

**IN THE SUPERIOR COURT**  
**FOR THE**  
**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

<b>MISAMIS CONSTRUCTION (SAIPAN) LTD.</b> )	<b>Civil Action No.00-0115B</b>
<b>Plaintiff,</b> )	
<b>vs.</b> )	
<b>TONY GLAD - MICRONESIAN</b> )	<b>ORDER DENYING</b>
<b>HEALTH CORPORATION</b> )	<b>APPLICATION FOR LIEN</b>
<b>Defendants.</b> )	
_____ )	

This matter came before the court on April 19, 2000, on Plaintiff Misamis Construction (Saipan) Ltd.’s Application for Lien and Judgment thereon. Barrie J. Ladd appeared, pro se, for Misamis Construction (Saipan) Ltd. and Alan M. Pecorella appeared for Micronesian Health Corporation. The court, having heard the arguments and reviewed all the evidence presented, now renders its written decision.

**I. BACKGROUND**

On March 29, 1999, Micronesian Health Corporation (“MHC”) and Misamis Construction (Saipan) Ltd. (“Misamis”) executed a standard form contract, pursuant to which Misamis, as contractor, agreed to construct the Susupe Medical Clinic for a lump sum of \$82,046.00, subject to adjustments as agreed. The contract did not specify when the work was to commence, nor did it define a date when the work was to be substantially completed.

On March 1, 2000, Plaintiff filed its Application for Lien and Notice of Lien with the Court. On its face, the Application notifies Defendants Tony Glad and Micronesian Health [p. 2] Corporation to file an answer to the “Notice of Lien” within ten days after service but contains no other information. The Application does not state the nature of the claim, specify the amount of the claim, mention the work or material furnished, or describe the property. The Notice, however, sets forth a claim against Glad and MHC for unpaid billings submitted pursuant to a March 29, 1999

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construction contract (the “March 29 contract”). In the Notice, Plaintiff seeks a lien of \$27,200 on property situated in Susupe known as the Island Medical Center and Pharmacy. It asserts, moreover, that “all reasonable notice has expired and the matter is ripe for acceleration” (Notice at ¶ 6).

On March 13, 2000, MHC filed its Answer to the Notice of Lien, denying that it was party to any March 29 Contract with the Plaintiff, that it received “reasonable notice,” and that the court had jurisdiction. MHC denied defaulting on its contract with Plaintiff, and as to the Notice of Lien, claimed that any lien should apply only to the materials placed in the “pharmacy site.” The Declaration of Counsel, filed concurrently with MHC’s answer, indicates that under a January 1999 contract between MHC and Misamis, Misamis agreed to improve an area outside of the pharmacy site and upgrade MHC’s electrical system. MHC claimed that it has been making payments on the work as the work progressed. MHC further claimed that, in any event, the time for filing a Notice of Lien had expired.

Tony Glad also filed an “answer to the complaint,” denying all allegations in the Notice. As an affirmative defense, Glad also claimed that he was not the party who executed the contract and disclaimed any and all liability for charges claimed. As an attachment to his answer, Glad included a copy of the March 29 Contract between MHC and Misamis to construct the Susupe Medical Clinic. Contrary to MHC’s Answer, the March 29 Contract was executed by Barrie J. Ladd for Misamis and what appears to the court to be Jarlav K. Richer for MHC.

At some point, Plaintiff later filed what it characterized as a motion for summary judgment asking the court to enter judgment against “the Defendant.” After rejecting the pleading as inadequate for failing to assert any legal theory of recovery, on March 23, 2000, Plaintiff filed a document captioned “Pleadings” contending that billings had been “submitted” in the amount [p. 3] of \$26,525 for construction work completed on the Islands Medical Center and Pharmacy, that the billings remain unpaid and uncollectible, and that the “ownership of the Island Medical Center and Pharmacy is in question.” On the same date, Plaintiff set the matter for hearing on April 19, 2000 before this court. Along with MHC and Tony Glad, the file contains declarations of service for the notice of hearing on the “Golden Bird Corporation.” There is no other indication that the Golden bird Corporation has been served with either the Application for or Notice of Lien.

## QUESTION PRESENTED

Whether probable cause exists to permit a mechanic's lien to attach to property when the Application for Lien fails to allege, among other things: (1) that the claimant is a "licensed construction contractor" or a "construction material supplier;" (2) the identity of the property owner; (2) that the materials have been delivered or that the improvement has been substantially completed or actually abandoned; (3) the date when the contracted work has been completed or abandoned; and (4) notice of the Application has been provided to the owner of the property, any person with an interest in the property, and upon the party or parties who contracted for the improvement.

## II. ANALYSIS

The Mechanic's Lien Statute, 4 CMC § 5802, permits any licensed construction contractor or supplier of construction material for the improvement of real property to place a lien upon the improvement and the owner's interest in the real property upon which the improvement is situated for the price agreed to be paid. To do so, the statute insists upon the satisfaction of several prerequisites, including the filing of an "Application for a Lien" and a written "Notice of Lien" with the Superior Court.<sup>1</sup> In addition to the filing of the Notice and Application, the statute further requires every applicant to serve the Application and Notice upon the owner of the property, any person with an interest in the property, and the party or parties who contracted for [p. 4] the improvement. The Application for Lien and the Notice of Lien must also be filed not later than 60 days "after the date of completing of the improvement against which it is filed." The "date of completion," as used in the statute, means the "time when the owner, general contractor, or material supplier...completes the delivery of a notice upon all other parties attesting that the contracted work on the improvement has been completed or has been abandoned." 4 CMC § 5803(d).<sup>2</sup> With regard

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<sup>1</sup> 4 CMC § 5803(a) requires the Notice of Lien to set forth the facts establishing the claim for lien, and be accompanied by any filing fee required by the court. The Application must likewise set forth the amount of the claim, the work or material furnished, a description of the property sufficient to identify the same, the return date to the court, and any matter necessary for a clear understanding of the claim.

<sup>2</sup> The statute provides that the notice of completion will not be effective for any purpose unless, prior to the notice, "there has been substantial completion of the improvement, delivery of the materials, or the improvement has been actually abandoned."

to material suppliers, “substantial completion” means that all materials contracted for have been delivered to the job site. 4 CMC § 5803(e).

By way of procedure, on the return day, the court holds a hearing to determine whether probable cause exists to permit the lien to attach to the property. Before such an order may issue, it must be clear to the court that all conditions required by the statute have been satisfied, that the Application and Notice were served on the party contracting for the improvement, and that the party contracting for the improvement has been given an opportunity to appear at the hearing. 4 CMC § 5803(b). Only after finding probable cause for the lien to attach will the court set the claim for trial.

A mechanic’s lien is a statutory lien on real estate that provides security for the payment for labor or materials. Because such liens do not exist at common law, any right to acquire and enforce the lien exists solely by legislative enactment. While there is no requirement that a claimant consult with an attorney to obtain a lien, to attain a mechanic’s lien, a claimant must strictly comply with the terms of the statute. The failure to do so will be fatal to the request.

Because the statutory prerequisites have not been satisfied here, the court cannot find probable cause for the lien to attach to the property. As an initial matter, 4 CMC § 5803(a) requires the Application to “set forth the amount of the claim, the work or material furnished, a description of the property sufficient to identify the same, the return date to the court, and any matter necessary for a clear understanding of the claim.” None of this information appears on the application filed in [p. 5] the instant case. More importantly, Plaintiff has failed to attach the Notice of Completion or Abandonment, so there is no way for the court to determine if the lien has been timely filed. Third, neither the Application nor the Notice make clear that all necessary documents were served upon the owner of the property or the party contracting for the improvement. Under the statute, the “owner” is either the owner of the property or any interest therein and the person contracting for the improvement.<sup>3</sup> Not only do the Plaintiff’s “pleadings” themselves admit that ownership is in

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<sup>3</sup> Under the statute, “Owner” means the “owner of the real property or of any interest therein who enters into a contract for the improvement thereof and who may be the owner in fee of the real property or of a lesser estate therein, the lessee for a term of years therein, the person having any right, title, or interest in the real property which may be sold under legal process, or a vendee in possession under a contract for the purchase of the real property or of any such right, title, or interest therein ” 4 CMC § 5801(f).

question, but all Defendants deny executing the March 29 Contract. The court notes, moreover, that for the first time, Plaintiff served the Golden Bird Corporation with a notice of hearing, and nowhere in the file does Applicant indicate what, if any, interest that corporation has in the property or these proceedings and whether the Golden Bird Corporation was a proper party to have been served with the Notice of and Application for Lien. In short, the court is not convinced that all proper parties have been served with the necessary papers and that these parties have had the opportunity to appear at the hearing.

On a different note, 4 CMC § 5803(a) appears to limit those claiming a lien to “any licensed construction contractor or construction material supplier.” Conspicuous in its absence from both the Application and the Notice is any assertion that Plaintiff is a member of either class. The court is aware that similar mechanic’s lien statutes provide that a claimant cannot enforce a mechanic’s lien unless the claimant was properly licensed at the time that the services were performed or the material was supplied. *E.g., In re Bransom Mall, Inc.*, 970 F.2d 456, 458 (8<sup>th</sup> Cir. 1992); *J & M Indus., Inc. v. Huguley Oil Co.*, 546 So.2d 367, 368-369 (Ala. 1989) (claimant who was not licensed as required by statute when work was performed cannot enforce a mechanic’s lien, regardless of the fact that the claimant became licensed after completion of the work, or that the conduct of the defendant was equally inequitable). The court finds Plaintiff’s [p. 6] failure comply with this statutory directive as another factor militating against granting the request for a lien.

### **CONCLUSION**

The court is sympathetic to Plaintiff’s desire to run his business efficiently and to eliminate, wherever possible, unnecessary expenses. In this case, however, it would have served Plaintiff well to consult with counsel prior to embarking on his claim for a lien. In a mechanic’s lien case, every statutory jurisdictional requirement must be met, and all conditions precedent as prescribed by the statute must be complied with before a lienor can prevail. Based on the materials before the court, the court cannot find probable cause for the lien to attach to the property. Accordingly, Plaintiff’s request for lien is DENIED.

At the same time, the failure to give proper notice or to satisfy the statutory technicalities should not affect Plaintiff’s separate request for money damages for the value of the materials

furnished and services performed. Based upon the foregoing, and within ten (10) days of the date of this Order, the court therefore ORDERS Plaintiff to amend his “pleadings” to comply with Com. R. Civ. P. Rule 8 and to serve the amended complaint upon all proper parties. Following service of the amended complaint, this case shall proceed to judgment in the manner required by the rules and laws of the Commonwealth.

SO ORDERED this 8 day of May, 2000.

BY THE COURT:

/s/ Timothy H. Bellas  
TIMOTHY H. BELLAS, Associate Judge