



Scope of Mechanic's Lien not as Clear as one Might Assume

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A recent decision by the Court of Appeal clarifies the scope of a mechanic's lien where a contractor performs work on only part of a larger property. The decision focuses on language in Civil Code section 3128, which provides that a mechanic's lien attaches to the property improved by the contractor, as well as additional property "as may be required for the convenient use" of the property improved.

In *Forsgren Associates, Inc. v. Pacific Golf Community Development LLC* (Case No. VCVVS023200, February 23, 2010), the court held that "convenient use" refers to the specific use for which the work was being performed, not use of the property in general. Thus, where the contractor was hired to work on a public golf course, but performed some of that work on adjacent property slated for residential development, the lien did not attach to the entire "adjacent property."

The court determined this despite the fact that the contractor's work unquestionably benefitted the adjacent property and increased its value. This is significant, because the general rule is that a mechanic's lien attaches to the entire property upon which the work was conducted. The *Forsgren* opinion reflects a notable departure from that general rule.

The idea behind mechanic's liens is a simple one: If a contractor improves a property, the contractor should be compensated for it. To secure payment, the law provides that the contractor is entitled to a lien against the property. (Civ. Code, § 3110.) And, as with any other lien against real property, in the event of non-payment, the lien holder can then foreclose on the property.

But what happens when a contractor performs work on only part of a property? Does the lien attach only to the portion touched by the work? As would be expected, the law has long held that a mechanic's lien attaches to the entire property involved in the work. Thus, where a contractor performs work on only part of a property, the lien – and the ultimate foreclosure, should it occur – would impact the entire property. (See

Civ. Code, § 3128.)

This brings us to *Forsgren Associates, Inc. v. Pacific Golf Community Development LLC*. There, the contractor performed work for a golf course. The contractor did not get paid, and it was undisputed that it was owed over \$1.5 million. Not surprisingly, the contractor perfected a mechanic's lien against the golf course property and sought to foreclose.

What made the case interesting was that the contractor also sought to perfect a mechanic's lien and foreclose on adjacent property slated for residential development. The contractor argued that because a small amount of the work it performed was on the adjacent property, it had the right to foreclose upon that property as well. The trial judge agreed, holding that the lien attached to the entirety of the "adjacent property."

The Court of Appeal reversed, holding that the mechanic's lien attached only to that portion of the "adjacent property" upon which work was actually conducted. The rationale for this lies in the language of Civil Code section 3128, which provides that the lien extends to "the land on which [the improvements are] situated together with a convenient space about the same or so much as may be required for the convenient use and occupation thereof."

Typically, the "as may be required for the convenient use and occupation thereof" encompasses the entire property. Among other things, this results in foreclosure proceedings not having the unintended consequence of subdividing property without following the procedures set forth in the Subdivision Map Act (Gov. Code, §§ 66410-66499.37). In *Forsgren*, however, the court examined the "use" for which the work was being performed. Since the contractor was performing its work for the golf course project, not the adjacent residential project, the court interpreted section 3128 to provide for the lien's encompassing only the property "required for the convenient use" of the golf course. The court concluded:

Even though the adjacent property would no doubt benefit from the construction of the public golf course, and the golf course . . . improvement would increase the value of the adjacent residential lots, such factors do not support extending the mechanic's lien to [portions of] the adjacent property [upon which the contractor did no actual work]. . . . In the instant case, the improvement was constructed for use as a public golf course Only the portion of the property that was necessary to the convenient use and occupation of the golf course . . . was subject to [the] lien.

Why does this matter? Because it is not uncommon that improvements to a particular property may require limited work on an adjacent property (work on utilities jumps out as an obvious example). Where such work occurs, the contractor should not be permitted to perfect a lien against the entirety of the adjacent property, even if the contractor's work adds substantial value to that property. This does not mean, however, that owners of such "adjacent property" face no risk, and that they should allow contractors to perform work on portions of their property without careful thought. In *Forsgren*, the court upheld the contractor's lien as to that portion of the "adjacent property" upon which the contractor performed work. It was the contractor's effort to encompass the remainder of the "adjacent property" that the court rejected.

Finally, to add more interest to the case, the Court of Appeal offered no explanation for what happens on remand in the event the foreclosures proceed. Foreclosing on the golf course property is simple enough,

but complications arise with respect to the small portion of the "adjacent property" upon which the lien attached. Would a foreclosure create a new lot encompassing just that portion of the adjacent property foreclosed upon? Does the foreclosure simply trump the Subdivision Map Act? Or, would the foreclosure effect a lot line adjustment, moving that property into the golf course property? The latter result probably makes more sense, but it's not at all clear that things will play out that way. And, based on the opinion, the Court of Appeal may not have even considered these implications.