

Minnesota Bond Claims Effective Upon Mailing, Not Receipt



Earlier today we wrote about a recent decision from the Minnesota Court of Appeals whereby a bond claim was invalidated based on a tiny technicality about which address the notice of the claim was sent. That blog post focused mostly on the result of the case and the reasoning supporting that result. While clearly important, the appeals court actually weighed in on another cloudy issue within the state's bond claim laws: the issue of whether a bond claim is effective upon mailing or receipt.

In the bond claim world there is a battle between jurisdictions and laws as to when the bond claim is effective: upon mailing the claim, or upon receipt of the claim? In the controversial Safety Signs LLC v. Westfield Insurance Co., et al matter, the appeals court addressed this argument even though its decision turned on another component of the surety's argument (see dicta).

Westfield Insurance Co. eventually had Safety Sign's bond claim dismissed because it was not addressed to the right address for the general contractor. Prior to reaching that argument, however, the appeals court considered whether the claim was sent timely. Westfield had argued that although the bond claim was sent before the expiration of the 120 day claim period, it was not received until after the expiration, and therefore, was untimely.

This determination - whether the claim is effective upon mailing or receipt - presented "an issue of first impression" for the court.

While it was a new question in the bond claim context there was some case law on the topic in the mechanics lien context, and the appeals court referred to that jurisprudence in making its decision. "We find instructive," the court held "the supreme court's holding that service of a mechanic's lien notice is effective upon mailing." The appeals court's discussion went on:

The Eischen court reasoned that (1) the mechanic's lien statute is remedial in nature and should therefore be liberally construed in

favor of the claimant; (2) the requirement that a mechanic's lien notice be served personally or by certified mail makes little sense other than to ensure that the sender will have proof of the date of service; and (3) the rules of civil procedure and general legal authorities make service effective upon mailing in similar circumstances...Like the mechanic's lien statute, the bond statute is remedial and should be liberally construed.

The reasoning here makes perfect sense, and I think the appeals court got this portion of their decision right. Nevertheless, if you read my previous discussion of the other components of the Safety Signs v. Westfield Insurance Co decision, you'll probably be shocked at how inconsistent that line of reasoning is with this line of reasoning. Same decision, very similar issues, and the court goes opposite directions with each.

Stay tuned, as this case is headed to the Supreme Court and both of the appeal court's determinations will be under review.

Read this post on the Lien Blog at:

<http://www.zlien.com/blog/?p=9318>

