

## Be Careful What You Ask For – (Fraudulent Construction Liens)

When a property owner wanted to construct a residence in North Florida, he entered into an agreement with a contractor to provide contracting and construction management services. The agreement was a “cost-plus” construction contract, whereby the contractor would be paid its cost of goods and services provided, plus a profit of 10%. Among other things, the contractor was required to carry worker’s compensation insurance related to the project.

When the deal unfortunately soured, the contractor sued to recover money still owed and to foreclose on a \$72,250.00 claim of lien filed against the owner’s property. That claim of lien was subsequently amended upward to the amount of \$158,843.62, and the owner defended on grounds that the lien was fraudulent in violation of Florida Statutes § 713.31. The owner also counter-sued the contractor claiming, among other things, that the lien was fraudulent.

After a non-jury trial, the trial judge found for the contractor, concluding that the contractor was owed \$70,500.00 and that the contractor’s lien was not fraudulent. The judge entered judgment for the contractor. The owner appealed, and the appellate court reversed.

Because the parties entered into a cost-plus contract, what the contractor actually paid for goods and services was critical in determining the amount owed and the amount it could include within a claim of lien. In this case, even though the contractor was required to carry worker’s compensations’ insurance and included worker’s compensation insurance premiums within its amended claim of lien, it did not actually have that coverage during the time it was providing goods and services. Accordingly, the court concluded that the contractor had “willfully exaggerated the amount of the amended claim of lien or compiled the lien with such willful and gross negligence as to amount to a willful exaggeration,” either of which renders an otherwise valid lien fraudulent. The court also rejected the contractor’s argument that it acted in good faith and in reliance on the advice of counsel, reasoning that, while reliance on the advice of counsel is a factor to be considered in determining whether a construction lien was prepared in good faith, this is so only when there has been a “full and complete disclosure of the pertinent facts to the attorney from whom the advice is sought,” something this contractor did not do.

The consequences of the court’s decision – pretty severe: the case was sent back to the trial court for a determination of what amount may be due to the owner on its claims, and for the trial court to consider the issues of interest, costs, and attorney’s fees due to the owner from the contractor. The moral of the court’s decision – while the right to file a lien certainly helps protect those who improve another’s property, always be careful what you ask for!

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