PUBLICATION UPDATE

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California Mechanics' Lien Law and Construction Industry Practice

Publication 80242 Release 25 June 2021

HIGHLIGHTS

Included in this release is new commentary, updates, and revisions affecting Chapters 4, 5, 6, 8, 9, 10, 11, and 12.

In *RGC Gaslamp, LLC v. Ehmcke Sheet Metal Co., Inc.*, 56 Cal. App. 5th 413, 270 Cal. Rptr. 3d 425 (2020), a subcontractor's filing of successive mechanic's liens after the project owner posted bond was protected petitioning activity under Code Civ. Proc., § 425.16, the anti-SLAPP (strategic lawsuit against public participation) statute because the filing of a mechanic's lien constituted protected activity, even if the lien was invalid or otherwise improper. Further, the Court held that no additional showing of good faith or serious contemplation of litigation was required where the prelitigation communication involved the filing of a mechanic's lien. See "Chapter 4 Representing the Lien Claimant."

In *C.W. Howe Partners Inc. v. Mooradian* (2019) 43 Cal. App. 5th 688, 698, 256 Cal. Rptr. 3d 806. Denied a special motion to strike under Code Civ. Proc., § 425.16, a cross-complaint filed against homeowners by structural engineers who sought indemnity because the engineers' claim did not arise from the filing of the homeowners' lawsuit, but from the alleged breach of their agreement to indemnify the engineers for liability regarding the homeowners' selection of building materials. The engineers did not allege in their cross-complaint that by filing their lawsuit the homeowners had

breached the parties' agreement or otherwise had engaged in wrongful activity, nor did the homeowners assert that their refusal of the engineers' indemnity demand implicated an issue of public interest. The indemnity obligation arose from the breach of an agreement, not breach of a lawsuit. See "Chapter 4 Representing the Lien Claimant."

Although mechanic's lien laws should be liberally construed to protect those who have contributed skills, services or materials, towards the improvement of property, it has been recognized that lien laws are for the protection of owners as well as mechanic's lien claimants. This has led to some seemingly conflicting understanding of whether ceasing performance necessarily requires a project to be completed. *Precision Framing Systems Inc. v. Luzuriaga* (2019) 39 Cal. App. 5th 457, 464, 251 Cal. Rptr. 3d 858 held that under the law, a mechanics lien claim filed prematurely—before the scope of work under a subcontract is completed—is void and cannot be enforced. (Id. at pp. 466–470). In *Precision Framing*, the Court of Appeal upheld a summary judgment against a framing subcontractor on grounds it had not yet ceased work when it recorded its mechanics lien claim, making it prematurely filed. See "Chapter 4 Representing the Lien Claimant."

Crosno Construction, Inc. v. Travelers Casualty and Surety Company of America (2020) 47 Cal. App. 5th 940, 950, 261 Cal. Rptr. 3d 317 concerned whether a pay-when-paid provision in a subcontract precluded the subcontractor from recovering under the payment bond while the general contractor's lawsuit against a project owner remained pending. The central question in the appeal was whether a surety could defend a public works payment bond action by invoking an expansive "pay-when-paid" provision in the construction subcontract that deferred payment for an indefinite period of time. Specifically, could a payment bond surety turn to a "pay-when-paid" provision in a subcontract to delay its bond obligation to a subcontractor until some unspecified point at which litigation between the direct contractor and project owner concludes? The provision was held to be unenforceable because it unreasonably forestalled accrual of the subcontractor's payment bond rights for an indefinite period of time while the general contractor pursued litigation against the project owner. See Chapter 8 "Representing the Owner."

California's Fourth District Court of Appeal found in *Caliber Paving Co., Inc. v. Rexford Industrial Realty & Management, Inc.*, 54 Cal. App. 5th 175, 268 Cal. Rptr. 3d 443 (2020) that even though the owner might have had an "economic interest" in the subcontractor's contract with the general contractor, the owner was still a "stranger" to the contract and could be liable for intentional interference. The *Caliber Paving Co.* decision conflicted with a judicial exception under California law that immunized parties from tortious in-

terference claims who were technically strangers to a contract, but had an "economic interest." The decision could have broad implications for owners and contractors on California construction projects. See Chapter 8 "Representing the Owner."

In *Pulte Home Corp. v. CBR Electric, Inc.*, 50 Cal. App. 5th 216, 263 Cal. Rptr. 3d 814 (2020), the trial court had denied incorrectly a general liability insurer's claim for equitable subrogation, which alleged that subcontractors had breached their contractual duty to defend the general contractor in construction defect actions related to their work, because equitable subrogation would not be unfair in that it would shift only each subcontractor's equitable share of the defense costs rather than the entire amount. The failure to defend the general contractor caused the insurer to incur the costs. There were two errors in the trial court's decision. First, the trial court incorrectly concluded that a cause of action based in subrogation required it to shift the entire amount of defense costs St. Paul incurred in the construction defect actions to the subcontractors, on a joint and several bases. Second, the trial court employed a flawed causation analysis when balancing the equities of the case (the seventh element (g) of equitable subrogation). See Chapter 10 "Concerning Contractors."

In *Carter v. Pulte Home Corp.*, 52 Cal. App. 5th 571, 266 Cal. Rptr. 3d 447 (2020), the court held that a liability insurer that defended a general contractor in a construction defects suit was not entitled to relief on equitable subrogation against subcontractors to indemnify and defend the general contractor because the insurer improperly sought to shift its entire loss jointly and severally to the subcontractors, each of whom was liable under Civ. Code, § 2778, subd. 4, only with respect to its own scope of work and could not be required under former Civ. Code, § 2782, subd. (a), to indemnify for others' negligence or misconduct. Under the liability insurer's theory of the case, each subcontractor had a duty to provide the general contractor with a complete defense, meaning each had the same obligation and no one of the subcontractors was "primarily liable." The liability insurer had framed the issue as primacy of liability for the entire cost of the defense. See Chapter 10 "Representing the Contractor."

A.J. Fistes Corp. v. GDL Best Contractors, Inc., 38 Cal. App. 5th 677, 251 Cal. Rptr. 3d 423 (2019) the Legislature amended Code of Civil Procedure section 526a, January 1, 2019, to specify what types of tax payments were sufficient to establish taxpayer standing. Section 526a now provided a corporation that had been assessed and was liable to pay or has paid within one year before the commencement of an action "a tax that funds the defendant local agency" has standing to sue a local agency to challenge the agency's expenditure of public funds. The amendment to section 526a applied prospectively. See Chapter 12 "California Public

Entity Practice."

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