

CHAPTER XVII

CONSTRUCTION LIENS



STANDARD 17.1

DURATION OF ENFORCEABILITY OF CLAIM OF CONSTRUCTION LIEN

STANDARD: A CLAIM OF CONSTRUCTION LIEN CEASES TO BE ENFORCEABLE ONE YEAR FROM THE DATE OF RECORDING, UNLESS A FORECLOSURE PROCEEDING HAS BEEN COMMENCED; PROVIDED, HOWEVER, THAT IF A NOTICE OF LIS PENDENS WITH RESPECT TO THE PROCEEDING HAS NOT BEEN RECORDED, THE LIEN MAY NOT BE FORECLOSED AGAINST THE INTEREST OF A PARTY NOT TIMELY SERVED IN THE PROCEEDING.

Problem A: On March 20, 2005, Jones Construction Company recorded a claim of construction lien against Blackacre. As of May 3, 2006, there was no suit to enforce the lien. May Jones enforce the lien against Blackacre?

Answer: No.

Problem B: On March 20, 2005, Jones Construction Company recorded a claim of construction lien against Blackacre. Jones filed a complaint to foreclose the lien on March 1, 2006, but did not record a notice of lis pendens. Jones timely served the complaint on John Doe, owner of Blackacre, on March 30, 2006. May Jones enforce the lien against Blackacre?

Answer: Yes.

Problem C: On March 20, 2004, Jones Construction Company recorded a claim of construction lien against Blackacre. On March 28, 2005, a certificate of the county clerk dated March 21, 2005 was recorded, stating

that no suit to foreclose the lien was then pending in the circuit court. May Jones enforce the lien against Blackacre?

Answer: No.

Authorities: Problem A: MCL 570.1117. *Fox v Martin*, 287 Mich 147, 283 NW 9 (1938); *Yerrington v Miller*, 325 Mich 193, 38 NW2d 84 (1949).

Problem B: MCL 570.1117 and 600.2701. *Wallich Lumber Co v Golds*, 375 Mich 323, 134 NW2d 722 (1965); *Troy W Maschmeyer Co v Haas*, 376 Mich 289, 136 NW2d 902 (1965).

Problem C: MCL 570.1128.

Comment A: The construction lien act, MCL 570.1101 *et seq.*, repealed the former mechanic's lien statute. The sections of the construction lien act addressed in this Standard are substantially unchanged from the applicable sections of the former mechanic's lien statute. Although this Standard addresses construction liens, it is also applicable to mechanic's liens.

Comment B: Timely commencement of a suit to enforce a claim of construction lien and the recording of a notice of lis pendens operate to continue the claim of lien (but see Comment C). MCL 570.1117, 600.2701. *Washtenaw Lumber Co v Belding*, 233 Mich 608, 208 NW 152 (1926); *Whitehead & Kales Co v Taan*, 233 Mich 597, 208 NW 148 (1926).

A claim of lien may also be continued by the timely filing of a cross-claim or counter-claim. Cf. *Guerra v Bar-Har Investments, Inc*, 112 Mich App 302, 315 NW2d 921 (1982).

Comment C: *Troy W Maschmeyer Co v Haas*, 376 Mich 289, 136 NW2d 902 (1965) addressed the question of how long a mechanic's lien is continued by the commencement of a foreclosure suit. In that case, the claim of lien had been recorded on March 19, 1962, and the complaint was filed on February 28, 1963. The defendants were served on July 9, 1963. Four justices were of the opinion that under the provisions of MCL 600.5856, the statute of limitations was tolled for a period not exceeding 90 days by the filing of the complaint, and that the cause of action was therefore barred before the defendants were served. The other four justices, while agreeing that service on

the defendants occurred after the termination of the lien, held that because then-applicable MCL 570.10 (repealed by 1980 P.A. 497, being MCL 570.1303; cf. MCL 570.117) provided for the filing of a notice of lis pendens in a mechanic's lien case, the lis pendens provisions of the Revised Judicature Act, being MCL 600.2701, applied, instead of MCL 600.5856. Under the lis pendens statute, service of process is to be made within 60 days after the filing of the notice of lis pendens, a shorter period than that allowed by MCL 600.5856. There has been no later reported decision determining which of the two periods is controlling in actions to foreclose a mechanic's lien or a construction lien.

Comment D: The Committee expresses no opinion on the issue of whether the interest of a bona fide purchaser of real property who acquired the interest after the commencement of a construction lien foreclosure proceeding with respect to which no notice of lis pendens was recorded and who has no actual notice of the proceeding would be subject to the construction lien foreclosure case.

