

Construction Law in North Carolina

Melissa Dewey Brumback
2840 Plaza Place, Suite 400
Raleigh, NC 27612

Phone: (919) 881-2214
Fax: (919) 783-8991
Email: mbrumback@rl-law.com
Website: constructionlawNC.com

Root canals & Lawsuits: two things to avoid (Law Note)

by MelissaBrumback on January 27, 2011



No one (with the exception of [sadistic dentists](#)) likes root canals, and no one (except lawyers) likes lawsuits. In the same way you can prevent (or limit) the need for root canals through proper flossing habits, you can limit the number of lawsuits you need to be involved in if you include everyone you should the first time around. For those involved in filing construction liens, this means that when you perfect a lien by filing the lawsuit, be sure you include everyone you need to include. A recent North Carolina Court of Appeals case demonstrates this principle in full living color.

In [Lawyers Title Insurance Corp. v. Zogreo, LLC](#), __ N.C. App. __ (November 16, 2010), two contractors filed and perfected valid liens on a piece of property. They did not include, in the lawsuits to perfect the liens, the banks which had given funds to the property owner after they first began work on the property. The Court held that it was entirely proper not to include the banks (who held deeds of trust on the property to secure their loans); however, by the contractors' failure to include them, they were forced to later litigate priority issues with the banks. This is because "if a subsequent encumbrancer is not joined [in the underlying lien perfection lawsuit], he is not bound by the judgment in the action between the contractor and the owner."

In other words, even though they filed proper liens, filed the lawsuits timely, and even won final judgment in those lawsuits, because they did not include the banks, the banks were free to start a new action, which they did in this case. The banks also obtained an injunction to stop any judicial sale of the property until priorities could be established.

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Moral of the story? It is better to include all subsequent encumbrancers (i.e., the banks) when perfecting a lien. It's not required, but it is better practice. (And flossing your teeth isn't required, either). After all, who wants a root canal, or, in this case, to re-litigate your right to be paid money in yet another expensive lawsuit? When it comes to root canals and lawsuits, fewer is better.

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