

Pleading Requirements for Establishing an Equitable Lien Claim

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In today's market, there is a much greater risk of investing labor and materials into a construction project as the probability of actually getting paid for your services is markedly reduced. In many cases, a lack of funding leads to abandonment of the project leaving vendors fighting to recover funds owed from whatever money is still left. In this situation, the only legal remedy may be an equitable lien against the real property.

An equitable lien is a remedy that can be used as a tool to prevent unjust enrichment when a party is unable to collect by any other means. Specifically, it is "a right of a special nature over a particular property that may arise from a written contract which shows an intention to charge the particular property with a debt or obligation, or it may be declared by a court of equity out of a general consideration of right and justice as applied to the relations of the parties and the circumstances of their dealings in the particular case". Crane Co. v. Fine, 221 So.2d 145, 148 (Fla. 1969).

In order to establish a cause of action for an equitable lien, there must be no adequate remedy at law. The Supreme Court in Tampa & G.C.R. Co. v. Mulhern, 74 So. 297 (Fla. 1917) explained the test for determining whether an adequate remedy at law exists. The true test is whether a judgment at law can be obtained, not whether the judgment would procure pecuniary compensation. Id. at 299. However, if the judgment obtained would be inferior to another party's mortgage encumbrance, that may be enough to claim an inadequate remedy at law in order to seek an equitable lien. Imler Earthmovers, Inc. v. Schatten, 240 So.2d 76, 77 (Fla. 1st DCA 1970). In this situation, when materials and labor are used to improve a piece of land and the mortgage-holder would be unjustly enriched by foreclosing on the improved property without paying for the improvements, courts will often allow an equitable lien claim to stand. Id. If a contractor is seeking undisbursed funds for work on a project, that contractor's work on the project must be completed before the contractor would be entitled to seek an equitable lien. J. G. Plumbing Service, Inc. v. Coastal Mortgage Company, 329 So.2d 393, 395 (Fla. 2nd DCA 1976).

An equitable lien claim can be based on either of two theories: equitable estoppel or unjust enrichment. It is important to determine which theory will be the basis for your claim as each has different pleading requirements. If pursuing an equitable lien claim under the theory of equitable estoppel, a party must also show that there is proof of fraud, misrepresentation or some other affirmative deceptive practice. Golden v. Woodward, 15 So.3d 664, 669 (Fla. 1st DCA 2009). A claim based on unjust enrichment must only set forth the required elements of an unjust enrichment claim: 1) plaintiff conferred a benefit on defendant; 2) defendant has knowledge of the benefit; 3) defendant accepted or retained the benefit; and 4) it would be inequitable for defendant to retain the benefit without paying for it. Id. at 670.

As a final note, it is important to file your equitable lien claim timely. The statute of limitations on such a claim is one year from the furnishing of labor or materials. Fla. Stat. § 95.11(5)(b) (2011).