

SUPREME COURT OF OKLAHOMA

Biantrav Contractor, LLC v. Condren

2020 OK 73 · No. 118945 · Decided September 21, 2020

SUMMARY

The Oklahoma Supreme Court assumed original jurisdiction and granted a writ of prohibition concerning the effectiveness of an amended mechanic's and materialman's lien. The Court held that an amended lien statement, including an amendment increasing the amount claimed, may be filed within the 90-day statutory period under 42 O.S. § 143 and is not prohibited by 42 O.S. § 172.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Chief Justice Gurich; Justice Winchester; Justice Edmondson; Justice Colbert; Justice Combs; Justice Kane; Justice Rowe; Justice Kauger
JURISDICTION	Oklahoma
DECIDED	September 21, 2020
DOCKET	118945
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Biantrav Contractor, LLC sought extraordinary relief in the Oklahoma Supreme Court, asking the court to prohibit enforcement of a district-court judgment holding its corrected and amended mechanics and materialmen's lien ineffective.
STANDARD OF REVIEW	Original-jurisdiction review; a writ may issue when the lower court's decision is based on an erroneous conclusion of law and a writ is the appropriate remedy.
PRECEDENTIAL VALUE	precedential
PARTIES	Biantrav Contractor, LLC v. Judge Sheila Condren, Sofidel America Corp., SMI USA LLC, Indexa USA, Inc.

TOPICS

- construction law
- statutory interpretation
- appellate procedure
- appellate jurisdiction
- remedies

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Oklahoma lien law permits an amended lien statement, including an amendment increasing the amount claimed, when the amended statement is filed within the ninety-day statutory period.
2. Whether the Oklahoma Supreme Court should prohibit enforcement of the district court's judgment declaring Biantrav's corrected and amended lien ineffective.

HOLDINGS

1. An amended lien statement filed within the ninety-day period prescribed by 42 O.S. Supp. 2013, § 143 may amend the amount claimed and is not prohibited by 42 O.S. 2011, § 172.
2. A writ of prohibition was appropriate to prevent enforcement of the district court's judgment because that judgment rested on an erroneous legal conclusion concerning the effectiveness of the amended lien.

KEY QUOTATIONS

"The Court finds 42 Ohio St. 2011, § 172 does not prohibit the filing of an amended lien statement, including an amendment as to the amount claimed, when the amended lien statement is filed within the 90-day time period prescribed by 42 O.S. Supp. 2013, § 143." (¶ 7)

"Hence, a lien statement in a civil action commenced under Section 172 is treated just as any other pleading that may be amended "in furtherance of justice as pleadings may be in any matter."" (¶ 8)

FACTUAL BACKGROUND

Biantrav filed a mechanics and materialmen's lien through a subcontractor claim and later filed a corrected and amended lien statement that increased the amount claimed. The amended lien was filed within the ninety-day period prescribed for filing a subcontractor lien. The Rogers County District Court nevertheless found the corrected and amended lien ineffective.

PROCEDURAL HISTORY

The Rogers County District Court entered a July 14, 2020 Journal Entry of Judgment finding Biantrav's corrected and amended lien ineffective. Biantrav commenced an original proceeding in the Oklahoma Supreme Court. The Supreme Court assumed original jurisdiction and granted a writ of prohibition barring enforcement of the district-court judgment.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The respondent district judge, or any other assigned judge, was prohibited from enforcing the July 14, 2020 Journal Entry of Judgment finding Biantrav's corrected and amended mechanics and materialmen's lien ineffective.

CASES CITED

- Scott v. Peterson, 2005 OK 84, 126 P.3d 1232
- Cannon v. Lane, 1993 OK 40, 867 P.2d 1235
- Davidson Oil Country Supply Co., Inc. v. Pioneer Oil & Gas Equip. Co., 1984 OK 65, 689 P.2d 1279
- El Reno Elec. Light & Tel. Co. v. Jennison, 1897 OK 64, 50 P. 144
- Whitfield v. Frensley Bros. Lbr. Co., 1930 OK 18, 283 P. 985

OPINION

PER CURIAM.

BIANTRAV CONTRACTOR LLC v. CONDREN Skip to Main Content Accessibility Statement Help Contact Us e-payments Careers Home Courts Decisions Programs News Legal Research Court Records Quick Links OSCN Found Document:BIANTRAV CONTRACTOR LLC v. CONDREN Previous Case Top Of Index This Point in Index Citationize Next Case Print Only BIANTRAV CONTRACTOR LLC v. CONDREN2020 OK 73Case Number: 118945Decided: 09/21/2020THE SUPREME COURT OF THE STATE OF OKLAHOMA Cite as: 2020 OK 73, __ P.3d __ NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION.

UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL. BIANTRAV CONTRACTOR, LLC, an Oklahoma Limited Liability Company, aka BIANTRAV CORPORATION, Petitioner, v. HONORABLE JUDGE SHEILA CONDREN, Judge of the District Court for Rogers County, Respondent, SOFIDEL AMERICA CORP., a Florida for profit business corporation, SMI USA LLC, an Oklahoma Limited Liability Company, and INDEXA USA, INC., a New York for profit corporation, Real Parties in Interest.

ORDER ¶1 Original jurisdiction is assumed in the cause now pending in the District Court of Rogers County, Case No. CJ-2019-508. Okla. Const. Art. 7, § 4. Scott v. Peterson, 2005 OK 84, ¶ 12, 126 P.3d 1232 (original jurisdiction may be assumed when decision is based on erroneous conclusion of law); Cannon v. Lane, 1993 OK 40, ¶ 13, 867 P.2d 1235 (assuming original jurisdiction and issuing writ where matter of public interest rendered a writ the appropriate remedy).

The writ of prohibition is hereby granted. ¶2 The Respondent District Judge, or any other assigned judge, is prohibited from enforcing the July 14, 2020 Journal Entry of Judgment finding Petitioner's Corrected and Amended Mechanics and Materialmens Lien filed December 20, 2019, to be ineffective. ¶3 42 O.S. Supp. 2013, § 143 governs liens filed by and through a subcontractor, and requires a lien to be filed with the county clerk of the county in which the land is situated

within ninety (90) days after the date upon which material or equipment used on said land was last furnished or labor last performed.

The lien statement must state (1) the amount due and the items thereof, (2) the name of the owner of the property, (3) the name of the contractor, (4) the name of the subcontractor making the claim, and (5) a legal description of the property. ¶4 The purpose of the lien statute is to protect subcontractors who provide labor and services, secure payment of claims, and give notice to owners of the intent to file a lien in a definite amount.

Davidson Oil Country Supply Co., Inc. v. Pioneer Oil & Gas Equip. Co., 1984 OK 65, ¶ 6, 689 P.2d 1279. ¶5 Pursuant to 42 O.S. Supp. 2013, § 143, "The risk of all payments made to the original contractor shall be upon such owner until the expiration of the ninety (90) days herein specified, and no owner shall be liable to an action by such contractor until the expiration of said ninety (90) days."

This portion of the statute is meant to exempt the owner of the subject property from suit by a contractor for the given statutory period provided for subcontractors to file their liens. *El Reno Elec. Light & Tel. Co. v. Jennison*, 1897 OK 64, ¶ 16, 50 P. 144. ¶6 On the other hand, 42 Ohio St. 2011, § 172 provides a means for enforcing a lien through the filing of a civil action in the district court.

In cases where such an action is brought, "any lien statement may be amended by leave of court in furtherance of justice as pleadings may be in any matter, except as to the amount claimed." *Id.* ¶7 The Court finds 42 Ohio St. 2011, § 172 does not prohibit the filing of an amended lien statement, including an amendment as to the amount claimed, when the amended lien statement is filed within the 90-day time period prescribed by 42 O.S.

Supp. 2013, § 143. Section 172 is intended as a mechanism, once a civil action for enforcement is filed, to permit amendments to a lien statement to correct technical defects after the statutory period to file a lien has expired. ¶8 Hence, a lien statement in a civil action commenced under Section 172 is treated just as any other pleading that may be amended "in furtherance of justice as pleadings may be in any matter." § 172; *Whitfield v. Frensley Bros. Lbr.*

Co., 1930 OK 18, ¶ 16, 283 P. 985. See, e.g., 12 O.S. Supp. 2018, § 2015(C). ¶9 There is no dispute Petitioner's Corrected and Amended Mechanics and Materialmens Lien (increasing the amount claimed) was filed within the 90-day statutory period prescribed by 42 O.S. Supp. 2013, § 143.

Accordingly, it was not prohibited by 42 Ohio St. 2011, § 172. See *Whitfield*, at ¶ 14 (a party may file multiple mechanic's lien statements in efforts to perfect a proper lien as long as the time for filing lien has not expired). DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS 21ST DAY OF SEPTEMBER, 2020. /S/CHIEF JUSTICE Gurich, C.J., Winchester,

Edmondson, Colbert, Combs, Kane and Rowe, JJ., concur; Kauger, J., concurs in part and dissents in part Kauger, J., concurring in part; dissenting in part: "I concur in the result.

I dissent to the procedure." Darby, V.C.J., not voting. Citationizer© Summary of Documents Citing This Document Cite Name Level None Found. Citationizer: Table of Authority Cite Name Level Oklahoma Supreme Court Cases CiteNameLevel 1993 OK 40, 867 P.2d 1235, 64 OBJ 972, Cannon v. LaneDiscussed 1930 OK 18, 283 P. 985, 141 Okla. 44, WHITFIELD v. FRENSLEY BROS. LBR.

CO.Discussed 2005 OK 84, 126 P.3d 1232, SCOTT v. PETERSONDiscussed 1897 OK 64, 50 P. 144, 5 Okla. 759, El Reno Elec. Light & Telephone Co. v. JennisonDiscussed 1984 OK 65, 689 P.2d 1279, Davidson Oil Country Supply Co., Inc. v. Pioneer Oil & Gas Equipment Co.Discussed Title 12. Civil Procedure CiteNameLevel 12 Ohio St. 2015, Amended and Supplemental PleadingsCited Title 42.

Liens CiteNameLevel 42 Ohio St. 143, Lien By or Through SubcontractorDiscussed at Length 42 Ohio St. 172, Enforcement by Civil Actions - Limitations - Practice, Pleading and Proceeding - Amendment of Lien StatementDiscussed at Length oscn EMAIL: webmaster@oscn.net Oklahoma Judicial Center 2100 N Lincoln Blvd. Oklahoma City, OK 73105 courts Supreme Court of Oklahoma Court of Criminal Appeals Court of Civil Appeals District Courts decisions New Decisions Supreme Court of Oklahoma Court of Criminal Appeals Court of Civil Appeals programs The Sovereignty Symposium Alternative Dispute Resolution Early Settlement Mediation Children's Court Improvement Program (CIP) Judicial Nominating Commission Certified Courtroom Interpreters Certified Shorthand Reporters Accessibility ADA Contact Us Careers Accessibility ADA