

Contractors That Allow Court Notices to Fall Through the Cracks Will Face Severe Consequences

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By **Nicholas D. Siegfried** | January 16, 2018



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In the case of *Rabil v. Seaside Builders*, a dispute arose between the homeowners and their contractor. Thereafter, the contractor recorded a construction lien against the property under Chapter 713, Florida Statutes, and filed suit. The homeowners responded by posting a lien transfer bond and recording a notice of contest of lien. The notice shortened the time for the contractor to file suit against the transfer bond from one year to 60 days. The clerk of court recorded a certificate of transfer of the lien to bond and mailed a copy to the contractor along with the notice of contest of lien.

When the contractor failed to file suit against the surety within 60 days of the recording of the notice of contest of lien as required under sections 713.22 and 713.24, Florida Statutes, the

homeowners moved to release the bond, dismiss the foreclosure complaint and discharge the lis pendens. The contractor responded by arguing the homeowners' motion should be denied based on "principles of equity and excusable neglect," noting that the company and its legal counsel were unaware of the lien transfer bond and the notice of contest until the homeowners requested to release the bond.

The lower court took issue with the homeowners' failure to send copies of the lien transfer bond and notice of contest to the contractor's counsel, and it found that the notice of contest failed to advise the contractor that it needed to file suit against the surety within 60 days. The homeowners responded that appropriate notice was given under the statute, but the court denied their motion and allowed the contractor to file an amended complaint naming the surety as a party.

In their subsequent appeal, the homeowners argued that the lien was transferred to the bond and the property was released from the lien. The clerk of court served a copy of the notice of contest on the contractor at the address shown on the claim of lien as required by the statute. Once the homeowners recorded a notice of contest of lien, the contractor had 60 days from service of the notice to file suit against the surety.

The contractor, which admitted that it received the notice, claims it was mishandled by an administrative assistant and was never delivered to a corporate officer or the company's legal counsel. It claims that the end result was that they did not receive notice until after the 60 days expired.

In essence, the contractor argued that the statutory notice provision of Section 713.22(2) violates due process because it does not require service on opposing counsel or that the lienor be informed that an additional suit must be filed.

The Fourth DCA's appellate panel was not swayed. Its unanimous opinion concluded that the legislature provided a statutory scheme, which the court must strictly construe. The homeowners complied with the statute, and the clerk properly noticed the contractor. When the contractor did not file suit against the surety within 60 days, the lien was automatically extinguished by operation of law, and the clerk was obligated to release the bond.

For Florida's construction industry, this ruling illustrates the strict requirements of the state's construction lien law as well as the critical nature of all communications and legal notices from the courts or from opposing litigants and their legal counsel. If lienors do not handle such notices with the highest level of priority, the ramifications can be extremely costly and severe. When it comes to communications from the courts involving ongoing litigation, nothing should be considered routine and unimportant, and everything must be consistently and immediately distributed to the appropriate company principals and legal counsel.

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