State of Tennessee

PUBLIC CHAPTER NO. 117

SENATE BILL NO. 877

By Gardenhire

Substituted for: House Bill No. 1183

By Daniel

AN ACT to amend Tennessee Code Annotated, Title 66, Chapter 11, relative to mechanics' and materialmen's liens.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 66-11-126, is amended by deleting the section in its entirety and substituting instead the following:

Liens under this chapter, except as provided in subdivision (5)(A), shall be enforced only by the filing of an action seeking the issuance of an attachment in the manner as follows:

(1) For a prime contractor, the lien shall be enforced in a court of law or equity by complaint and writ of attachment or in a court of general sessions having jurisdiction by a warrant for the sum claimed and writ of attachment, filed under oath, setting forth the facts, describing the real property, with process to be served on the person or persons whose interests the prime contractor seeks to attach and sell;

(2) For a remote contractor, the lien shall be enforced in a court of law or equity by complaint and writ of attachment or in a court of general sessions having jurisdiction by a warrant for the sum claimed and writ of attachment, filed under oath, setting forth the facts and describing the real property with process to be served on the person or persons whose interests the remote contractor seeks to attach and sell. In the discretion of the plaintiff or complainant, the complaint or warrant may also be served on the prime contractor or remote contractor in any degree, with whom the plaintiff or complainant is in contractual privity. In either event, the person or persons whose interest the remote contractor seeks to attach and sell shall have the right to make the prime contractor or remote contractor a defendant by third-party complaint or cross-claim as is otherwise provided by law;

(3) An action under this chapter is timely filed if a suit seeking the issuance of an attachment is filed within the applicable period of time, even if the attachment is not issued or served within the applicable period. The clerk of the court in which the suit is brought shall issue the attachment writ without obtaining fiat of a judge or chancellor;

(4) The clerk of the court to whom application for attachment is made shall, before issuing the attachment, require the plaintiff, or the plaintiff's agent or attorney to execute a bond with sufficient surety, payable to the defendant or defendants in the amount of one thousand dollars ($1,000) or the amount of the lien claimed, whichever is less; provided, that a party may petition the court for an increase in the amount for good cause shown, and conditioned that the plaintiff will prosecute the attachment with effect or, in case of failure, pay the defendant or defendants all costs that may be adjudged against the defendant or defendants and all such damages as the defendant or defendants may sustain by the wrongful suing out of the attachment; and

(5)(A) Where a bond has been provided pursuant to § 66-11-124, § 66-11-136, or § 66-11-142, an attachment on the real property shall not be necessary after the bond has been recorded, and the claim shall be enforced by an action on the bond before the circuit or chancery court, or before a court of general sessions where the amount is within its jurisdiction, filed under oath, setting forth the facts and describing the real property with process to be served on the obligors on the bond. In the discretion of the plaintiff or complainant, the complaint or warrant may also be served on the owner or owner's agent, prime contractor or remote contractor in any degree with whom the plaintiff is in contractual privity. In either event, the obligors on the bond shall have the right to make the owner or owner's agent, prime contractor, or any remote contractor of any degree a defendant by third-party complaint or cross-claim as is otherwise provided by law. Any action on the bond shall be filed in the county where any portion of the real property is located;

(B) Where a lien is enforced pursuant to this subdivision (5), or after suit is commenced on a bond provided pursuant to § 66-11-124, § 66-11-136, or § 66-11-142, the plaintiff shall, in case of failure to prosecute the suit with effect, pay the defendant or defendants all costs adjudged against the defendant or defendants and all the damages the defendant or defendants may sustain by the wrongful assertion of the lien; and

(C) Where an action is brought pursuant to this subdivision (5), or after suit is commenced on a bond provided pursuant to § 66-11-124, § 66-11-136, or § 66-11-142, the defendants shall retain all defenses to the validity of the underlying lien.

SECTION 2. Tennessee Code Annotated, Section 66-11-142, is amended by deleting subsection (b) in its entirety and substituting instead the following language:

(b)(1) When a prime contractor or remote contractor has provided a valid payment bond for the benefit of potential lien claimants, a copy of that bond may be recorded, in lieu of the recording of another bond, to discharge a lien asserted by the lien claimants. A copy of the bond may be recorded with the register of deeds in lieu of the bond provided in subsection (a) to discharge such a lien. Upon recording with the register of deeds, the contractor or owner shall notify the surety executing the bond, and the lien on the property shall be discharged. The person asserting the lien may make the obligors on the bond parties to any action to enforce the claim, and any judgment recovered may be against all or any of the obligors on the bond.

(2) The bond recorded pursuant to this subsection (b) shall:

(A) Be in a penal sum at least equal to the total of the original contract amount;

(B) Be in favor of the owner;

(C) Be executed by:

(i) The original contractor as principal; and

(ii) A sufficient corporate surety authorized and admitted to do business in this state and licensed by this state to execute bonds as surety; and

(D) Provide for payment of the lien claimant, whether the lien claimant was employed or contracted with by the person who originally contracted with the owner of the premises or by a remote contractor.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to any lien that attaches on or after that date.

SENATE BILL NO. 877

PASSED: March 30, 2015

RON RAMSEY
SPEAKER OF THE SENATE

BETH HARWELL, *SPEAKER*
HOUSE OF REPRESENTATIVES

APPROVED this 10th day of April 2015

BILL HASLAM, *GOVERNOR*