

**RESOLUTION 08-14-04**

**DIGEST**

Small Claims Jurisdiction: To Include Mechanic's Lien

Amends Code of Civil Procedure section 116.220 to add to the jurisdiction of the small claims court proceedings to foreclose mechanic's liens on judgments of \$5,000.00 or less.

**RESOLUTIONS COMMITTEE RECOMMENDATION**

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure section 116.220 to add to the jurisdiction of the small claims court proceedings to foreclose mechanic's liens on judgments of \$5,000.00 or less. This resolution should be disapproved because litigants who bring claims in the small claims court and the presiding officers who often sit in such courts, often attorneys sitting pro tempore, have little or no experience with the technicalities associated with mechanics lien foreclosure proceedings.

Current jurisdiction of the small claims court does not provide for the power to issue a judgment ordering foreclosure of a mechanic's lien. This resolution would permit contractors to enforce small judgments, potentially resulting in foreclosure of valuable properties by courts without the requisite judicial training or experience generally necessary to properly handle such matters.

**TEXT OF RESOLUTION**

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 116.220 to read as follows:

- 1    § 116.220
- 2       (a) The small claims court shall have jurisdiction in the following actions:
- 3       (1) Except as provided in subdivisions (c), (e), and (f), for recovery of money, if
- 4    the amount of the demand does not exceed five thousand dollars (\$5,000).
- 5       (2) Except as provided in subdivisions (c), (e), and (f), to enforce payment of
- 6    delinquent unsecured personal property taxes in an amount not to exceed five thousand
- 7    dollars (\$5,000), if the legality of the tax is not contested by the defendant.
- 8       (3) To issue the writ of possession authorized by Sections 1861.5 and 1861.10 of
- 9    the Civil Code if the amount of the demand does not exceed five thousand dollars
- 10   (\$5,000).
- 11       (4) To issue a judgment ordering foreclosure on a mechanic's lien authorized by
- 12   Sections 3082-3154 and 3258-3268 of the Civil Code if the amount of the judgment does
- 13   not exceed five thousand dollars (\$5,000).
- 14       ~~(4)~~ (5) To confirm, correct, or vacate a fee arbitration award not exceeding five

15 thousand dollars (\$5,000) between an attorney and client that is binding or has become  
16 binding, or to conduct a hearing de novo between an attorney and client after nonbinding  
17 arbitration of a fee dispute involving no more than five thousand dollars (\$5,000) in  
18 controversy, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of  
19 Division 3 of the Business and Professions Code.

20 (b) In any action seeking relief authorized by subdivision (a), the court may grant  
21 equitable relief in the form of rescission, restitution, reformation, and specific  
22 performance, in lieu of, or in addition to, money damages. The court may issue a  
23 conditional judgment. The court shall retain jurisdiction until full payment and  
24 performance of any judgment or order.

25 (c) Notwithstanding subdivision (a), the small claims court shall have jurisdiction  
26 over a defendant guarantor who is required to respond based upon the default, actions, or  
27 omissions of another, only if the demand does not exceed (1) two thousand five hundred  
28 dollars (\$2,500), or (2) on and after January 1, 2000, four thousand dollars (\$4,000), if the  
29 defendant guarantor charges a fee for its guarantor or surety services or the defendant  
30 guarantor is the Registrar of the Contractors' State License Board.

31 (d) In any case in which the lack of jurisdiction is due solely to an excess in the  
32 amount of the demand, the excess may be waived, but any waiver shall not become  
33 operative until judgment.

34 (e) Notwithstanding subdivision (a), in any action filed by a plaintiff incarcerated  
35 in a Department of Corrections facility or a Youth Authority facility, the small claims  
36 court shall have jurisdiction over a defendant only if the plaintiff has alleged in the  
37 complaint that he or she has exhausted his or her administrative remedies against that  
38 department, including compliance with Sections 905.2 and 905.4 of the Government Code.  
39 The final administrative adjudication or determination of the plaintiff's administrative  
40 claim by the department may be attached to the complaint at the time of filing in lieu of  
41 that allegation.

42 (f) In any action governed by subdivision (e), if the plaintiff fails to provide proof  
43 of compliance with the requirements of subdivision (e) at the time of trial, the judicial  
44 officer shall, at his or her discretion, either dismiss the action or continue the action to give  
45 the plaintiff an opportunity to provide such proof.

46 (g) For purposes of this section, "department" includes an employee of a  
47 department against whom a claim has been filed under this chapter arising out of his or her  
48 duties as an employee of that department.

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

PROPONENT: Orange County Bar Association

#### STATEMENT OF REASONS

Existing Law: Does not expressly authorize a small claims court to issue a judgment ordering foreclosure on a mechanic's lien.

This Resolution: Would expressly authorize small claims court to issue a judgment ordering foreclosure on a mechanic's lien.

The Problem: One who bestows labor upon or furnishes material to a work of improvement (e.g. a construction contractor or one of the other persons listed in (Civil Code § 3110) has a constitutional right to a mechanic's lien. California Constitution, Article XIV, Section 3. *Connolly Dev., Inc. v. Superior Court* (1976) 17 C.3d 803. That right may be severely limited by a small claims court which does not view itself as authorized to do anything other than what it is currently expressly authorized to do under Code of Civil Procedure section 116.220 (which does not reference mechanic's liens). A builder who conducted quality work, but has not been paid all that it is owed (so long as the amount remaining owed is \$5,000.00 or less), should not be denied its mechanic's lien remedy in Small Claims Court and should not be required to pursue enforcement of its mechanic's lien remedy in the more costly (often cost prohibitive) forum of Superior Court.

## IMPACT STATEMENT

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

AUTHOR AND/OR PERMANENT CONTACT: Daryl J. Miller, Esq., Gladych & Associates, Inc., 4400 MacArthur, Suite 230, Newport Beach, CA 92660, voice 949-442-8942, mobile 949-678-1236, fax 949-442-8949, e-mail darylmil@yahoo.com

RESPONSIBLE FLOOR DELEGATE: Daryl J. Miller

## COUNTERARGUMENT

### **BAR ASSOCIATION OF NORTHERN SAN DIEGO**

A mechanic's lien is an extraordinary remedy that may require a property owner to pay for the same work twice - once to the general contractor who fails to pay a subcontractor or material supplier and again to the subcontractor or material supplier who perfects a mechanic's lien. Since such liens are extraordinary remedies, they are subject to 30 - 90 day statutes of limitations on filing the lien and the court action to foreclose the lien. The relaxed rules of evidence in Small Claims Court may be inappropriate for such a complex and extraordinary remedy. Mechanic's lien cases generally involve complex issues regarding the statutes of limitations, date the lien attaches to the property, date of completion of the work, date of preliminary notice, date of filing the lien, date of filing the action to foreclose, quality of work, compliance with licensing and other laws that will be time consuming and burdensome for the small claims court. Such cases will consume far more time than is generally allocated for cases in the Small Claims Court. The property owner will probably be unaware of the complicated statutes of limitations and defenses to this extraordinary remedy. In spite of the complex issues and defenses, the property owner will be denied defense counsel in Small Claims Court. Since even a small lien is a lien against the entire property, the property owner can lose the entire property. This loss can far exceed the jurisdictional limit of the Small Claims Court. The property owner can lose the entire property through the Small Claims Court lien, even though the property owner has already paid for the work once.