

Construction & Infrastructure Law Blog

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The Year 2010 In Review: Mechanic's Liens, Lis Pendens and Construction Bonds

This article is the third in a series summarizing construction law developments for 2010.

By [Candace Matson](#), [Harold Hamersmith](#) & [Helen Lauderdale](#)

A. Mechanic's Liens

1. New Requirement for Mechanic's Liens (AB 457)

Effective January 1, 2011, Civil Code Section 3084 is amended to require that mechanic's lien claimants must give notice of certain information included in the lien claim to the property owner and accompany the notice with a proof of service affidavit.

B. Lis Pendens

1. Forsgren Associates, Inc. v. Pacific Golf Community Development LLC, 182 Cal. App. 4th 135 (4th Dist. Feb. 2010)

A general contractor on a project involving the construction of a golf course sued the owners of adjacent property to foreclose on a mechanic's lien recorded against both the golf course property and adjacent properties. Although the parcels were owned by different legal entities, the principal owner of the golf course development was also a member of the other owner entities. Part of the golf course contained a flood control channel which benefitted not only the golf course, but the surrounding land designated for the construction of homes. The trial court ruled that the general contractor was entitled to foreclose on the liens attached to the whole of the adjacent properties.

The Court of Appeal reversed the ruling as overbroad. The golf course was owned by a business entity separate and independent from the owners of the surrounding residential and commercial property. The Court held that the scope of the lien was limited to only those portions of adjacent properties that were beneficial to the convenient use and occupancy of the golf course. Only those limited portions of adjacent properties where sprinklers for the golf course had been installed and areas in which topsoil had been removed and vegetation planted could be subject to the lien.

2. Recording of Lis Pendens Now Mandatory (AB 457)

Effective January 1, 2011, Civil Code Section 3146 is amended to require that a lis pendens must be recorded within 20 days of filing a lien foreclosure action. Until and unless the lis pendens is recorded, an encumbrancer or purchaser will not be deemed to have constructive notice of the foreclosure suit as a matter of law.

C. Stop Notices

1. Force Framing, Inc. v. Chinatrust Bank (U.S.A.), 187 Cal. App. 4th 1368 (4th Dist. Aug. 2010)

The subcontractor served its preliminary notice on the bank erroneously listed in a preliminary information sheet furnished by the owner (East West Bank) and there was no evidence it had reason to know of the error. The subcontractor served the correct bank (Chinatrust) with a bonded stop notice and filed suit to enforce the stop notice. The bank sought summary judgment on the ground that the subcontractor had not served it with the preliminary notice required by Civil Code Section 3097 and that the subcontractor was charged with constructive knowledge of the bank as construction lender because the deed of trust it recorded was a matter of public record. The trial court agreed and granted summary judgment in the bank's favor. The appellate court reversed on the ground that the subcontractor could have had a good faith belief in the identity of the construction lender, and that created a triable issue of fact which could not be resolved on summary judgment.

D. Performance and Payment Bonds

1. Mepco Services, Inc. v. Saddleback Valley Unified School District, 189 Cal. App. 4th 1027 (4th Dist. Nov. 2010) , modified, 2010 Cal. App. LEXIS 1978

A general contractor sued a school district to recover compensation for extra work and delay damages, in addition to its final progress payment and retention. The district countersued the general contractor for breach of contract, seeking liquidated damages for delay and also sued both the contractor and the surety on the performance bond, the procurement of which by the contractor was required under the prime contract. Following a jury trial, the trial court issued judgment in favor of the contractor on its action, and against the district on its countersuit, and the court awarded the contractor its attorneys' fees, although the contract contained no attorneys' fee provision. The appellate court held that the fees were properly awarded pursuant to the terms of the performance bond and Civil Code Section 1717. The bond provided that the district was entitled to recover its fees from the contractor and the surety, jointly and severally, if it was required to engage the services of an attorney to enforce the bond. The Court of Appeal observed that under Section 1717, the contractor and the surety were each, reciprocally, entitled to recover their fees in defending against the enforcement action. Also, under the circumstances of this case, the claims prosecuted and defended by the contractor involved an issue common to, and intertwined with, the district's performance bond claim, i.e., which party had breached the contract. Therefore, the trial court did not err in awarding the contractor all its attorneys' fees.

Authored By:

[Candace L. Matson](#) is a partner in Sheppard Mullin's Los Angeles office where she specializes in construction law. [Harold E. Hamersmith](#) is a partner in the firm's Los Angeles office specializing in design and construction contracts, claims, and defects litigation, and public contract law. [Helen J. Lauderdale](#) is a special counsel specializing in construction litigation in Sheppard Mullin's Los Angeles office.