

Painful Technicality Invalidates Ohio Lien in Recent Supreme Court Case

The ThompsonHine Firm published an alert on their website notifying visitors of [Recent Developments in Ohio's Mechanic's Lien and Bond Claim Law](#). If you do construction work in Ohio, we highly recommend that you visit their summary of the developments in Ohio's lien laws.

While the ThompsonHine Firm addresses two recent cases, one addressing the mechanic's lien law and the other regarding the claim period for claims against bonds, we'll only be addressing the first case: [Halsey, Inc. v. Robert J. Isbel](#), 2010-Ohio-2052.

The Hasley, Inc. case is a remarkable demonstration on how painfully technical the mechanic lien requirements can be.

To preserve their lien rights, Ohio subcontractors and suppliers must serve a Notice of Furnishing within twenty-one days after first furnishing materials to a project. The exact language is quoted by the Ohio Supreme Court in Hasley here:

[A] subcontractor *** who furnishes materials in furtherance of real property and who wishes to preserve the subcontractor's *** lien rights shall serve a notice of furnishing *** within twenty-one days after *** furnishing the first materials. R.C. 1311.04(A).

According to another Ohio statute, service is "complete upon receipt by the party being served...[unless] service of a notice of furnishing is made by certified mail," whereupon the service is complete on the date of mailing. R.C. 1311.19(B).

In [Hasley](#), the lien claimant sent its notice of furnishing by certified mail on a day when it had not yet furnished materials. When the owner received the notice of furnishing, the lien claimant had begun to furnish materials.

[Zlien.com](#) | Nationwide Notice and Lien Service | Lien Deadline Calculator

Zlien is a national mechanic lien and preliminary notice filing service. Zlien also provides the LienPilot, a web-based lien compliance manager and deadline calculator, and publishes mechanic lien resources.

However, since the notice was required *after* the first furnishing of materials, and was considered sent as of the date of mailing, the Ohio Supreme Court determined that the notice of furnishing was untimely. Based wholly on technicalities, the notice of furnishing had been 'served' before materials were furnished, and therefore, was premature.

Without the notice of furnishing properly sent, the lien was invalid.

The ThompsonHine firm's web article provides a "morale of the story:"

The moral of the story is that a subcontractor or supplier should not serve its Notice of Furnishing until after it starts work or furnishes material. As long as it is served within 21 days of the start of work or furnishing of materials, the contractor's mechanic's lien rights for the full amount will be preserved.

But I would go even further. I would say that subcontractors and suppliers have to be even more careful because the word "serve" may mean something completely different than they expect when they slip the notice of furnishing in the mail. As always, a good Ohio construction attorney can help clear these questions. And don't forget about sending your questions to attorneys through Avvo.com.

Read this article on the Construction Lien Blog here:
<http://constructionlienblog.com/?p=1951>

Zlien.com | Nationwide Notice and Lien Service | Lien Deadline Calculator

Zlien is a national mechanic lien and preliminary notice filing service. Zlien also provides the LienPilot, a web-based lien compliance manager and deadline calculator, and publishes mechanic lien resources.