NO MECHANIC'S LIEN FOR LESSORS

The Kentucky Court of Appeals has settled a long-standing controversy by holding that one who merely leases machinery to a private construction project site may not claim a mechanic's lien for rent incurred. The case is Dirt & Rock Rentals, Inc. v. Irwin & Powell Construction, et al. (May 15, 1992)

The construction project in question was the Glenmary Subdivision in Jefferson County, Kentucky. Irwin & Powell had leased equipment from the appellant, Dirt & Rock Rentals, but did not pay the accrued rent upon the return of the machinery. Accordingly, Dirt & Rock attempted to file a mechanic's lien against the subdivision property after giving notice to the owner, who bonded off the mechanic's lien with its bonding company. When Dirt & Rock attempted to force payment of its past due rentals by filing a complaint to enforce the mechanic's lien, the Jefferson Circuit Court denied enforcement of the lien, and Dirt & Rock naturally appealed.

The appellee (owner) and bonding company again prevailed in the Court of Appeals. They argued that KRS 376.010 does not provide for a mechanic's lien to secure payment of rental charges of equipment and machinery. Historically, this has been the case unless a lessor actually provided labor in connection with the construction work. Dirt & Rock claimed in its appeal, however, that this long-standing rule had been changed in 1988 when the statute was amended to include a definition of "labor."

The pertinent part of the statute, along with its recent amendment, reads as follows:

> (1) Any person who performs labor or furnishes material... for the improvement in any manner of real property... by contract with, or by the written consent of, the owner, contractor, subcontractor, architect or authorized agent, shall have a lien thereon, and upon the land upon which the improvements were made or on any interest the owner has therein, to secure the amount thereof with interest as provided in KRS 360.040 and costs.
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> (5) For purposes of this section "labor" includes but is not limited to, all work done by teams, trucks, machinery, and mechanical equipment, whether the owner furnishes a driver or operator or not.

Dirt & Rock argued that equipment and machinery rental services fell within the category of "labor" as "work done by... machinery and mechanical equipment, whether the owner furnishes a driver or operator or not." The successful appellees countered the argument by comparing the statute in question with KRS 376.195, which provides definitions concerning liens on public projects, and which defines "supplies" as including "the agreed or reasonable rental price of equipment and machinery used in performing the work to be done." In other words, since the statute covering public improvements included rentals under "supplies," rentals can not be considered "labor" under the similar statute which covers nonpublic jobs.

The Court of Appeals concluded that the new definition of "labor" in KRS 376.010 "does no more than specify that a lien is conferred for work actually done by machinery, etc., not for the leasing of machinery to another who performs or has the work performed with the machinery."

The Court went further by suggesting to lessors of equipment how this setback could be remedied:

"It may be that logic favors that equipment and machinery rental charges should be lienable on private as well as public projects; however, this is a matter for legislative consideration. We may only enforce the statutes as written."

Your editor deems it only fair that the next legislature extend the same protection to lessors of machinery as it extends to other creditors of public construction jobs. Lessors will have to undertake an educational lobbying effort in Frankfort, however, to receive the equitable treatment they desire. ❑