

RESOLUTION 04-04-2014

DIGEST

Mechanic's Lien: Dismissal for Failure to Prosecute Within Six Months

Amends Civil Code section 8462 to allow discretionary dismissal of complaint to enforce mechanic's lien if plaintiff fails to prosecute claim within six months of filing complaint.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Civil Code section 8462 to allow discretionary dismissal of complaint to enforce mechanic's lien if plaintiff fails to prosecute claim with six months of filing complaint. This resolution should be approved in principle because it would give the court the discretion to weed out cases that are not being reasonably prosecuted.

Currently, a plaintiff can file a case and then ignore it for up to two years by failing to have a summons issued. The defendant's property may become encumbered, causing lenders to withhold funds. The defendant's property may suffer increasing damage because the plaintiff refuses to prosecute or compromise its claim. This amendment would give the trial court discretion to dismiss a complaint to enforce a lien if the case is not brought to trial within six months after the action is commenced and will close the window to intentional non-meritorious delay.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 8462 to read as follows:

§ 8462

- 1 (a) Notwithstanding Section 583.420 of the Code of Civil Procedure, if an action to
- 2 enforce a lien is not brought to trial within two years after commencement of the action, the court
- 3 may in its discretion dismiss the action for want of prosecution.
- 4 (b) Notwithstanding Section 583.420 of the Code of Civil Procedure, if service is not
- 5 made within six months after the action is commenced, the court may in its discretion dismiss the
- 6 action for want of prosecution.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Sacramento County Bar Association

STATEMENT OF REASONS

The Problem: Existing law permits defendants to move for discretionary dismissal if service is not made within two years after the action is commenced. Code Civ. Proc. §583.420. Discretionary dismissal is also permitted if an action to enforce a mechanic's lien is not brought to trial within two years after commencement. Civ. Code §8462. Plaintiffs must commence actions within 90 days after recording their mechanic's lien to preserve their rights. Civ. Code §8460. An action is commenced when the complaint is filed, not when the summons is issued. Code Civ. Proc. §350. Currently, plaintiffs may preserve their rights to a mechanic's lien by filing a complaint to enforce the lien, but don't need to have a summons issued. Plaintiffs who fail to have the summons issued may then choose to not prosecute the action while the defendant is damaged during this "limbo" period. The Trial Court Delay Reduction Act, Case Management Program, California Rules of Court, and Civil Code are not effectively addressing this "limbo" period.

The Solution: When a mechanic's lien is filed, the defendant's property is encumbered and lenders may withhold funds. The defendant is continuously damaged while the action is pending. Commencing the action, but failing to serve the defendant, places enormous pressure on the defendant to settle the action without being able to defend their position on the merits. This resolution will help close the "limbo" period by creating an earlier avenue for requesting discretionary dismissal. This resolution will provide the defendant with a possible remedy against plaintiffs who intentionally delay prosecution by failing to have their summons issued. It will also encourage plaintiffs prosecute their actions. Making discretionary dismissal will allow the court to consider uncontrollable delays due to court processing times. Discretionary dismissal will also permit the court to take into consideration the actions of plaintiffs who are actively attempting to prosecute the matter.

LEGISLATIVE HISTORY

Not known.

IMPACT STATEMENT

The proposed resolution does not affect any other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: Trevor Carson, Carson & Kyung, A Law Corporation, 2377 Gold Meadow Way, Suite 220, Gold River, CA 95670; (916) 241-3336; tcarson@carsonkyung.com

RESPONSIBLE FLOOR DELEGATE: Trevor Carson