

In this case, the substantial evidence established:

- Shelcon knew that A-4 sought from Anchor Bank a loan to refinance an exhausted prior construction loan. It knew that A-4 sought the new loan to refinance the prior loan, fund additional work on the Farm property and, pay monies already owed to Shelcon.
- Shelcon knew that Anchor Bank would not make the loan unless Shelcon released its lien.
- The exclusive purpose of providing the lien release was to get Anchor Bank to make the loan.
- Shelcon understood that there was nothing on the face of the lien release that would communicate to Anchor Bank that it was anything less than a complete release.
- Shelcon provided A-4 with invoices that represented that the work performed and invoiced was 100% completed and made no reference to unpaid invoices. The new invoices were specially generated so A-4 could receive payments from the loan disbursements.
- Shelcon intended, without disclosing the Anchor, to apply draw proceeds to prior invoices that were purportedly released in the recorded Release of Lien.

The lien release was a statement (inconsistent with facts only known to Shelcon and Haymond) that was deliberately placed in the public record. More importantly, the release was intended to induce Anchor Bank to act – Shelcon intended for the statements on the release to be seen by Anchor so that Anchor would close the loan and advance funds to be disbursed to Shelcon. The trial court's finding in this regard comports to the substantial evidence: "Shane Martin

released Shelcon's lien with the purpose of enabling Scott Haymond to continue his application for a refinancing through Anchor Bank and receive payment from the loan proceeds." (CP 623, Finding 27.)

The trial court also found that the statements on the invoices (Exs. 24-26) that work was 100% complete (and which conveniently omitted reference to any past due balances or other contract work previously or yet to be performed) were also generated for the purpose of presentation to Anchor Bank for loan draws. (CP 625, Finding 34.) The statements were intended for Anchor Bank, and Anchor Bank acted based upon those statements.

Moreover, the trial court expressly found that Anchor Bank relied on the release (CP 626, Finding 47) and that it could not "find fault with Anchor Bank, its protocols or procedures for their August 2008 loan of \$3,900,000 to Scott Haymond." (CP 627, Finding 53.) These finding support a single conclusion - that Anchor Bank reasonably relied on Shelcon's lien release, which again, was publicly recorded with the purpose of inducing Anchor Bank to fund the loan. Shelcon presented no law that Anchor Bank should not be able to rely upon statements recorded with the public record.

Finally, it cannot be disputed that Anchor Bank relied on the release to its detriment. Anchor Bank carefully took action to preserve

and obtain a first lien position. It fully paid the WA 1<sup>st</sup> \$1.54 million debt so that it could step into the shoes of WA 1<sup>st</sup>'s July 5, 2006 lien position. (CP 627, Finding 52.) Upon learning of Shelcon's mechanic's lien, Anchor Bank advised Haymond it would not fund the loan unless a lien release was obtained. (CP 623, Finding 24.) Only after receiving the lien release, ensuring that the lien was removed from the title report did Anchor Bank proceed with approving the loan. (CP 626, Finding 47.) If the court construes the recorded lien release to be without legal consequence to Shelcon, then Anchor Bank's reasonable reliance on the release will have cost it its first lien position.

By recording a lien release without any stated limitations or conditions, Shelcon induced Anchor Bank to loan funds to Haymond and benefited from that loan. Shelcon should not now be permitted ask this Court to disregard this same release.

The trial court erred when it failed to conclude that equitable estoppel should be applied to this case. Its conclusions are inconsistent with the substantial evidence in the record, but more importantly, inconsistent with the trial court's own findings.<sup>16</sup>

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<sup>16</sup> Shelcon may argue that Anchor Bank should have made direct inquiry with Shelcon to verify that the June 2008 lien claim was fully paid. However, the trial court's finding that it could not find fault with Anchor Bank's actions negates this argument. Only as a "Monday morning quarterback" are the purported red flags apparent. (CP 627-28, Finding 53.) Moreover, when misrepresentations serve to deceive or mislead a party, it is immaterial if investigation would reveal the truth. *Hoffer v.*

C. Anchor Bank's Lien Priority Vested On July 5, 2006 As To \$1,554,767.32 Of Anchor Bank's Secured Debt.

The starting point to determine the respective priorities of two competing liens is a determination of each lien's vesting date. RCW 60.04.061 provides that a claim of lien created by Washington's Mechanic's Lien Statute "shall be prior to any . . . deed of trust . . . which attached to the land after or was unrecorded at the time of commencement of labor or professional services or first delivery of materials or equipment by the lien claimant."

The date or dates that Shelcon commenced to furnish labor are addressed below. With regard to Anchor Bank, it recorded its own \$3.9 million deed of trust on August 22, 2008. (Ex. 60.) However, nearly half of Anchor Bank's lien (\$1,554,676) attached to the Farm property on July 5, 2006. Because Anchor Bank paid off the WA 1<sup>st</sup> July 5, 2006 secured lien, Anchor Bank is equitably subrogated to and steps into the lien position held by WA 1<sup>st</sup> to the full extent of payment to that first lien holder. *Bank of America v. Prestance Corp.*, 160 Wn.2d 560, 160 P.3d 17 (2007). See also, CP 631, Conclusion 3.)

In *Prestance*, the Washington Supreme Court formally adopted the *Restatement (Third) of Property: Mortgages* § 7.6 (1997) approach

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*State*, 110 Wn.2d 415, 426, 755 P.2d 781 (1988); *Boonstav v. Stevens-Norton, Inc.*, 64 Wn.2d 621, 626, 393 P.2d 287 (1964); *North Pacific Plywood, Inc. v. Access Rd Builders, Inc.*, 29 Wn. App. 228, 233, 628 P.2d 482 (1981).

on refinances, and held that a lender may be equitably subrogated to a first priority lien even if it had actual or constructive knowledge of intervening junior lien holders. 160 Wn.2d at 561, 567, 582. Section 7.6(a) of the *Restatement* describes equitable subrogation as:

One who fully performs an obligation of another, secured by a mortgage, becomes by subrogation the owner of the obligation and the mortgage to the extent necessary to prevent unjust enrichment. Even though the performance would otherwise discharge the obligation and the mortgage, they are preserved and the mortgage retains its priority in the hands of the subrogee.

The *Prestance* Court held that “[e]quitable subrogation is a broad doctrine and should be followed whenever justice demands it and where there is no material prejudice to junior interest.” 160 Wn.2d at 581. The Court noted that one acknowledged purpose of equitable subrogation is to preserve proper priorities by allowing a mortgagee who satisfies another mortgagee’s loan to take that mortgagee’s priority position. *Id.* at 567. If a junior lienor is simply required to hold its same junior status, it suffers no material prejudice. *Id.* at 581-82.

Section 7.6 also provides several illustrations of the doctrine’s application at subsection (b):

By way of illustration, subrogation is appropriate to prevent unjust enrichment if the person seeking subrogation performs the obligation:

(1) in order to protect his or her interest;

- (2) under a legal duty to do so;
- (3) on account of misrepresentation, mistake, duress, undue influence, deceit, or other similar imposition; or
- (4) upon a request from the obligor or the obligor's successor to do so, if the person performing was promised repayment and reasonably expected to receive a security interest in the real estate with the priority of the mortgage being discharged, and if subrogation will not materially prejudice the holders of intervening interests in the real estate.

In this case, illustration 4 is clearly applicable here.<sup>17</sup>

Shelcon asserts that its lien nonetheless has priority because Shelcon “commenced work” a few hours before the WA 1<sup>st</sup> deed of trust recorded. The “labor” performed on this day is based upon a single time sheet allegedly submitted by Shane Martin, owner of Shelcon. The time sheet reveals that Martin was conducting reconnaissance at the Farm property prior to construction. Martin described his activity as, walking the project, flagging clearing limits and identifying issues. (Ex. 13. See *also* Martin notes at Ex. 12.) Martin’s inspection of the Farm property occurred prior to the “pre-construction meeting” with Pierce County. (See Ex. 115 at p. 7, June 12, 2006 entry.) In any event, Martin’s activity on July 5, 2006 does

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<sup>17</sup> Under the circumstances presented here, Illustration 3 regarding misrepresentation, mistake or deceit should also apply.

not qualify as lienable services and did not serve to vest Shelcon's lien before the WA 1<sup>st</sup> lien.

RCW 60.04.021 only authorizes a lien for a person "furnishing labor, professional services, material, or equipment for the improvement of real property." (Emphasis added.) The lien shall be for the "contract price<sup>18</sup> of labor, professional services, materials, or equipment furnished at the instance of the owner." *Id.* As noted earlier, RCW 60.04.061 provides that a claim of lien created by the mechanic's lien statute "shall be prior to any . . . deed of trust . . . which attached to the land after or was unrecorded at the time of commencement of labor or professional services or first delivery of materials or equipment by the lien claimant." (Emphasis added.)

RCW 60.04.011(4) provides that "'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 improvement of real property." (Emphasis added.) RCW 60.04.011(5) provides: "'Improvement' means: (a) Constructing,

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<sup>18</sup> A contract is essential to claiming a lien. *Colorado Structures, Inc. v. Blue Mountain Plaza, LLC*, 159 Wn. App. 654, 664, 246 P.3d 835 (2011).

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.” These statutory provisions, which apply to determine if certain work or services are lienable, are to be strictly construed.<sup>19</sup> *Colorado Structures, Inc. v. Blue Mountain Plaza, LLC*, 159 Wn. App. 654, 246 P.3d 835 (2011); *Williams v. Athletic Field, Inc.*, 172 Wn.2d 683, 696-97, 261 P.3d 109 (2011).

To be lienable, the labor or service provided must amount to improvement of the real property. Minor preparatory activities, however, do not amount to improvement of realty. *Colorado Structure, supra*, 159 Wn. App. at 663. In *Colorado Structures*, the court held that test drilling was not a lienable service under the mechanic’s lien

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<sup>19</sup> While RCW 60.04.900 provides that certain provisions of the mechanics lien statute are to be liberally construed, that liberal construction is limited to the extent necessary “to provide security for all parties intended to be protected by their provisions.” Because statutes creating liens are in derogation of common law, Washington courts have instructed that the mechanic’s lien statute should nonetheless be strictly construed with regard to determining if persons or services come within the statute’s protection. *Williams v. Athletic Field, Inc.*, 172 Wn.2d 683, 696-97, 261 P.3d 109 (2011). Thus, in determining if the service Shane Martin asserts he provided on July 5, 2006 were lienable, Shelcon does not get the benefit of liberal construction, but instead the services must be evaluated in the context of strict construction of the statute.

statute. The court acknowledged that “the holes provided intelligence about the water level, which undoubtedly shaped the subsequent plans.” *Id.* “However, that information was not itself an improvement upon the reality.” *Id.* The information gathering that Martin performed July 5, 2006 was, at best, minor preparatory work, and did not qualify as furnishing labor or professional services to improve real property. *See also, McAndrews Group Ltd, Inc. v. Ehmke*, 121 Wn. App. 759, 90 P.3d 1123 (2004)( placement of survey stakes and other markers did not constitute an “improvement” for purposes of mechanic’s lien); *Pacific Industries, Inc. v. Singh*, 120 Wn. App. 1, 86 P.3d 778 (2004) (performing services such as acquiring permits does not amount to “labor” or “improvement” under lien statutes).

Martin’s preparatory activity did not serve to vest Shelcon’s lien and its lien priority should be subrogated at least to the extent of the WA 1<sup>st</sup> 2006 lien position.<sup>20</sup>

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<sup>20</sup> As discussed more fully above, Shelcon’s lien release impacts if, and to what extent, Shelcon may enforce it lien. As to work that Shelcon performed between the July 15, 2008 lien release and August 22, 2008, the date Anchor Bank recorded, it too fails to vest Shelcon’s lien. All of this work was represented by Shelcon as 100% complete at the time of closing (Exs. 24.26.) Shelcon was fully paid for the work from the Anchor Bank loan proceeds. (Exs. 37-39.) Shelcon held no signed contract with A-4 at the time this work was done (RP 252-54) and Shelcon’s own invoices represent the work as discreet and fully completed items of work.

Under the circumstances, the work in the relevant time period was discreet and fully completed. It did not serve to vest lien rights for separate, subsequently conducted work. *See Hopkins v. Smith*, 45 Wn.2d 548, 276 P.2d 732 (1954).

**VI. REQUEST FOR ATTORNEYS' FEES**

RAP 18.1 allows a party prevailing on appeal to recover its reasonable attorneys' fees incurred on appeal if there is a legal basis for such award. RCW 60.04.181(3) provides that the court may allow the prevailing party in a mechanic's lien action, whether plaintiff or defendant, to recover costs, attorneys' fees and necessary expenses incurred by the attorney in the superior court, court of appeals, supreme court as the court deems reasonable. Anchor Bank requests that, if it prevails on this appeal, it be awarded its attorneys' fees and expenses successfully prosecuting the appeal.

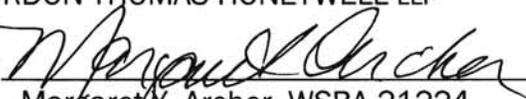
**VII. CONCLUSION**

The trial court erred and should be reversed. This Court should hold that Shelcon's lien is subordinate to the Anchor Bank's lien.

Dated this 9 day of December, 2013.

Respectfully submitted,

GORDON THOMAS HONEYWELL LLP

By   
Margaret Y. Archer, WSBA 21224  
Attorneys for Anchor Bank

# **APPENDIX A**

**(Findings of Fact & Conclusions  
of Law -  
CP 617-634)**



The Honorable Vicki L. Hogan  
Hearing: May 17, 2013 at 1:30 p.m



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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

SHELCON CONSTRUCTION GROUP, LLC, a )  
Washington limited liability company, )

Plaintiff, )

v. )

SCOTT M. HAYMOND AND JANE DOE )  
HAYMOND, husband and wife; A-3 VENTURE )  
LLC, a Washington limited liability company, )  
A-4 VENTURE, an unknown entity type; A- )  
1111 VENTURE LLC, a Washington limited )  
liability company; 14224 PIONEER LIVING )  
TRUST; and ANCHOR MUTUAL SAVINGS )  
BANK, )

Defendants. )

NO. 09-2-15838-5

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

I. TRIAL

This case concerns the foreclosure of a mechanic's lien on real property located at 14224 Pioneer Way E, Puyallup, Washington (hereinafter, "the Subject Property") This matter was tried to the Court without a jury from February 4, 2013 to February 7, 2013. The undersigned judge presided at the trial. Plaintiff Shelcon Construction Group, LLC (hereinafter, "Shelcon") appeared for trial and was represented throughout the trial proceedings by Lawrence B. Linville, WSBA #6401. Defendant Anchor Mutual Savings Bank (hereinafter, "Anchor Bank") appeared for trial and was represented throughout the trial

FINDINGS OF FACT AND CONCLUSIONS OF LAW - 1

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1 proceedings by Margaret Y. Archer, WSBA #21224. Two witnesses testified in person at the  
2 trial: Dallas Shane Martin (hereinafter, "Shane Martin"), the owner of Shelcon and Kathryn  
3 A. Dixon (hereinafter, "Kate Dixon"), an employee of Anchor Bank. Deposition testimony of  
4 Shane Martin and Diane Sandoval was submitted and admitted pursuant to CR 32(a).

## 6 II. PROCEDURAL HISTORY

7 The trial that occurred before the undersigned judge between February 4, 2013 and  
8 February 7, 2013 was the second trial in this matter. The first trial occurred between  
9 September 14, 2011 and September 22, 2011 before Judge Frederick W. Fleming. Anchor  
10 Bank did not participate in the first trial because all claims against Anchor Bank were  
11 dismissed with prejudice by summary judgment on November 19, 2010.

12  
13 Shelcon prevailed at the first trial. On October 28, 2011, a Judgment and Decree of  
14 Foreclosure in the amount of \$553,849.77 was entered in favor of Shelcon against defendants  
15 Scott Haymond and A-1111 Venture, LLC. The judgment consisted of principal in the  
16 amount of \$245,151.42, prejudgment interest in the amount of \$167,480.60, attorney fees in  
17 the amount of \$140,432.97 and costs in the amount of \$784.78.

18 In October 2010, Anchor Bank filed a motion for summary judgment seeking  
19 dismissal of all claims against Anchor Bank because Shelcon's lien was improperly  
20 acknowledged under *Williams v Athletic Field, Inc.*, 155 Wn.App. 434, 228 P.3d 1297  
21 (2010). In the *Williams* case, Division II of the Court of Appeals held that liens lacking  
22 certain acknowledgment formalities were invalid under the Washington Mechanics Lien  
23 statute. Coincidentally, while the first trial was in progress, on September 15, 2011, the  
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25

1 Washington Supreme Court of Washington reversed the Division II decision, thereby  
 2 invalidating the basis of the summary judgment dismissing Anchor Bank. *See Williams v*  
 3 *Athletic Field, Inc.*, 172 Wash.2d 683, 261 P.3d 109 (2011).

4 On October 19, 2011, in light of the Supreme Court's decision in the *Williams* case,  
 5 the parties filed a stipulation and order to vacate the order dismissing Anchor Bank and for  
 6 the Court to issue a new case schedule for a trial between Shelcon and Anchor Bank. Said  
 7 stipulation and order provided in part that: "Any findings of fact or conclusions of law entered  
 8 as a result of the trial in this matter that commenced on September 14, 2011 shall not be  
 9 binding on Anchor Mutual Savings Bank."

10 The Findings of Fact and Conclusions of Law entered by Judge Fleming on October  
 11 28, 2011 provide at Conclusion of Law no. 10:

12 Pursuant to the Stipulated Vacation attached as Exhibit A hereto, the above  
 13 Findings of Fact and Conclusions of Law shall not be binding on Anchor  
 14 Mutual Savings Bank. All issues related to Shelcon's claims against Anchor  
 15 Mutual Savings Bank, to include the respective priorities of Shelcon's lien and  
 16 Anchor Mutual Savings Bank's Construction Deed of Trust lien and all  
 defenses, shall be tried in a separate trial.

17 In October 2012, Anchor Bank, Scott Haymond, A-1111 Venture, LLC and the 14224  
 18 Pioneer Living Trust stipulated to the appointment of a general receiver, REO Asset  
 19 Management NW, Inc., with authority to take possession and control of the Subject Property,  
 20 complete construction of the improvements, and to manage, operate, market and sell the  
 21 Subject Property under Pierce County Superior Court Cause No. 12-2-13945-3. Said order  
 22 provided in part that the general receiver shall have the power to sell the Subject Property free  
 23 and clear of all security interests and liens encumbering the Subject Property and that all such  
 24 security interests and liens shall attach to the proceeds of sale, net of reasonable expenses  
 25

1 incurred in the disposition of the Subject Property, in the same order, priority, and validity as  
2 the security interests and liens had with respect to the Subject Property immediately before  
3 the conveyance.

4 The appointment of the general receiver resulted in an automatic stay. On November  
5 29, 2012, a stipulation and order was entered providing in part for a limited lifting of the  
6 automatic stay to permit the lien priority dispute between Shelcon and Anchor Bank to  
7 proceed under this cause number.  
8

### 9 III. FINDINGS OF FACT

10 1. At all times relevant, Shelcon was a general contractor, duly registered  
11 with the Washington State Department of Labor & Industries, contractor registration  
12 number SHELCCG 97420.  
13

14 2. At all times relevant, Scott Haymond was an individual engaged in the  
15 business of real estate development.

16 3. Prior to 2006, Scott Haymond purchased the Subject Property.

17 4. The Subject Property was and is commonly referred to by the parties in this  
18 action as "the farm" and/or "Haymond Farms".

19 5. Prior to 2006, Scott Haymond formed A-1111 Venture LLC, which entity  
20 is sometimes referred to as "A-4 Venture, LLC" or "A-4".

21 6. On or about January 17, 2006, Shelcon provided Scott Haymond a construction  
22 bid to perform certain work, including earthwork, excavation, demolition, clearing and  
23 grading at the Subject Property for \$732,941.92. Although there was no signed written  
24  
25

1 contract, Scott Haymond accepted Shelcon's bid sometime after receiving it, but before  
2 Shelcon commenced work at the Subject Property.

3 7. The purpose of Shelcon's work was to prepare the Subject Property to such a  
4 state that Scott Haymond could thereafter construct a warehouse/office complex.

5  
6 8. On July 5, 2006, a quit claim deed was recorded at the Pierce County Auditor's  
7 Office conveying the Subject Property from Scott Haymond (grantor) to A-III Venture LLC  
8 (grantee).

9 9. At 8:35 a.m. on July 5, 2006, Shane Martin, on behalf of Shelcon, arrived at  
10 the Subject Property for the purpose of determining the readiness of the site for construction  
11 of improvements thereon and to establish by measuring tape the boundaries of the site for  
12 clearing and grubbing.

13  
14 10. Commencing at 8:35 a.m. on July 5, 2006, Shane Martin marked the  
15 boundaries of the Subject Property with fluorescent ribbon so that Shelcon's employees could  
16 visually determine the boundary lines of the Subject Property

17 11. Commencing at 8:35 a.m. on July 5, 2006, Shane Martin met with a  
18 representative of a trailer park neighboring the Subject Property.

19  
20 12. Commencing at 8:35 a.m. on July 5, 2006, Shane Martin made a note in his  
21 journal concerning a potential property line dispute involving placement of a fence by Scott  
22 Haymond that he learned of from the representative of the neighboring trailer park.

23 13. Shane Martin completed Shelcon's site investigation and establishment of the  
24 boundary lines and departed the Subject Property at 11:45 a.m. on July 5, 2006.  
25

1           14.    Visual establishment of the boundary lines of the Subject Property was  
2 necessary before commencing clearing and grubbing of the Subject Property in order to  
3 minimize the risk of Shelcon trespassing onto neighboring properties.

4           15.    At 2:14 pm on July 5, 2006, a deed of trust was recorded at the Pierce County  
5 Auditor's Office, from A-III Venture LLC (grantor) to Washington First International Bank  
6 (grantee) concerning the Subject Property to secure a loan in the amount of \$1,540,000.00 that  
7 Washington First International Bank made at that time to A-III Venture LLC.

8           16.    The following week, Shelcon's employees cleared and grubbed the Subject  
9 Property.

10           17.    On or around August 15, 2006, Scott Haymond and Shelcon verbally agreed  
11 upon certain changes in the scope of work and the appropriate credits and debits to the  
12 contract price and the contract amount was reduced from \$732,941.92 to \$717,193.12 based  
13 upon a second written bid dated August 15, 2006.

14           18.    In June 2007, Shelcon invoiced \$17,676.84 to Scott Haymond. This invoice  
15 was paid in July 2007 by A-2 Venture LLC, a company controlled by Scott Haymond. This  
16 concerned a change order that was mistakenly not added into the total work to be performed  
17 by Shelcon, although Scott Haymond was given credit for it.

18           19.    On June 20, 2008, Shelcon recorded a mechanic's lien in the amount of  
19 \$303,291.29 at the Pierce County Auditor's Office concerning the Subject Property.

20           20.    In 2008, Scott Haymond decided to refinance the existing loan from  
21 Washington First International Bank.

1           21.    In 2008, Kate Dixon was employed as a loan officer for Anchor Bank

2           22.    In April 2008, Kate Dixon met with Scott Haymond in person at the Subject  
3 Property and observed the site.

4           23.    Scott Haymond requested Anchor Bank to pay off the loan to Washington First  
5 International Bank and lend additional money to fund additional improvements to the Subject  
6 Property.

7           24.    When Anchor Bank learned of Shelcon's lien, Anchor Bank informed Scott  
8 Haymond that Shelcon's lien would need to be released before Anchor Bank would lend.

9           25.    Scott Haymond contacted Shane Martin and requested that Shelcon release its  
10 lien.

11           26.    Scott Haymond promised Shane Martin that if Shelcon released its lien that  
12 Shelcon would be paid what was owed to Shelcon after the refinancing occurred.

13           27.    Shane Martin released Shelcon's lien with the purpose of enabling Scott  
14 Haymond to continue his application for a refinancing through Anchor Bank and receive  
15 payment from the loan proceeds.

16           28.    In releasing Shelcon's lien, Shane Martin relied on Scott Haymond's promise  
17 that Shelcon would be fully paid for its unpaid work, notwithstanding that at the time just  
18 prior to Shelcon recording its lien release, the only payment that Shelcon had received after  
19 Shelcon filed its \$303,291.29 lien on June 20, 2008 was a check dated July 11, 2008 in the  
20 amount of \$17,000.00 from Scott Haymond.  
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1           29.    On July 15, 2008, Shane Martin sent a fax to Lien Research Corp. requesting  
2 that Lien Research Corp release Shelcon's lien.

3           30.    On July 16, 2008, Lien Research Corp. recorded a lien release at the Pierce  
4 County Auditor's Office. The lien release provided in part: "THE UNDERSIGNED LIEN  
5 CLAIMANT hereby releases the lien on the property owned or reputedly owned by . . .".  
6

7           31.    Shelcon's lien release did not contain any language indicating whether Shelcon  
8 had been paid any or all of the amount of the lien that was released. Shelcon's lien release  
9 also did not contain any language specifying whether the lien release was conditional or  
10 limited.

11           32.    In an email dated July 22, 2008 from Scott Haymond to Kate Dixon, Scott  
12 Haymond represented to Anchor Bank that Shelcon's lien was a mistake and a  
13 misunderstanding for the reason that the \$303,291.29 amount stated in the lien was the  
14 amount that Shelcon was owed by Scott Haymond or an entity controlled by Scott Haymond  
15 on an entirely different project known as Beaver Meadows project and that this amount had  
16 been fully paid to Shelcon. Scott Haymond's email stated in part:  
17

18           the lein (sic) with shelcon construction has been paid and was for Beaver Meadows. It  
19 appeared on title because it was the 88th day and lein (sic) research recorded the lein  
20 (sic) because they weren't instructed to do otherwise.

21 The representations made by Scott Haymond to Anchor Bank in this email were false.

22           33.    On July 1, 2008, Scott Haymond sent an email to Kate Dixon at Anchor Bank  
23 requesting that Anchor Bank increase the proposed loan amount by \$300,000.00, which was  
24 an amount very close to the amount of Shelcon's lien of \$303,291.29 recorded on June 20,  
25

1 2008. The reason Scott Haymond gave for the need for the additional \$300,000.00 was  
2 because: "The budget is really close and tight."

3 34. In July 2008, at the request of Scott Haymond, Shelcon submitted to Scott  
4 Haymond three invoices totaling \$79,200.00. Each of the three invoices was dated July 21;  
5 2008. Invoice number 293 in the amount of \$61,000 states: "Water Line 100% complete".  
6 Invoice number 294 in the amount of \$8,200 states: "Retention Pond 100% Complete".  
7 Invoice number 295 in the amount of \$10,000 states: "Utility Trenching 100% Complete".  
8 The invoices were prepared for the purpose of obtaining payment from loan disbursements.  
9

10 35. Shelcon and Scott Haymond understood that these three invoices totaling  
11 \$79,200.00 represented part, but not all, of what Shelcon was owed at the time that the  
12 invoices were submitted. Scott Haymond did not disclose this understanding to Anchor Bank.  
13

14 36. Scott Haymond furnished these three Shelcon invoices to Anchor Bank  
15 Anchor Bank did not receive any other Shelcon invoices.

16 37. Shelcon and Scott Haymond understood that as of July 21, 2008, there existed  
17 prior invoices dating back to 2006 that had not been fully paid to Shelcon. Scott Haymond  
18 did not disclose this understanding to Anchor Bank.

19 38. Shelcon and Scott Haymond understood that Shelcon's scope of work was  
20 substantially incomplete on July 21, 2008 and that it would still remain substantially  
21 incomplete after Shelcon's completed the work identified in the three invoices totaling  
22 \$79,200.00. Scott Haymond did not disclose this understanding to Anchor Bank.  
23  
24  
25

1           39.    Shelcon never represented to Scott Haymond, Anchor Bank, or any other  
2 person or company that Shelcon was owed a total of only \$79,200.00 in 2008.

3           40.    First American Title Insurance Company issued a title insurance policy to  
4 Anchor Bank concerning the loan.

5           41.    Shelcon was not requested to sign a lien waiver form.

6           42.    Neither Anchor Bank nor First American Title Insurance Company ever  
7 communicated with Shane Martin, Shelcon, or any employee of Shelcon.  
8

9           43.    Anchor Bank had knowledge of Shelcon's phone number and address, as this  
10 information was listed on Shelcon's lien, which Anchor Bank received a copy of shortly after  
11 Shelcon's lien was recorded on June 20, 2008.  
12

13           44.    Anchor Bank did not contact Shelcon to verify whether Shelcon had been paid  
14 the \$303,291.29 amount listed in Shelcon's lien.

15           45.    Anchor Bank did not contact Shelcon to verify whether Shelcon's work was  
16 complete after Shelcon completed the work stated on the three invoices totaling \$79,200 00  
17

18           46.    Neither Scott Haymond nor Anchor Bank ever requested Shelcon to sign a  
19 subordination agreement, a waiver of Shelcon's lien rights, or any other document purporting  
20 to compromise Shelcon's right to subsequently record a lien for work performed either before  
21 or after the date of Shelcon's July 16, 2008 lien release.

22           47.    Kate Dixon and Anchor Bank relied on the lien release and the title report  
23 showing that the lien had been released for the decision to proceed with the loan application.  
24  
25

1           48.    Kate Dixon followed up with Scott Haymond to obtain an explanation from  
2 him after the lien release was provided. Kate Dixon accepted Scott Haymond's  
3 representations that Shelcon's lien dated June 20, 2008 and Shelcon's lien release dated July  
4 16, 2008 related to the Beaver Meadows project.

5           49.    Shane Martin had no knowledge of what Scott Haymond was representing to  
6 Anchor Bank, other than the belief that Scott Haymond had likely forwarded to Anchor Bank  
7 a copy of Shelcon's lien release and Shelcon's three invoices dated July 21, 2008.  
8

9           50.    Anchor Bank approved Shelcon's three July 21, 2008 invoices totaling  
10 \$79,200 for payment from the first draw. Loan proceeds were disbursed by Anchor Bank.  
11 Prior to approving the loan, an Anchor Bank representative visited the Subject Property to  
12 determine whether the work described in the three invoices was complete  
13

14           51.    On August 22, 2008, a deed of trust was recorded at the Pierce County  
15 Auditor's Office, from A-III Venture LLC (grantor) to Anchor Bank (grantee) concerning the  
16 Subject Property to secure a loan in the amount of \$3,900,000 that Anchor Bank made at that  
17 time to A-III Venture LLC and release of Washington First International Bank's deed of  
18 trust.

19           52.    In August 2008, Washington First International Bank received \$1,554,197.73  
20 from Anchor Bank, which resulted in full satisfaction of Washington First International  
21 Bank's 2006 loan to A-III Venture LLC.  
22

23           53.    The Court cannot find fault with Anchor Bank, its protocols or procedures for  
24 their August 2008 loan of \$3,900,000 to Scott Haymond. It is easy under a Monday morning  
25

1 quarterback analysis to see that there were signs that might have suggested or prealerted  
 2 Anchor Bank prior to the loan being funded. Some of those might have included that Scott  
 3 Haymond had multiple project and multiple lenders, or that Scott Haymond was seeking  
 4 \$3,900,000 from Anchor Bank, but had just paid off the \$300,000 lien filed two months  
 5 before the loan was funded and as suggested by the lien release equaling payment in full.

6  
 7 54. Anchor Bank sent a representative to visit the Subject Property to monitor  
 8 construction progress there. Commercial loan progress reports describing construction status  
 9 were prepared by Anchor Bank, dated 10/15/08, 11/5/08 and 12/5/08.

10 55. On September 8, 2008, Shane Martin sent a letter to Scott Haymond together  
 11 with a written memorialization dated September 2, 2008 wherein Shelcon summarized the  
 12 progress of the work to date by referencing the January 17, 2006 agreement, mathematically  
 13 summarizing all adjustments to date in changes in the scope of work resulting in both credits  
 14 and debits to Haymond, and further setting out additional terms regarding payment, including  
 15 the provisions stated below. The written memorialization was not signed by Scott Haymond.  
 16

17 "OWNER's payment shall be made within 10 days after receipt of  
 18 CONTRACTORS's application for payment "

19 "Any overdue payment shall accrue interest . . . from the due date until the  
 20 actual payment date at the per annum rate of Eighteen Percent (18%) per  
 21 annum."

22 "CONTRACTOR shall be entitled to recover its actual collection costs,  
 23 including attorney fees and court costs."

24 56. Prior to September 8, 2008, the practice and course of conduct between  
 25 Shelcon and Scott Haymond was to apply all payments received from Scott Haymond to the  
 oldest amounts due to Shelcon.

1           57.    Shelcon's letter to Scott Haymond dated September 8, 2008 informed Scott  
2    Haymond that Shelcon was agreeable to accepting Scott Haymond's offer to pay \$79,200.00  
3    to Shelcon in exchange for a partial lien release in this amount, but provided that Shelcon  
4    "reserved all lien rights, including the right to re-file a claim of lien for these and any other  
5    amounts that may become due".

6           58.    Neither Shelcon's September 8, 2008 letter nor Shelcon's September 2, 2008  
7    written memorialization that accompanied it were provided to Anchor Bank.

8           59.    Scott Haymond paid Shelcon \$8,200.00 on September 1, 2008, \$62,000.00 on  
9    September 9, 2008, and \$10,000.00 on September 30, 2008.

10          60.    Scott Haymond accepted the revisions to scope and price stated in the  
11    September 2, 2008 written memorialization and Scott Haymond accepted the additional terms  
12    and conditions stated therein, one of which stated that henceforth Scott Haymond would pay  
13    Shelcon for all extra work on the basis of cost plus fifteen percent (15%), which Shelcon did  
14    in fact charge Scott Haymond, and Scott Haymond did in fact pay to Shelcon thereafter

15          61.    The September 2, 2008 written memorialization was executed by the conduct  
16    of Scott Haymond and Shelcon and called for substituted performance with regard to payment  
17    of interest and attorneys' fees, but did not call for any revisions to scope or cost of Shelcon's  
18    work or contract.

19          62.    After recording the lien release on July 16, 2008, Shelcon resumed work at the  
20    Subject Property even though it had not been fully paid and continued to work there until  
21    Shelcon's last date of work, which occurred on February 12<sup>th</sup>, 2009.

1           63.    Prior to commencing work on the Farm, Shelcon had performed work for Scott  
2 Haymond and/or entities controlled by him.

3           64.    On November 19, 2008, the Subject Property was conveyed by A-III Venture  
4 LLC to 14224 Pioneer Living Trust by statutory warranty deed, recording number  
5 200811190789.  
6

7           65.    On May 1, 2009, Shelcon recorded a second lien in the amount of \$309,369.58  
8 at the Pierce County Auditor's Office concerning the Subject Property.

9           66    The amount of Shelcon's second lien included some of the same labor and  
10 materials that were included in Shelcon's first lien.

11           67.    During the course of Shelcon's work, Scott Haymond authorized and directed  
12 Shelcon to perform extra work in the amount of \$229,029.74.  
13

14           68.    During the course of Shelcon's work, Scott Haymond and Shelcon agreed to  
15 delete certain work from Shelcon's scope of work in the amount of \$111,265.60 concerning  
16 work that was not performed by Shelcon.  
17

18           69.    Shelcon received payments totaling \$572,129.00 for work performed at the  
19 Subject Property.

20           70.    Shelcon is owed a principal amount of \$262,828.26 for its work at the Subject  
21 Property, computed as follows:

22           Contract Amount	\$717,193.12
23           (Credit for work performed by 24           others)	(\$111,265.60)

25  
FINDINGS OF FACT AND CONCLUSIONS OF LAW - 14

LINVILLE LAW FIRM PLLC  
800 FIFTH AVENUE - SUITE 3850  
SEATTLE, WASHINGTON 98104  
(206) 515-0640 • FAX (206) 515-0646

1	Extra work	\$211,352.90
2	Extra work	\$17,676.84
3	(discovered by Shelcon after the	
4	first trial with Judge Fleming and	
5	not included in Judge Fleming's	
6	findings of fact)	
7	(Payments made)	(\$572,129.00)
8	Principal Balance Owed	\$262,828.26

#### 9 IV. CONCLUSIONS OF LAW

10 1. This Court has personal jurisdiction over the parties and jurisdiction over the  
11 subject matter of this action.

12 2. Shelcon's work at the Subject Property during the morning hours of July 5,  
13 2006 constituted an improvement to the Subject Property, such that, for priority purposes,  
14 Shelcon's lien relates back in time to 8:35 a.m. on July 5, 2006, which precedes the time that  
15 Washington First International Bank's deed of trust was recorded at 2:14 p.m. on the same  
16 day.

17 3. The doctrine of equitable subrogation permits Anchor Bank to step into the  
18 shoes of Washington First International Bank for lien priority purposes.

19 4. The application of equitable subrogation in this case does not affect the result,  
20 because Shelcon's lien had priority over Washington First International Bank's deed of trust.  
21  
22  
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1           5.     The effect of Shelcon's recorded lien release on July 16, 2008 was that  
2 Shelcon released its previously recorded lien, but did not waive or release its right to record a  
3 subsequent lien for the work performed prior or subsequent to July 16, 2008.

4           6.     Shelcon's lien release on July 16, 2008 did not affect the amount for which  
5 Shelcon could subsequently lien after it had finished its work at the Subject Property.

6           7.     Shelcon is owed a principal amount of \$262,828.26 for the improvements that  
7 it made to the Subject Property.

8           8.     The principal amount of \$262,828.26 owed to Shelcon is a liquidated amount,  
9 since this amount was determined by mathematical computation.

10           9.     Shelcon is entitled to interest at the rate of twelve percent per annum on  
11 the amount of \$262,828.26 accruing from May 1, 2009.

12           10.    Shelcon's lien was timely recorded pursuant to RCW 60.04.091 since the lien  
13 was recorded not later than ninety days after Shelcon ceased work at the Subject Property.

14           11.    The forms of both Shelcon's first lien dated June 20, 2008 and Shelcon's  
15 second lien dated May 1, 2009 are valid, including proper acknowledgements pursuant to  
16 RCW 60.04.091.

17           12.    Shelcon's lawsuit to foreclose its lien was timely filed pursuant to RCW  
18 60.04.141 since the lawsuit was filed less than eight calendar months after Shelcon's second  
19 lien was recorded.

20           13.    Anchor Bank did not meet its burden of proof concerning its affirmative  
21 defense that Shelcon's lien is barred by the doctrine of equitable estoppel.

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14. Anchor Bank did not meet its burden of proof concerning its affirmative defense that Shelcon's lien is barred by the doctrine of equitable subordination

15. Anchor Bank did not meet its burden of proof concerning its affirmative defense that Shelcon's lien is barred by the doctrine of unclean hands.

16. Shelcon's lien, which is comprised of the principal amount of \$262,828.26, prejudgment interest on the principal amount accruing at an annual rate of twelve percent from May 1, 2009, and the attorneys' fees and costs awarded to Shelcon by Judge Fleming in the prior trial in the amount of \$141,181.75, is superior in priority to Anchor Bank's deed of trust concerning the Subject Property.

17. Shelcon is the prevailing party in this action between Shelcon and Anchor Bank.

18. As the prevailing party, Shelcon is entitled to an award of attorney fees, costs and necessary expenses against Anchor Bank pursuant to RCW 60.04.181(3).

SIGNED this 17<sup>th</sup> day of May 2013.

*Vicki L. Hogan*  
The Honorable Vicki L. Hogan

Presented by:

LINVILLE LAW FIRM PLLC

*Lawrence B. Linville*  
Lawrence B. Linville, WSBA #6401



FINDINGS OF FACT AND CONCLUSIONS OF LAW - 17

LINVILLE LAW FIRM PLLC  
800 FIFTH AVENUE • SUITE 3850  
SEATTLE WASHINGTON 98104  
(206) 515-0640 • FAX (206) 515-0646

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David E. Linville, WSBA #31017  
Attorneys for Plaintiff Shelcon Construction Group LLC

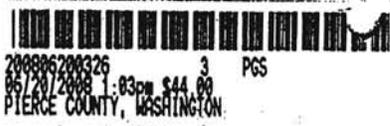
Approved as to form:

GORDON THOMAS HONEYWELL LLP



Margaret Y. Archer, WSBA #21224  
Attorneys for Defendant Anchor Mutual Savings Bank

**APPENDIX B**  
**(Trial Exhibit 48)**



PRODUCTION 4C

AFTER RECORDING RETURN TO:

LIEN RESEARCH CORP.  
P. O. BOX 148  
MARYSVILLE, WA 98270

**CLAIM OF LIEN**

SHELCON CONSTRUCTION GROUP  
LLC  
Claimant.  
VS  
SCOTT HAYMOND, A-3 VENTURE LLC  
(Name of person indebted to claimant)

NOTICE IS HEREBY GIVEN that the person below claims a lien pursuant to chapter 60.04 RCW. In support of this lien the following information is submitted:

1. NAME OF LIEN CLAIMANT: SHELCON CONSTRUCTION GROUP LLC  
TELEPHONE NUMBER: (425) 222-3570  
ADDRESS: P.O. BOX 2016, SNOQUALMIE, WA. 98065
2. DATE ON WHICH THE CLAIMANT BEGAN TO PERFORM LABOR, PROVIDE PROFESSIONAL SERVICES, SUPPLY MATERIAL OR EQUIPMENT OR THE DATE ON WHICH EMPLOYEE BENEFIT CONTRIBUTIONS BECAME DUE: JULY 5, 2006
3. NAME OF PERSON INDEBTED TO THE CLAIMANT: SCOTT HAYMOND, A-3 VENTURE LLC, P.O. BOX 206, PACIFIC, WA. 98047
4. DESCRIPTION OF THE PROPERTY AGAINST WHICH A LIEN IS CLAIMED:  
ADDRESS: THE FARM, 14224 PIONEER WAY E, PUYALLUP, WA.  
LEGAL DESCRIPTION: PORTION OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 20 NORTH, RANGE 4 EAST, W.M. SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON. (SEE FULL LEGAL ATTACHCD)  
PIERCE COUNTY ASSESSOR'S TAX PARCEL NO. 042036-1-002
5. NAME OF OWNER OR REPUTED OWNER (if not known state "unknown"):  
A-III VENTURE LLC, P.O. BOX 206, PACIFIC, WA. 98047-0206 / SCOTT M. HAYMOND, 136 STEWART RD SE, UNIT J, PACIFIC WA, 98407-2143 / SCOTT HAYMOND, A-3 VENTURE LLC, P.O. BOX 206, PACIFIC, WA. 98047
6. THE LAST DATE ON WHICH LABOR WAS PERFORMED; PROFESSIONAL SERVICES WERE FURNISHED; CONTRIBUTIONS TO AN EMPLOYEE BENEFIT PLAN WERE DUE OR MATERIAL, OR EQUIPMENT WAS FURNISHED: MARCH 28, 2008
7. PRINCIPAL AMOUNT FOR WHICH THE LIEN IS CLAIMED: \$303,291.29 PLUS APPLICABLE LIEN FEES &/OR ATTORNEY'S FEES, &/OR INTEREST:
8. IF THE CLAIMANT IS THE ASSIGNEE OF THIS CLAIM SO STATE HERE:

N/A.

*Jacklyn Marks*  
\_\_\_\_\_  
For, SHELCON CONSTRUCTION GROUP LLC, Claimant  
P.O. BOX 2016  
SNOQUALMIE, WA. 98065  
(425) 222-3570  
(Phone Number, Address, City/State of Claimant)

44



THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 20 NORTH, RANGE 4 EAST, W.M. DESCRIBED AS FOLLOWS; BEGINNING AT A POINT WHERE A LINE PARALLEL TO AND 416 FEET WESTERLY OF THE WEST LINE OF THE NORTHERN PACIFIC RAILROAD RIGHT OF WAY WITH THE INTERSECTION OF THE CENTER LINE OF PIONEER WAY; THENCE SOUTHEASTERLY ALONG SAID PARALLEL LINE 1040 FEET; THENCE EAST AT A RIGHT ANGLE 386 FEET TO A LINE PARALLEL WITH AND 30 FEET WEST OF THE WEST LINE OF THE NORTHERN PACIFIC RAILROAD RIGHT OF WAY; THENCE SOUTHEASTERLY ON SAID PARALLEL LINE TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER; THENCE WEST TO THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER; THENCE NORTH TO THE CENTER LINE OF PIONEER WAY; THENCE EAST TO THE POINT OF BEGINNING; LESS PIONEER WAY; EXCEPT THAT PORTION LYING EASTERLY AND NORTHERLY OF A LINE DESCRIBED AS FOLLOWS; BEGINNING AT THE INTERSECTION OF THE CENTERLINE OF PIONEER WAY AND THE CENTER LINE OF THE NORTHERN PACIFIC RAILROAD RIGHT OF WAY; THENCE WEST 616 FEET; THENCE SOUTH  $16^{\circ}13'00''$  319 FEET; THENCE SOUTH  $09^{\circ}37'00''$  EAST 715 FEET; THENCE SOUTH  $89^{\circ}20'00''$  EAST 618 FEET MORE OR LESS TO THE CENTER LINE OF SAID RAILROAD; TOGETHER WITH THAT PORTION LYING WESTERLY AND SOUTHERLY OF A LINE DESCRIBED AS FOLLOWS; BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF PIONEER WAY E. AND THE CENTER LINE OF THE NORTHERN PACIFIC RAILROAD RIGHT OF WAY; THENCE WEST 616 FEET, MORE OR LESS, TO THE CENTER LINE OF SAID RAILROAD, SAID LINE SET FORTH IN PROPOSED LINE AGREEMENT UNDER AUDITOR'S FILE NO. 2593594.

SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.

# **APPENDIX C**

**(Trial Exhibits 52 and 53)**

200807160578  
6771612008 12:47pm \$42.00 PG  
PIERCE COUNTY, WASHINGTON

AFTER RECORDING RETURN TO:  
LIEN RESEARCH CORP.  
P.O. BOX 148  
MARYSVILLE, WA 98270

SHELCON CONSTRUCTION GROUP  
CLAIMANT  
  
VS.  
  
SCOTT HAYMOND, A-3 VENTURE LLC  
DEFENDANT

RELEASE OF LIEN  
# 200806200326

THE UNDERSIGNED LIEN CLAIMANT hereby releases the lien on the property owned or reputedly owned by: A-III VENTURE LLC, P.O. BOX 206, PACIFIC, WA. 98047-0206 / SCOTT M. HAYMOND, 136 STEWART RD SE, UNIT J, PACIFIC, WA. 98407-2143 / SCOTT HAYMOND, A-3 VENTURE LL, P.O. BOX 206, PACIFIC, WA. 98047. Property described as follows:

COMMONLY KNOWN AS: THE FARM, 14224 PIONEER WAY E, PUYALLUP, WA. .

Which lien was dated the 20TH day of JUNE, 2008, and filed on the 20TH day of JUNE, 2008, in the office of the Auditor of ~~PIERCE~~ County, Washington, under Recording # 200806200326.

SHELCON CONSTRUCTION GROUP  
P.O. BOX 2016  
SNOQUALMIE, WA. 98065  
425-222-3570  
CLAIMANT

STATE OF WASHINGTON)  
) ss.  
COUNTY OF SNOHOMISH)

*[Signature]*  
As Agent

This is to certify that on 15 July, 2008, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared TAMARA A. OQUIST, to me known to be the agent of SHELCON CONSTRUCTION GROUP, the corporation that executed the forgoing instrument, and acknowledged the said instrument to be free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath said that he/she is authorized to execute the said instrument.

*[Signature]*  
As Agent

Witness my hand and official seal hereto affixed the day and year in this certificate above written.

*[Signature]*  
DAVID ELLIOTT

Notary Public in and for the State of Washington. Residing at EVERETT.  
My commission expires JANUARY 30, 2010.

Order #: 08-071137, Dated: 7-15-08.



STATE OF WASHINGTON )  
 ) ss  
COUNTY OF SNOHOMISH )

JACLYN MARTH, being sworn, says: I am the agent of the claimant (or attorney of the claimant, or administrator, representative, or agent for the trustee of an employee benefit plan) above named. I have read the foregoing claim, know the contents thereof, and believe the same to be true and correct and that the claim of lien is not frivolous and is made with reasonable cause, and is not clearly excessive under penalty of perjury.

Jaclyn Marth

On this day personally appeared before me, JACLYN MARTH, to me known to be the individual, described above, and who further, under oath, stated that he/she had read the claim set forth above, and based upon information provided knew the contents thereof, and believed the same to be true and correct, and that the claim was made with reasonable cause and was not frivolous, and further acknowledged to me that he/she signed the same as his/her free and voluntary act and deed for the uses and purposes therein mentioned.

Subscribed and sworn to before me this 20 day of June, 2008

David Elliott

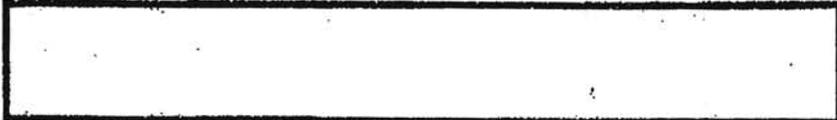
PRINTED NAME: DAVID ELLIOTT  
NOTARY PUBLIC  
in and for the State of Washington.  
Residing in: EVERETT  
My commission expires: 1/30/2010



Order #08-061578, dated: 6/19/2008

PLEASE RUSH

PLEASE RELEASE TOMORROW, 7/16



Date: 7/15/08 LRC Order #: \_\_\_\_\_

Your Name: \_\_\_\_\_ Your Customer: SCOTT HAYMOND, A-3 VENTURE  
Your Company: SHELCON CONSTRUCTION Address: PO BOX 206  
Your Address: GROUP, LLC PACIFIC, WA 98047  
PO BOX 2016  
SNOQUALMIE, WA 98065

Type of Order: LIEN RELEASE Previous LRC #: \_\_\_\_\_  
(i.e., Notice to owner, Lien, Claim, Release, etc.) Your Inv. #: 288

TYPE OF MATERIALS DELIVERED &/OR LABOR:

Project Name: THE FARM 1st date on Job: 7-5-06  
Job site address: 14224 PIONEER WAY E Last date on Job: 3-28-08  
PUYALLUP, WA 98372 Due date of Inv. 4-30-08

Tax Parcel No.: 0420361002 Dollar Amt due: \$ 303,291.29

Type of Project: Commercial  Residential  Public   
(check one) New  Remodel

Owner Name: SCOTT HAYMOND, A-3 General Contr.: \_\_\_\_\_  
Owner address: VENTURE LLC GC's Address: \_\_\_\_\_  
PO BOX 206 ← SAME  
PACIFIC, WA 98047

Lender Name: WASHINGTON 1ST Lessee name: \_\_\_\_\_  
Lender address: NATIONAL BANK lessee address: \_\_\_\_\_  
9709 3RD AVE. NE  
SEATTLE, WA 98115

FOR LIENS AND CLAIM AGAINST BONDS ONLY: (Sworn statement of claimant or claimant's authorized representative)  
"I hereby state and represent that I have requested the forgoing claim, that I have read and know all of the contents contained thereof, and I believe the same to be true and just and not frivolous, under penalty of perjury."  
end research date: \_\_\_\_\_ date mailed: \_\_\_\_\_ date emailed: \_\_\_\_\_ date billed: \_\_\_\_\_

AFTER RELEASED, PLEASE FAX A COPY TO THE OWNER:  
SCOTT HAYMOND 253-862-1660 Thanks!

# **APPENDIX D**

**(Trial Exhibits 24-26)**

Shelcon Construction Group, LLC

P.O.Box 2016  
Snoqualmie, WA 98065

# Invoice

Date	Invoice #
7/21/2008	293

Bill To
A - 2 Venture LLC PO Box 206 Pacific, WA 98047

P.O. No.	Terms	Project
	Due on receipt	

Quantity	Description	Rate	Amount
	Water Line 100% complete	61,000.00	61,000.00
<b>Total</b>			<b>\$61,000.00</b>

Shelcon Construction Group, LLC

P.O.Box 2016  
Snoqualmie, WA 98065

# Invoice

Date	Invoice #
7/21/2008	294

<b>Bill To</b>
A - 2 Venture LLC PO Box 206 Pacific, WA 98047

P.O. No.	Terms	Project
	Due on receipt	

Quantity	Description	Rate	Amount
	Retention Pond 100% Complete	8,200.00	8,200.00
		<b>Total</b>	<b>\$8,200.00</b>

Shelcon Construction Group, LLC

P.O.Box 2016  
Snoqualmie, WA 98065

# Invoice

Date	Invoice #
7/21/2008	295

<b>Bill To</b>
A - 2 Venture LLC PO Box 206 Pacific, WA 98047

P.O. No.	Terms	Project
	Due on receipt	

Quantity	Description	Rate	Amount
	Utility Trenching 100% Complete	10,000.00	10,000.00
		<b>Total</b>	<b>\$10,000.00</b>

COURT OF APPEALS, DIVISION II

OF STATE OF WASHINGTON

SHELCON CONSTRUCTION GROUP,  
LLC,

Respondents,

vs.

SCOTT M. HAYMOND and JANE  
DOE HAYMOND; A-3 VENTURE LLC;  
A-4 VENTURE; A-111 VENTURE  
LLOC; 14224 PIONEER LIVING  
TRUST and ANCHOR MUTUAL  
SAVINGS BANK,

Appellants.

NO. Consolidated No. 42845-8

CERTIFICATE OF SERVICE

2013 DEC 11 PM 1:12  
COURT OF APPEALS  
DIVISION II

THIS IS TO CERTIFY that on this 9<sup>th</sup> day of December, 2013, I did serve via U.S. Postal Service, true and correct copies of Appellant Anchor Mutual Savings Bank's Opening Brief by addressing for delivery to the following:

Lawrence B. Linville and  
David Linville  
LINVILLE LAW FIRM  
800 Fifth Avenue, Suite 3850  
Seattle, WA 98104-3101

Allan L. Overland  
Attorney at Law  
901 South I Street, Suite 202  
Tacoma, WA 98405-4578



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