

ACT 181

H.B. NO. 141

A Bill for an Act Relating to Mechanic's and Materialman's Liens.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 507-43(a), Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 507-43 Filing notice, contents.** (a) Requirements. Any person claiming a lien shall apply therefor to the circuit court of the circuit where the property is situated. Such “Application For A Lien” shall be accompanied by a written “Notice Of Lien” setting forth the alleged facts by virtue of which the person claims a lien. A copy of the Application and Notice shall be served in the manner prescribed by law for service of summons upon the owner of the property and any person with an interest therein and upon the party or parties who contracted for the improvements if other than the owner of the property or any person with an interest therein. If any person entitled to notice cannot be served as herein provided, notice may be given the person by posting the same on the improvement. The Application shall set forth the amount of the claim, the labor or material furnished, a description of the property sufficient to identify the same, and any other matter necessary to a clear understanding of the claim. If the claim has been assigned, the name of the assignor shall be stated. The Application shall specify the names of the parties who contracted for the improvement, the name of the general contractor and the names of the owners of the property and any person with an interest therein. The Application may (but need not) specify the names of the mortgagees

or other encumbrancers of the property, if any, and the name of the surety of the general contractor, if any.

The Application and Notice shall be returnable not less than three nor more than ten days after service. On the return day, a hearing shall be held by the court to determine whether probable cause exists to permit the lien to attach to the property. Any person to whom notice is required to be given shall be permitted to offer testimony and documentary evidence on the issue of whether probable cause exists to permit the lien to attach. If the person who contracted for the improvement from which the requested lien arises claims a set-off against the lienor or if any person to whom notice is required to be given otherwise disputes the amount of the requested lien, the court shall hear and receive all admissible evidence offered and shall only permit the attachment of a lien in the net amount which the court determines is the reasonably probable outcome of any such dispute. The return day hearing may be continued at the order of the court so that the entire controversy need not be determined on the originally scheduled return day. The lien shall not attach to the property until the court finds probable cause exists and so orders. No such order shall be entered before the Application and Notice have been served on the party contracting for the improvement, the general contractor and the owner of the property, and they were given an opportunity to appear at the hearing."

SECTION 2. Section 507-43, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Time for filing. The Application and Notice shall be filed not later than forty-five days after the date of completion of the improvement against which it is filed. Where title to the property involved, or any portion thereof, is registered in the land court it shall be incumbent upon the lienor to file a certified copy of the Order Directing Lien To Attach in the office of the assistant registrar of the land court within seven days after the entry thereof in order to preserve his rights against subsequent encumbrancers and purchasers of the property."

SECTION 3. Section 507-43, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Joint owner. If the fee title to the land involved is held in joint or common ownership or as an estate by the entirety, service upon one of the owners of the Application and Notice in accordance with this section shall be deemed service upon all of the owners. Likewise, if the parties who contracted for the improvement, if other than the owner of fee title to the property involved, hold their interest in the premises in joint or common ownership, or as an estate by the entirety, service upon one of the parties of the Application and Notice in accordance with this section shall be deemed service upon all of the parties."

SECTION 4. Section 507-43, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Owner acting through attorney-in-fact. In cases where materials

have been furnished or labor was performed at the request, or upon the order, of a person acting under a duly executed and acknowledged power of attorney from the owner and (1) the power of attorney has not been revoked, or (2) the power of attorney has been revoked subsequent to the furnishing of materials and labor upon request or order and the owner cannot be found within the State, service of the Application and Notice upon the person acting under the power of attorney shall be deemed service upon the owner."

SECTION 5. Section 507-43, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Duration of lien. The lien shall expire three months after the entry of the Order Directing Lien to Attach unless proceedings are commenced within that time to collect the amount due thereon by enforcing the same."

SECTION 6. Section 507-44, Hawaii Revised Statutes, is amended to read as follows:

"**Sec. 507-44 Record in circuit courts.** The clerks at the circuit courts shall keep in their respective offices a book called "Notice of completion record" in which shall be entered a memorandum of each notice of completion filed and the date of filing, arranged alphabetically in the names of the owners. There shall also be kept a "mechanics' lien record" in which a memorandum of each Application and Notice filed shall be entered, arranged alphabetically in the names of the claimants and showing the amount of the lien or claim, the date of filing the Application and Notice, the date of the entry of the Order Directing Lien To Attach, the date of withdrawal, discharge or cancellation of the Application and Notice or of a lien which has been directed to attach, and any other matters deemed necessary."

SECTION 7. Section 507-47, Hawaii Revised Statutes, is amended to read as follows:

"**Sec. 507-47 Demand; enforcement; foreclosure, other attachment.** After demand and refusal of the amount due or upon neglect to pay same upon demand, the lien may be enforced by action filed in the circuit court of the circuit in which the property is situated. The demand may be included in the Application and Notice and when so included it shall not be necessary to make separate demand upon any other person. The complaint, in addition to setting forth a claim in the nature of assumpsit, may pray for the foreclosure of the lien as to which notice has been filed and may pray for any incidental relief according to the usual practice of courts of equity and according to this section in enlargement thereof. The owner or his assigns on whose property the lien has attached may file a third-party action against a licensed contractor whom he has paid for improvements as provided for in section 444-28(g), Hawaii Revised Statutes, as amended. All proceedings concerning the same improvement shall, unless good reason otherwise appears, be consolidated for trial and the court may order publication of notice of the pendency of the action. Any person having or claiming an interest in any such proceeding or in the property, including other claimants, lienors, encumbrancers, sureties, indemnitors and the contractors license board may be joined as parties, may be

interpleaded or may be permitted to intervene, under such orders as the court may enter. Interlocutory and final decrees for the foreclosure of the liens, for deficiency judgments, and relief against the parties liable therefor, and fixing the priority of liens between the mechanics and materialmen as a group and other parties having liens against or interests in the property shall be made and entered as near as may be in accordance with the practice on foreclosure of mortgages. If the property or proceeds realized upon the foreclosure sale are insufficient to satisfy all mechanic's and materialmen's liens filed against the same, the property or proceeds shall, after satisfaction of liens for wages for labor entitled to priority under section 507-46, be divided pro rata among the liens according to the principal amounts of the liens, without regard to the order or priority in which the respective Applications and Notices have been filed or the respective actions or interventions commenced.

The court having jurisdiction of the action to foreclose the lien shall have all of the powers pertaining to courts of equity, and in addition may direct the issuance of a writ of attachment or execution upon the motion of any party against the property of any other party, in the same manner as is provided in chapter 651 provided that the writ shall only issue where the claim upon which the motion therefor is based is upon a contract, express or implied, between the parties. In addition to costs of the action the court may allow any fee or fees for legal services rendered by the attorneys for any of the parties, and apportion the same as costs for payment by and between the parties or any of them, all as to the court seems equitable in the light of the services performed and the benefits derived therefrom by the parties respectively."

SECTION 8. Section 507-49(a), Hawaii Revised Statutes, is amended to read as follows:

**"Sec. 507-49 Exceptions.** (a) Anything contained in this part to the contrary notwithstanding, in connection with any repairs or improvements made or performed on property which before the repairs or improvements was used primarily for dwelling purposes, no lien shall exist either for the furnishing of materials to a general contractor as defined in this chapter or his subcontractor either of whom was not licensed pursuant to chapter 444 or if unreasonable advancement of credit was given by the furnisher of materials to the general contractor or subcontractor whether such person is licensed, unlicensed or exempted under chapter 444.

The issue of reasonable advancement of credit shall be decided by the circuit judge at the return day hearing provided for in section 507-43(c); provided that if a party affected by the lien does not appear at said return day hearing, he may raise the issue of unreasonable advancement of credit at any time prior to the entry of a final or interlocutory decree of foreclosure in the proceeding brought to enforce the lien under section 507-47. For the purposes of this section, if the furnisher of materials has secured a credit application form from the general contractor or the subcontractor to whom the materials were furnished or has reasonably inquired into the credit status of said general contractor or subcontractor, the advancement of credit by the furnisher of materials shall be prima facie reasonable.

## ACT 181

The credit application referred to herein shall be current and shall include at least the following information:

- A. For all persons:
  - 1. Name
  - 2. Address
  - 3. Type of business (Example—plumbing subcontractor)
  - 4. Date business started
  - 5. Contractor's license number
  - 6. Bonding companies generally used
  - 7. Banks used
  - 8. List of current creditors
  - 9. Balance sheet
  - 10. Total of all outstanding construction contracts \$\_\_\_\_\_
  - 11. Incompleted portion of all contracts \$\_\_\_\_\_
- B. In addition, for corporate accounts:
  - 1. Name of officers
  - 2. Authorized capital
  - 3. Paid in capital
- C. In addition, for noncorporate accounts:
  - 1. Names of partners, co-venturers, etc.

SECTION 9. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of the statutes need not include the brackets, the bracketed material, or the underscoring.\*

SECTION 10. This Act shall take effect upon its approval.

(Approved June 2, 1975.)

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\*Edited accordingly.