

Blanket Liens Against Condominium Complexes and Their Effect on Individual Condo Owners

By David J. Barnier, Esq.

Condominium homeowners associations routinely hire contractors to perform work on areas of their condominium complex. A few mechanic's lien issues arise as the result of the fact that the "property being improved" includes not only the common areas, but the individual condominium parcels.

CIVIL CODE SECTIONS 3130 AND 1369: BLANKET MECHANIC'S LIENS AND HOW THEY AFFECT INDIVIDUAL CONDOMINIUMS

California Civil Code Section 3130 permits a contractor to record a "blanket" mechanic's lien on an entire condominium complex when the contractor has a contract with an HOA to improve the common areas of the complex. This blanket lien clouds the title to not only the common areas, but also the individual parcels (i.e., each individual condominium). So, what happens if the owner of a condominium wishes to sell his/her property during the time period that a blanket lien is on title?

California Civil Code Section 1369 provides that, when a blanket lien covers two or more condominiums, the owner of any one (or more) of these condominiums are entitled to remove the lien from their by paying the lien holder "the fraction of the total sum secured by the lien which is attributable to his or her condominium." If a condominium owner contacts a lien holder to request the opportunity to remove the lien via payment of this fraction of the total amount of the lien, the contractor is obligated to notify the owner of the amount of this fraction, so that the condominium owner may satisfy the portion of the blanket lien that relates to the individual condominium.

In most circumstances, it seems logical to assume that the individual condominium owner's fraction is equal to the total value of the work performed divided by the number of units in the complex. The contractor can provide written notice of this calculated fraction, and release the lien as to only that individual condominium by accepting payment of this fraction, with the contractor retaining the blanket lien against all remaining condominiums and the common areas.

Other times, it may not be easy to calculate this fraction. The benefit of the work performed might be different for each individual condominium owner--one strip of pavement might be laid in a far corner of the complex that is only used by the people who live in that part of the complex, or a new pool area might be constructed in a far corner of a complex. Under these circumstances, it could be argued by either the contractor or the condominium owner that the value of the work is either greater or less than the fraction of the value that would be calculated by merely dividing the total value of work by the number of condominiums. These circumstances would need to be unique, however, and it seems likely that a pro-rata calculation would be appropriate in almost any circumstance.

ECC CONSTRUCTION: A CONTRACTOR MAY NOT MAINTAIN A MECHANIC'S LIEN AGAINST AN INDIVIDUAL CONDOMINIUM UNLESS IT CAN IDENTIFY THE VALUE BESTOWED UPON THAT INDIVIDUAL CONDOMINIUM

Shortly after the 1994 Northridge earthquake, an HOA for a condominium complex in Calabasas hired a contractor on a time and materials basis to repair both the common areas of its complex *and individual condominiums*. The damages to each condominium varied. A pro-rata calculation dividing the total value of work performed by the number of units would have been inappropriate under these circumstances.

The contractor sued individual homeowners to foreclose on its blanket mechanic's lien. During the lawsuit, the contractor stated that it could not calculate the value bestowed on the individual condominiums. It is unclear, but it appears that the contractor failed to keep detailed records as to the work that was performed on each individual condominium.

In the published case of ECC Construction v. Ganson [98 Cal.Rptr.2d 292 (2000)], the California Court of Appeals (Second District) upheld this contractor's obligation to notify the individual condominium owners of the value of the work performed to each individual condominium in order to prevail on its foreclosure actions against the various owners. Because the contractor could not state the value of work to each individual condominium during the discovery phase of the lawsuit, the court granted summary judgment in favor of the condominium owners. This is logical, as the principal amount of the judgment against each homeowner would be equal to this amount.

Worth noting is that the court in the Calabasas case held that the contractor could not make a claim for breach of contract against the individual condominium owners on the basis of the HOA having hired the contractor. The court held that only the HOA was a party to that contract, not the individual condominium owners.

WHAT THIS MEANS

This issue will only arise if an individual condominium owner wishes to remove the lien prior to the HOA paying the contractor, or if the contractor is not paid and sues the individual condominium owners for foreclosure of the mechanic's lien. If a condominium owner contacts you to inquire into removing the lien, you are required to remove the lien upon the owner's payment of the amount of the lien attributable to that condominium. If you are not paid by an HOA and are forced to sue, you must identify the fraction of the lien that is attributable to each homeowner, as this would be the principal amount of the judgment as to each individual homeowner.

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Mr. Barnier is an attorney practicing general business litigation with an emphasis on construction law and a particular emphasis on litigation involving breach of contract claims, mechanic's liens, stop notices and payment bond claims. He frequently presents seminars to the construction industry by which he explains the complex laws affecting the industry, and how companies can avoid litigation or, as a last resort, be best prepared for litigation.

His articles on construction law topics have been published in numerous trade journals and magazines. In addition to construction law, Mr. Barnier represents businesses of all sizes on both litigation and non-litigation matters. In addition, Mr. Barnier is an active member in construction trade organizations including the Engineering General Contractor's Association (EGCA).