

IN THE COURT OF APPEALS OF  
THE STATE OF WASHINGTON  
DIVISION I

No. 70217-3-1

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Bruce Johnson Contractor LLC

Appellant,

v.

Columbia State Bank

Respondent.

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APPEALED FROM SKAGIT COUNTY SUPERIOR COURT  
CAUSE NO: 12-2-01516-6

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APPELLANT'S REPLY BRIEF

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## **A. INTRODUCTION**

Columbia State Bank responded to Johnson's Opening Brief arguing, as expected, that its Lien Release Bond was limited in scope to properties subject to Columbia's Deeds of Trust. Columbia defends this position by arguing Columbia's "intent" in recording the Bond, and not from the language of the Bond itself. Johnson anticipated this argument, and briefed it in the Opening Brief (Pgs. 19 – 21, 24).

More important, Columbia does not dispute or challenge Johnson's "Statement of the Case", Pgs. 5 – 15. It is undisputed that Johnson's Liens and Lien Foreclosure Judgment attached to parcel areas within the "open space" Lot 26 that were not subject to security interests asserted by or foreclosed by Columbia State Bank.

As such, it is Johnson's position that the only real issue before the Court in this matter is the scope of the Lien Release Bond, as recorded by Columbia.

## **B. ARGUMENT**

1. The scope of the lien release effectuated by the Bond is determined on the face of the recorded Bond.

Columbia availed itself of a statutory procedure set forth in RCW 60.04.161. The Statute allows as an apparent matter of right an

interested entity to “Bond” a contractor’s lien, before or during lien foreclosure litigation. The statute does not limit who may record a lien release bond, nor does it require Court approval, but it does provide the requirements of the bond. The voluntary procedure neither requires approval of the Court, nor can recording a lien release bond be required by a Court.

Likewise, there is no requirement that the entity recording the lien release bond be in privity with the lien claimant, or be a party to any litigation asserting a right to foreclose the contractor’s lien. Commonly, on a construction project, a general contractor may “Bond” a subcontractor’s lien claim or a supplier’s lien claim to free up payments from an owner who otherwise could withhold significant contract funds to cover the lien claim even though disputed.

As a voluntary procedure, available as a matter of right, the entity offering and recording the lien release bond determines the scope of the bond. Quite simply, the Bond itself, by its own language, when recorded, establishes the property being released from potential or actual lien foreclosure proceedings.

The Bond offered and recorded by Columbia could not be more clear as to the extent of the property being released:

“The Claim of Lien contains a description of the real property to be involved...”

Bond; Columbia Brief Appendix 1 Page 2.

As set forth in Johnson's Opening Brief, Columbia was in its pleadings asserting a security interest in *all* of Lot 26 at the time that the Bond was prepared and recorded. That claim was proven false, and now Columbia desires to have the Court release the Bond under Columbia's argument that it was never the Bank's *intent* that the Bond would be liable for anything. As we are sure the Court understands, Johnson views this evolving position as an attempted cute trick.

The rebuttal to the Bank's "intent" argument, however, is quite simple. The desired release of real property from any claim of lien is accomplished by the *recording* of the Bond, and not by any pleadings filed in any litigation. Only by recording is the release effectuated, and the recorded Bond on its face determines the scope of the release. Subjective intent that is later argued to limit the scope of the release defeats the purpose of the Lien Release Statute, which is to inform third parties that the lien has been released from any lien foreclosure authority against the specific real property identified in the Lien Release Bond.

The entity offering and recording the Lien Release Bond has the sole authority to determine its scope. Columbia released Johnson's lien claim and Lien Foreclosure Judgment against Lot 26; no other reading of the Bond is possible.

2. No judgment against Columbia is required to collect against the Lien Release Bond.

RCW 60.04.161 does not require or even suggest that a judgment against the entity recording the Lien Release Bond is required to collect against the Bond. Columbia's argument, Page 16, Response Brief, suggests that Columbia does not understand that the statutory purpose of allowing the recording of a Lien Release Bond is to allow by choice the replacement of an "in rem" lien claim with alternate but reliable security. Johnson asserts no direct cause of action against Columbia. In fact, Columbia makes Johnson's argument, as follows:

"There is no reason to release the lien on property outside the scope of the interest claimed by the party posting the bond". Columbia Response Brief, Page 17.

Yet, Columbia recorded a Lien Release Bond that released all real property subject to Johnson's lien and Lien Foreclosure Judgment. Johnson did not determine the scope; Columbia did, as a matter of right.

**C. ATTORNEYS FEES**

Columbia argues that RCW 60.04.181 (3) only applies in cases involving multiple and competing lien claims. Columbia is wrong. RCW 60.04.181 is a "catch all" provision, and RCW

60.04.181(3) applies. Johnson is entitled to an award of fees, and directly against Columbia, not limited to Bond proceeds.

**D. CONCLUSION**

Columbia's desire to limit the scope of the Lien Release Bond recorded by Columbia to less than the scope of the real property set forth on the face of the Bond must fail.

Johnson prevailed on its lien claim in the trial court, and was awarded a total Lien Foreclosure Judgment of \$89,867. Columbia's Lien Release Bond was for 150% of that amount, and was posted "to guarantee payment of any judgment...". The Judgment remains unsatisfied today; Johnson's Lien Foreclosure Judgment against the Lot 26 work area parcels was released by Columbia's Lien Release Bond; and now Johnson must pursue this Appeal to protect a claim against the Bond which was incorrectly released by the superior court on Columbia's motion. An award of fees to Johnson is requested.

RESPECTFULLY SUBMITTED this 2<sup>nd</sup> day of May, 2014

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DECLARATION OF MAILING

REPLY BRIEF

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DECLARATION OF MAILING

I, Craig D. Magnusson, under penalty of perjury and in accordance with the laws of the State of Washington, declare that on the 2nd day of May, 2014, I caused true and correct copies of the following documents:

1. REPLY BRIEF, and this:
2. Declaration of Mailing

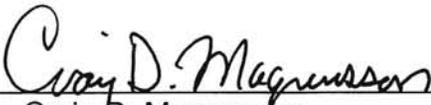
to be delivered by U.S. Mail, postage prepaid, to the following parties of record:

**COUNSEL FOR THE RESPONDENT**

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DATED this 2<sup>nd</sup> day of May, 2014

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By   
Craig D. Magnusson