

2008

General Construction and Development, Inc. v. Peterson Plumbing Supply : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca3



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Paul D. Dodd; Fillmore Spencer; attorneys for appellee.

Dana T. Farmer, Garrett A. Walker; Smith Knowles; attorneys for appellant.

Recommended Citation

Brief of Appellant, *General Construction v. Peterson Plumbing*, No. 20080998 (Utah Court of Appeals, 2008).
https://digitalcommons.law.byu.edu/byu_ca3/1344

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

)	
GENERAL CONSTRUCTION)	
& DEVELOPMENT, INC., ET AL.;)	Appellate Case No. 20080998
)	
Plaintiffs and Appellees)	
)	ORAL ARGUMENT REQUESTED
v.)	
)	
PETERSON PLUMBING SUPPLY;)	REPORTED OPINION REQUESTED
)	
Defendant and Appellant)	
)	

**APPEAL FROM THE DECISION AND ORDER
OF THE HONORABLE SAMUEL D. MCVEY OF THE FOURTH JUDICIAL
DISTRICT COURT OF UTAH COUNTY, STATE OF UTAH**

Dana T. Farmer
Garrett A. Walker
Smith Knowles, P.C.
4723 Harrison Blvd., Suite 200
Ogden, UT 84403
Attorneys for Appellant

REF ID: A66666

)	
GENERAL CONSTRUCTION)	
& DEVELOPMENT, INC., ET AL.;)	Appellate Case No. 20080998
)	
Plaintiffs and Appellees)	
)	ORAL ARGUMENT REQUESTED
v.)	
)	
PETERSON PLUMBING SUPPLY;)	REPORTED OPINION REQUESTED
)	
Defendant and Appellant)	
)	

**APPEAL FROM THE DECISION AND ORDER
OF THE HONORABLE SAMUEL D. MCVEY OF THE FOURTH JUDICIAL
DISTRICT COURT OF UTAH COUNTY, STATE OF UTAH**

Dana T. Farmer
Garrett A. Walker
Smith Knowles, P.C.
4723 Harrison Blvd., Suite 200
Ogden, UT 84403
Attorneys for Appellant

PARTIES TO THE PROCEEDINGS

Pursuant to Rule 24(a)(1) of the Utah Rules of Appellate Procedure, the following is a complete list of all parties to the proceedings below that are involved in this Appeal:

General Construction & Development, Inc., Petitioner below, Appellee

Brandon D. Wilson, Petitioner below, Appellee

Justin A. Hutchins, Petitioner below, Appellee

Shanon Hutchins, Petitioner below, Appellee

Blake Walker, Petitioner below, Appellee

Brackus Luke Ray, Petitioner below, Appellee

Mary L. Doyl, Petitioner below, Appellee

Cliff Stradling, Petitioner below, Appellee

Lisa Stradling, Petitioner below, Appellee

James Harvey, Petitioner below, Appellee

Wendi Harvey, Petitioner below, Appellee

Julie Gray, Petitioner below, Appellee

Scott E. Wilson, Petitioner below, Appellee

Brittany Wilson, Petitioner below, Appellee

Andrew W. Young, Petitioner below, Appellee

Krista W. Young, Petitioner below, Appellee

James Purcell, Petitioner below, Appellee

Margaret Purcell, Petitioner below, Appellee

Nicholas S. Bernard, Petitioner below, Appellee

Ryan J. Bernard, Petitioner below, Appellee

Donald R. Rogers, Petitioner below, Appellee

Wendy Rogers, Petitioner below, Appellee

Pleasant Grove Property, LLC, Petitioner below, Appellee

Andrew Rammell, Petitioner below, Appellee

Robert M. Berry, Petitioner below, Appellee

Lyle E. Petersen, Petitioner below, Appellee

Scott Goodman, Petitioner below, Appellee

William Tipton, Petitioner below, Appellee

Chelsey Tipton, Petitioner below, Appellee

Peterson Plumbing Supply, Respondents below, Appellant

TABLE OF CONTENTS

PARTIES TO THE PROCEEDINGS.....	i
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES	v
JURISDICTIONAL STATEMENT	1
STATEMENT OF ISSUES PRESENTED FOR REVIEW	1
I. DID THE DISTRICT COURT ERR IN CONCLUDING THAT PETERSON’S MECHANICS’ LIEN NOTICES WERE NOT TIMELY? .	1
II. DID THE DISTRICT COURT ERR IN CONCLUDING THAT PETERSON’S MECHANICS’ LIENS WERE WRONGFUL LIENS?	1
STATUTES DETERMINATIVE ON APPEAL	2
I. UTAH CODE ANN. § 38-1-3 (2008).	2
II. UTAH CODE ANN. § 38-1-7 (2008).	2
III. UTAH CODE ANN. § 38-9-1 (2008).	4
IV. UTAH CODE ANN. § 38-9-2 (2008).	5
STATEMENT OF THE CASE.....	5
I. NATURE OF THE CASE.	5
II. COURSE OF PROCEEDINGS.	6
III. DISPOSITION IN THE COURT BELOW.	7
STATEMENT OF FACTS	8
SUMMARY OF THE ARGUMENTS	9
I. THE DISTRICT COURT ERRED IN CONCLUDING THAT THE MECHANICS’ LIEN NOTICES FILED BY PETERSON PLUMBING SUPPLY WERE NOT TIMELY.	9
II. THE DISTRICT COURT ERRED IN CONCLUDING THAT PETERSON PLUMBING SUPPLY’S MECHANICS’ LIENS WERE WRONGFUL LIENS.	10

ARGUMENTS.....11

I. THE DISTRICT COURT ERRED IN CONCLUDING THAT THE MECHANICS’ LIEN NOTICES FILED BY PETERSON PLUMBING SUPPLY WERE NOT TIMELY..... 11

II. THE DISTRICT COURT ERRED IN CONCLUDING THAT PETERSON PLUMBING SUPPLY’S MECHANICS’ LIENS WERE WRONGFUL LIENS. 15

A. Peterson Plumbing Supply’s Mechanics’ Liens are Expressly Authorized by Statute. 16

B. Peterson Plumbing Supply is “Entitled to a Lien under Section 38-1-3.”..... 20

CONCLUSION.....27

ADDENDUM28

CERTIFICATE OF SERVICE29

TABLE OF AUTHORITIES

Cases

Anderson v. Wilshire Investments, L.L.C., 2005 UT 59, 123 P.3d 393 (Utah 2005)	18
Carrier v. Salt Lake County, 2004 UT 98, 104 P.3d 1208 (Utah 2004)	13, 21
Foothill Park, LC v. Judston, Inc., 2008 UT App 113, 182 P.3d 924 (Utah Ct. App. 2008)	1, 2, 6, 16, 20, 24
Hutter v. Dig-It, Inc., 2009 UT 69	10, 14, 16, 17, 23, 24
Labelle v. McKay Dee Hosp. Center, 2004 UT 15, 89 P.3d 113 (Utah 2004)	20
Oman v. Davis Sch. Dist., 2008 UT 70, 194 P.3d 956 (Utah 2008)	23
Sill v. Hart, 2007 UT 45, 162 P.3d 1099 (Utah 2007)	14
West Jordan v. Morrison, 656 P.2d 445 (Utah 1982)	12
Wilson v. Valley Mental Health, 969 P.2d 416 (Utah 1998)	12

Statutes

UTAH CODE ANN. § 38-1-11 (2008)	21
UTAH CODE ANN. § 38-1-3 (1997)	22
UTAH CODE ANN. § 38-1-3 (2008)	2, 5, 20, 21, 22, 24, 27
UTAH CODE ANN. § 38-1-3 (2009)	22
UTAH CODE ANN. § 38-1-7 (2008)	2, 5, 10, 11, 12, 13, 14, 15, 21
UTAH CODE ANN. § 38-1-7 (2009)	12, 13, 14, 15
UTAH CODE ANN. § 38-9-1 (1985)	24, 25
UTAH CODE ANN. § 38-9-1 (1997)	25, 26
UTAH CODE ANN. § 38-9-1 (2008)	4, 10, 16, 18, 23
UTAH CODE ANN. § 38-9-2 (1997)	26

UTAH CODE ANN. § 38-9-2 (2008)	5, 10, 16, 20, 21, 22, 23
UTAH CODE ANN. § 38-9-2 (2009)	26
UTAH CODE ANN. § 38-9-3 (1997)	25
UTAH CODE ANN. § 38-9-3 (2008)	18
UTAH CODE ANN. § 38-9-4 (1985)	25
UTAH CODE ANN. § 38-9-6 (2008)	19
UTAH CODE ANN. § 38-9-7 (1997)	25
UTAH CODE ANN. § 38-9-7 (2008)	7, 18
UTAH CODE ANN. § 78A-3-102 (2009).....	1

JURISDICTIONAL STATEMENT

The Supreme Court has jurisdiction to review this matter pursuant to Utah Code § 78A-3-102(3)(j). *See* UTAH CODE ANN. § 78A-3-102(3)(j) (2009).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. DID THE DISTRICT COURT ERR IN CONCLUDING THAT PETERSON'S MECHANICS' LIEN NOTICES WERE NOT TIMELY?

Standard of Review

Since the facts are not disputed, the issue of whether Peterson Plumbing Supply's mechanics' lien notices were timely filed is a question of statutory interpretation and therefore constitutes a question of law for which "no deference need be given the trial court's conclusions." Foothill Park, LC v. Judston, Inc., 2008 UT App 113, ¶ 4, 182 P.3d 924, 926 (Utah Ct. App. 2008).

Preservation for Appeal

This issue was preserved for appeal by being addressed in Peterson Plumbing Supply's Memorandum in Opposition to Verified Petition to Nullify Liens and Memorandum [R. 91-95] and in oral argument before the district court on October 8, 2008 [R. 287-98].

II. DID THE DISTRICT COURT ERR IN CONCLUDING THAT PETERSON'S MECHANICS' LIENS WERE WRONGFUL LIENS?

Standard of Review

Since the facts are not disputed, the issue of whether Peterson Plumbing Supply's mechanics' liens were wrongful liens is a question of statutory interpretation and

therefore constitutes a question of law for which “no deference need be given the trial court’s conclusions.” Foothill Park, LC v. Judston, Inc., 2008 UT App 113, ¶ 4, 182 P.3d 924, 926 (Utah Ct. App. 2008).

Preservation for Appeal

This issue was preserved for appeal by being addressed in Peterson Plumbing Supply’s Memorandum in Opposition to Verified Petition to Nullify Liens and Memorandum [R. 91-95] and in oral argument before the district court on October 8, 2008 [R. 287-98].

STATUTES DETERMINATIVE ON APPEAL

I. UTAH CODE ANN. § 38-1-3 (2008).

Contractors, subcontractors, and all persons performing any services or furnishing or renting any materials or equipment used in the construction, alteration, or improvement of any building or structure or improvement to any premises in any manner and licensed architects and engineers and artisans who have furnished designs, plats, plans, maps, specifications, drawings, estimates of cost, surveys or superintendence, or who have rendered other like professional service, or bestowed labor, shall have a lien upon the property upon or concerning which they have rendered service, performed labor, or furnished or rented materials or equipment for the value of the service rendered, labor performed, or materials or equipment furnished or rented by each respectively, whether at the instance of the owner or of any other person acting by his authority as agent, contractor, or otherwise except as the lien is barred under Section 38-11-107 of the Residence Lien Restriction and Lien Recovery Fund Act. This lien shall attach only to such interest as the owner may have in the property

II. UTAH CODE ANN. § 38-1-7 (2008).

(1)(a)(i) Except as modified in Section 38-1-27, a person claiming benefits under this chapter shall file for record with the county recorder of the county in which the property, or some part of the property, is situated, a written notice to hold and claim a lien within: (A) 180 days after the day on which occurs final completion of the original contract if no notice of completion is filed under Section 38-1-33; or (B) 90 days after the day on which a notice of completion is filed under Section 38-1-33. (ii) For purposes of this Subsection

(1), final completion of the original contract, and for purposes of Section 38-1-33, final completion of the project, means: (A) if as a result of work performed under the original contract a permanent certificate of occupancy is required for the work, the date of issuance of a permanent certificate of occupancy by the local government entity having jurisdiction over the construction project; (B) if no certificate of occupancy is required by the local government entity having jurisdiction over the construction project, but as a result of the work performed under the original contract an inspection is required as per state-adopted building codes for the work, the date of the final inspection for the work by the local government entity having jurisdiction over the construction project; or (C) if with regard to work performed under the original contract no certificate of occupancy and no final inspection are required as per state-adopted building codes by the local government entity having jurisdiction over the construction project, the date on which there remains no substantial work to be completed to finish the work on the original contract.

(b) Notwithstanding Section 38-1-2, where a subcontractor performs substantial work after the applicable dates established by Subsections (1)(a)(ii)(A) and (B), that subcontractor's subcontract shall be considered an original contract for the sole purpose of determining: (i) the subcontractor's time frame to file a notice of intent to hold and claim a lien under this Subsection (1); and (ii) the original contractor's time frame to file a notice of intent to hold and claim a lien under this Subsection (1) for that subcontractor's work.

(c) For purposes of this chapter, the term "substantial work" does not include: (i) repair work; or (ii) warranty work.

(d) Notwithstanding Subsection (1)(a)(ii), final completion of the original contract does not occur if work remains to be completed for which the owner is holding payment to ensure completion of that work.

(2)(a) The notice required by Subsection (1) shall contain a statement setting forth: (i) the name of the reputed owner if known or, if not known, the name of the record owner; (ii) the name of the person: (A) by whom the lien claimant was employed; or (B) to whom the lien claimant furnished the equipment or material; (iii) the time when: (A) the first and last labor or service was performed; or (B) the first and last equipment or material was furnished; (iv) a description of the property, sufficient for identification; (v) the name, current address, and current phone number of the lien claimant; (vi) the amount of the lien claim; (vii) the signature of the lien claimant or the lien claimant's authorized agent; (viii) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording of Documents; and (ix) if the lien is on an owner-occupied residence, as defined in Section 38-11-102, a statement describing what steps an owner, as defined in Section 38-11-102, may take to require a lien claimant to remove the lien in accordance

with Section 38-11-107.

(b) Substantial compliance with the requirements of this chapter is sufficient to hold and claim a lien.

(3)(a) Within 30 days after filing the notice of lien, the lien claimant shall deliver or mail by certified mail a copy of the notice of lien to: (i) the reputed owner of the real property; or (ii) the record owner of the real property.

(b) If the record owner's current address is not readily available to the lien claimant, the copy of the claim may be mailed to the last-known address of the record owner, using the names and addresses appearing on the last completed real property assessment rolls of the county where the affected property is located.

(c) Failure to deliver or mail the notice of lien to the reputed owner or record owner precludes the lien claimant from an award of costs and attorneys' fees against the reputed owner or record owner in an action to enforce the lien.

(4) The Division of Occupational and Professional Licensing shall make rules governing the form of the statement required under Subsection (2)(a)(ix).

III. UTAH CODE ANN. § 38-9-1 (2008).

As used in this chapter:

(1) "Interest holder" means a person who holds or possesses a present, lawful property interest in certain real property, including an owner, title holder, mortgagee, trustee, or beneficial owner.

(2) "Lien claimant" means a person claiming an interest in real property who offers a document for recording or filing with any county recorder in the state asserting a lien, or notice of interest, or other claim of interest in certain real property.

(3) "Owner" means a person who has a vested ownership interest in certain real property.

(4) "Record interest holder" means a person who holds or possesses a present, lawful property interest in certain real property, including an owner, titleholder, mortgagee, trustee, or beneficial owner, and whose name and interest in that real property appears in the county recorder's records for the county in which the property is located.

(5) "Record owner" means an owner whose name and ownership interest in certain real property is recorded or filed in the county recorder's records for the county in which the

property is located.

(6) “Wrongful lien” means any document that purports to create a lien, notice of interest, or encumbrance on an owner's interest in certain real property and at the time it is recorded or filed is not: (a) expressly authorized by this chapter or another state or federal statute; (b) authorized by or contained in an order or judgment of a court of competent jurisdiction in the state; or (c) signed by or authorized pursuant to a document signed by the owner of the real property.

IV. UTAH CODE ANN. § 38-9-2 (2008).

(1)(a) The provisions of Sections 38-9-1, 38-9-3, 38-9-4, and 38-9-6 apply to any recording or filing or any rejected recording or filing of a lien pursuant to this chapter on or after May 5, 1997. (b) The provisions of Sections 38-9-1 and 38-9-7 apply to all liens of record regardless of the date the lien was recorded or filed. (c) Notwithstanding Subsections (1)(a) and (b), the provisions of this chapter applicable to the filing of a notice of interest do not apply to a notice of interest filed before May 5, 2008.

(2) The provisions of this chapter shall not prevent a person from filing a lis pendens in accordance with Section 78B-6-1303 or seeking any other relief permitted by law.

(3) This chapter does not apply to a person entitled to a lien under Section 38-1-3 who files a lien pursuant to Title 38, Chapter 1, Mechanics’ Liens.

STATEMENT OF THE CASE

I. NATURE OF THE CASE.

This case presents two question of statutory interpretation: (1) whether or not a mechanics’ lien notice is timely filed under Utah Code § 38-1-7 (2008) when the notice of lien is filed within 90 days of the filing of a notice of completion but later than 180 days after final completion of the original contract; and if not, (2) whether an untimely mechanics’ lien notice filed by a party entitled to a lien under Utah Code § 38-1-3 (2008) renders the mechanics’ lien wrongful under Utah’s Wrongful Lien Act.

Appellant Peterson Plumbing Supply is a plumbing materials supplier that supplied materials for the construction of Appellee Petitioners' condominiums. Peterson Plumbing Supply was not fully paid for the plumbing materials. Certificates of occupancy were issued for the condominiums between October and December of 2007. These certificates evidence final completion of the original contract. Thereafter, notices of completion for the condominiums were filed in July and August of 2008. Mechanics' lien notices were also filed by Peterson Plumbing Supply in July and August of 2008.

Petitioners argued before the district court that Peterson Plumbing Supply's mechanics' lien notices were not timely since they were filed more than 180 days after final completion of the original contracts even though they were filed within 90 days of the filing of the notices of completion. Therefore, according to Petitioners, Peterson Plumbing Supply's mechanics' liens were wrongful liens based on Foothill Park, LC v. Judston, Inc., 2008 UT App 113, 182 P.3d 924 (Utah Ct. App. 2008).

Conversely, Peterson Plumbing Supply argued before the district court that its mechanics' lien notices were timely since they were filed within 90 days of the filing of the notices of completion. In addition, Peterson Plumbing Supply argued that its mechanics' liens were not wrongful liens even if the lien notices were not timely filed.

II. COURSE OF PROCEEDINGS.

1. On September 17, 2008, Petitioners filed their Verified Petition to Nullify Liens and Memorandum [R. 1-73].

2. On October 1, 2008, Peterson Plumbing Supply filed its Memorandum in Opposition to Verified Petition to Nullify Liens and Memorandum [R. 91-95].
3. On October 8, 2008, Petitioners filed their Reply Memorandum in Support of Petition to Nullify Liens [R. 99-103].
4. On October 8, 2008, a Hearing was held before Honorable Samuel D. McVey, Fourth District Court, Utah County, Provo Department, State of Utah, pursuant to Utah Code § 38-9-7 (2008), wherein the court granted Petitioners Verified Petition to Nullify Liens [R. 98, 271-323].
5. On November 14, 2008, the district court entered its Order on Petition to Nullify Liens [R. 107-09].
6. On December 4, 2008, Peterson Plumbing Supply filed its Petition for Interlocutory Appeal with this Court. [R. 120].
7. On February 18, 2009, this Court granted Peterson Plumbing Supply's Petition for Interlocutory Appeal [R. 262].

III. DISPOSITION IN THE COURT BELOW.

On November 14, 2008, the district court entered its Order on Petition to Nullify Liens wherein the court concluded that the mechanics' lien notices filed by Peterson Plumbing Supply were not timely filed and that therefore Peterson Plumbing Supply's mechanics' liens were wrongful liens pursuant to Utah Code § 38-9-7 (2008).

STATEMENT OF FACTS

1. Appellee Petitioners are the owners of certain individual condominiums which are part of multi-unit buildings located in Pleasant Grove City, Utah [R. 70-73; 320, ¶¶ 1-12].
2. Appellant Peterson Plumbing Supply is a plumbing materials supplier that supplied materials for the construction of Petitioners' condominiums [R. 320, ¶¶ 21-23].
3. The plumbing materials supplied by Peterson Plumbing Supply were supplied pursuant to a contract with Pace Plumbing, Inc. [R. 70, ¶ 26].
4. Petitioner General Construction & Development, Inc. contracted with Pace Plumbing, Inc. to do plumbing work on the condominiums [R. 70, ¶ 24].
5. Petitioner General Construction & Development, Inc. developed and built the condominiums [R. 72, ¶ 2].
6. Peterson Plumbing Supply was not fully paid by Pace Plumbing, Inc. for the plumbing materials supplied for the construction of Petitioners' condominiums [R. 4, 6, 8, 9, 13-16, 18, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47].
7. Peterson Plumbing Supply filed mechanics' lien notices against the condominiums as set forth in the following schedule:

Building	Cert of Occupancy	Notice of Completion	Date of Lien
n	October 11, 2007	July 29, 2008	August 6, 2008
v	November 14, 2007	July 29, 2008	August 6, 2008

w	October 25, 2007	July 29, 2008	August 6, 2008
x	December 17, 2007	August 8, 2008	July 1, 2008
y	December 4, 2007	August 8, 2008	August 21, 2008

[R. 4-49, 93-94, 102, 320-22].

8. Each mechanics' lien notice was filed within 90 days after a notice of completion was filed in the Utah State Construction Registry for each of the condominiums as set forth in the foregoing schedule [R. 93-94, 320-22].

9. Each mechanics' lien notice was filed more than 180 days after final completion of the original contract for each of the condominiums as established by the certificates of occupancy and as set forth in the foregoing schedule [R. 93-94, 320-22].

SUMMARY OF THE ARGUMENTS

I. THE DISTRICT COURT ERRED IN CONCLUDING THAT THE MECHANICS' LIEN NOTICES FILED BY PETERSON PLUMBING SUPPLY WERE NOT TIMELY.

The district court held that the mechanics' lien notices filed by Peterson Plumbing Supply were not timely filed since they were filed more than 180 days after final completion of the original contracts. However, Utah Code § 38-1-7 (2008) provides that mechanics' lien notices are required to be filed "within: (A) 180 days after the day on which occurs final completion of the original contract if no notice of completion is filed

under Section 38-1-33; or (B) 90 days after the day on which a notice of completion is filed under Section 38-1-33.” UTAH CODE ANN. § 38-1-7(1)(a)(i) (2008).

A notice of completion was filed for each of the condominiums upon which Peterson Plumbing Supply filed a mechanics’ lien notice. Accordingly, the 180 day deadline set forth in section 38-1-7(1)(a)(i) was expressly inapplicable. Since Peterson Plumbing Supply’s mechanics’ lien notices were filed within 90 days of the filing of the notices of completion, its mechanics’ liens were timely.

II. THE DISTRICT COURT ERRED IN CONCLUDING THAT PETERSON PLUMBING SUPPLY’S MECHANICS’ LIENS WERE WRONGFUL LIENS.

The district court held that Peterson Plumbing Supply’s mechanics’ liens were wrongful under Utah’s Wrongful Lien Act based upon its conclusion that the mechanics’ lien notices filed by Peterson Plumbing Supply were not timely. However, Peterson Plumbing Supply’s mechanics’ liens do not fall within the definition of “wrongful lien” under Utah’s Wrongful Lien Act since mechanics’ liens are “expressly authorized” by statute. *See* UTAH CODE ANN. § 38-9-1(6) (2008); Hutter v. Dig-It, Inc., 2009 UT 69, ¶ 52.

Furthermore, Peterson Plumbing Supply was “entitled to a lien under Section 38-1-3” of Utah’s Mechanics’ Lien Act regardless of whether its mechanics’ liens were enforceable. *See* UTAH CODE ANN. § 38-9-2(3) (2008). Accordingly, the district court erred by nullify Peterson Plumbing Supply’s mechanics’ liens under Utah’s Wrongful Lien Act.

ARGUMENTS

I. THE DISTRICT COURT ERRED IN CONCLUDING THAT THE MECHANICS' LIEN NOTICES FILED BY PETERSON PLUMBING SUPPLY WERE NOT TIMELY.

The facts pertinent to this appeal are straightforward. With respect to each condominium, Peterson Plumbing Supply filed a mechanics' lien notice within 90 days of the filing of a notice of completion but later than 180 days after final completion of the original contract [R. 93-94, 320-22]. In finding that Peterson Plumbing Supply's liens were untimely, the district court interpreted Utah Code § 38-1-7 (2008) as (1) creating a maximum lien filing deadline of 180 days from final completion of the original contract, and (2) providing that the filing of a notice of completion can only reduce, not extend, the 180 day deadline [R. 279].

This interpretation of Utah Code § 38-1-7 (2008) is inconsistent with its plain and unambiguous language, which provides that mechanics' lien claimants

shall file for record with the county recorder of the county in which the property, or some part of the property, is situated, a written notice to hold and claim a lien *within: (A) 180 days after the day on which occurs final completion of the original contract **if no notice of completion is filed under Section 38-1-33; or (B) 90 days after the day on which a notice of completion is filed under Section 38-1-33.***

UTAH CODE ANN. § 38-1-7(1)(a)(i) (2008) (emphasis added).

Under the rules of this Court, “[w]hen examining a statute, we look first to its plain language as the best indicator of the legislature’s intent and purpose in passing the statute. *Only* if that language is ambiguous do we then turn to a consideration of

legislative history and relevant policy considerations.” Wilson v. Valley Mental Health, 969 P.2d 416, 418 (Utah 1998) (emphasis added). Furthermore,

a statute should be applied according to its literal wording unless it is unreasonably confused or inoperable. We must assume that each term in the statute was used advisedly by the Legislature and that each should be interpreted and applied according to its usually accepted meaning. Where the ordinary meaning of the terms results in an application that is neither unreasonably confused, inoperable, nor in blatant contradiction to the express purpose of the statute, it is not the duty of this Court to assess the wisdom of the statutory scheme.

West Jordan v. Morrison, 656 P.2d 445, 446 (Utah 1982).

Interpreting Utah Code § 38-1-7 (2008) pursuant to the ordinary meaning of its literal wording is not confusing, does not render the statute inoperable, and would not result in an application of the statute in blatant contradiction to the express purpose of the statute (which is to define the time within which a notice of mechanics’ lien must be filed). Rather, the plain language of Utah Code § 38-1-7 (2008) manifests that the legislature intended to limit the time within which to file a mechanics’ lien notice to 180 days after final completion of the original contract only when “no notice of completion is filed.” *See* UTAH CODE ANN. § 38-1-7 (2008).

If a notice of completion is filed, the plain and unambiguous language of the statute requires that the lien be filed within “90 days after the day on which a notice of completion is filed.” *See id.* The accuracy of this interpretation is apparent when Utah Code § 38-1-7 (2008) is contrasted with its amended version, Utah Code § 38-1-7 (2009). The 2008 version provides that mechanics’ lien claimants

shall file for record with the county recorder of the county in which the property, or some part of the property, is situated, a written notice to hold and claim a lien **within**: (A) 180 days after the day on which occurs final completion of the original contract **if no notice of completion is filed under Section 38-1-33; or (B) 90 days after the day on which a notice of completion is filed under Section 38-1-33.**

UTAH CODE ANN. § 38-1-7(1)(a)(i) (2008) (emphasis added). In contrast, the 2009 version provides that mechanics' lien claimants

shall file for record with the county recorder of the county in which the property, or some part of the property, is situated, a written notice to hold and claim a lien **no later than**: [(1)(a)(i)](A) 180 days after the day on which occurs final completion of the original contract if no notice of completion is filed under Section 38-1-33; or [(1)(a)(i)](B) 90 days after the day on which a notice of completion is filed under Section 38-1-33 **but not later than the time frame established in Subsection (1)(a)(i)(A).**

UTAH CODE ANN. § 38-1-7(1)(a)(i) (2009) (emphasis added).¹

The 2009 version contains a 180 day maximum with a potential notice of completion limitation, but the 2008 version does not contain any such limitation. Rather, the 180 day period is an alternative to the notice of completion deadline. To hold as the district court did requires this Court to amend the plain language of Utah Code § 38-1-7 (2008) to reflect the policy added to the statute by the legislature in 2009. As noted by this Court, “we should give effect to any omission in the [statutory] language by presuming that the omission is purposeful.” Carrier v. Salt Lake County, 2004 UT 98, ¶ 30, 104 P.3d 1208, 1216 (Utah 2004) (internal quotation marks and citations omitted).

¹ The 2009 version had not yet been enacted when the district court made its determination that Peterson Plumbing Supply's liens were not timely under Utah Code § 38-1-7 (2008).

Furthermore, this Court acknowledged that “[t]he purpose and intent of Utah's Mechanics’ Lien Act . . . manifestly has been to protect, at all hazards, those who perform the labor and furnish the materials which enter into the construction of a building or other improvement. Lien statutes should be broadly construed to effectuate that purpose.” Sill v. Hart, 2007 UT 45, ¶ 8, 162 P.3d 1099, 1102-03 (Utah 2007) (internal quotation marks and citations omitted). In light of this standard, the narrow construction adopted by the district court is the antitheses of broadly construing the statute for the purpose of protecting laborers and material suppliers.

Notably the 2009 amendment to Utah Code § 38-1-7 is a substantive change and not a mere clarification of the law. While recently interpreting another section of Utah’s Mechanics’ Lien Act, this Court observed the following:

While it is true that an amendment to an ambiguous statute may indicate a legislative purpose to clarify the ambiguities in the statute rather than to change the law, this is not the general rule, and this view of an amendment should be taken only where there is a strong indication that clarification was, in fact, the legislative intent.

Hutter v. Dig-It, Inc., 2009 UT 69, ¶ 16 (internal quotations and footnote omitted). Utah Code § 38-1-7 (2008) is not an ambiguous statute: its meaning is clear especially when its plain language is contrasted with the plain language of Utah Code § 38-1-7 (2009). Furthermore, there is no evidence that the legislature intended for Utah Code § 38-1-7 (2009) to clarify Utah Code § 38-1-7 (2008).

It is undisputed that Peterson Plumbing Supply filed its mechanics’ lien notice for each of the condominium within 90 days after each applicable notice of completion was

filed [R. 93-94, 320-22]. In consideration of the foregoing, the Court should find that Peterson Plumbing Supply's mechanics' lien notices were timely filed under a plain language interpretation of Utah Code § 38-1-7 (2008) for the following reasons: (1) it is presumed that the legislature chose its words advisedly in crafting Utah Code § 38-1-7 (2008); (2) the language of Utah Code § 38-1-7 (2008) is not ambiguous; (3) applying Utah Code § 38-1-7 (2008) according to its literal wording does not render it confusing, inoperable, or contradictory to the purpose of the statute; (4) lien statutes should be broadly construed to protect those furnishing labor and materials to construction projects; and (5) Utah Code § 38-1-7 (2009) created a substantive change in the law as opposed to a mere clarification of the law and is therefore not applicable other than as a contrast to demonstrate the plain meaning of Utah Code § 38-1-7 (2008).

II. THE DISTRICT COURT ERRED IN CONCLUDING THAT PETERSON PLUMBING SUPPLY'S MECHANICS' LIENS WERE WRONGFUL LIENS.

Peterson Plumbing Supply's liens are not wrongful under Utah's Wrongful Lien Act regardless of whether the Court finds that its liens were untimely because timing has no effect on whether a mechanics' lien is wrongful. In nullifying Peterson Plumbing Supply's liens, the district court found that the Utah Court of Appeals' holding in *Foothill Park*, a seminal interpretation of Utah Code § 38-9-2(3), mandated the conclusion that untimely mechanics' liens are wrongful liens [R. 278-80].

However, the Court of Appeals failed to consider whether mechanics' liens are "expressly authorized by . . . statute." See Foothill Park, LC v. Judston, Inc., 2008 UT

App 113, 182 P.3d 924 (Utah Ct. App. 2008). Since mechanics' liens are "expressly authorized by . . . statute," they fall outside the Wrongful Lien Act's definition of "wrongful lien." *See* UTAH CODE ANN. § 38-9-1(6) (2008); Hutter v. Dig-It, Inc., 2009 UT 69, ¶ 52.

Furthermore, the Court of Appeals failed to utilize the rules of statutory construction in its analysis of Utah Code § 38-9-2(3). *See* Foothill Park, LC v. Judston, Inc., 2008 UT App 113, ¶ 19, 182 P.3d 924, 930 (Utah Ct. App. 2008). A more thorough interpretation of Utah Code § 38-9-2(3) leads to the conclusion that the Wrongful Lien Act is not applicable to this case since Peterson Plumbing Supply was "entitled to a lien under Section 38-1-3." *See* UTAH CODE ANN. § 38-9-2(3) (2008).

A. Peterson Plumbing Supply's Mechanics' Liens are Expressly Authorized by Statute.

The Wrongful Lien Act's definition of "wrongful lien" does not encompass liens that are "expressly authorized by . . . statute" such as mechanics' liens. A "wrongful lien" is defined by the Wrongful Lien Act as follows:

(6) "Wrongful lien" means any document that purports to create a lien, notice of interest, or encumbrance on an owner's interest in certain real property and at the time it is recorded or filed is not: (a) expressly authorized by this chapter or another state or federal statute; (b) authorized by or contained in an order or judgment of a court of competent jurisdiction in the state; or (c) signed by or authorized pursuant to a document signed by the owner of the real property.

UTAH CODE ANN. § 38-9-1(6) (2008) (emphasis added). This Court recently addressed the issue of whether mechanics' liens that have been rendered unenforceable due to

noncompliance with the provisions of the Mechanics' Lien Act are nevertheless "expressly authorized by . . . statute." See Hutter v. Dig-It, Inc., 2009 UT 69.

In *Hutter*, the parties agreed that "a lien is wrongful if it is not 'expressly authorized by . . . statute,'" but disputed "the meaning of the phrase 'expressly authorized.'" Id. ¶ 46. Dig-It argued "that because the right to file a mechanic's lien is granted by statute, all mechanic's liens--even if they ultimately prove unenforceable--are expressly authorized by statute and therefore are not wrongful liens." Id. ¶ 46. On the other hand, the Hutters argued "that an unenforceable lien cannot be expressly authorized by statute since the statute only allows liens to be recorded that comply with the statutory terms." Id. ¶ 46.

Concluding that "both parties' interpretations [were] plausible readings of the statutory text" and "that the phrase 'expressly authorized by . . . statute' [was] ambiguous," the Court "turn[ed] to the statute's legislative history for guidance as to the legislature's intent." Id. ¶ 49. After quoting excerpts from a senate floor debate of comments made by Senators Carling, Matheson and Moll concerning the intended scope of the Wrongful Lien Act, the Court held as follows:

This legislative history makes clear that the legislature intended that the definition of "wrongful lien" should encompass only common law liens. Therefore, we conclude that the phrase "not expressly authorized by . . . statute" in the Wrongful Lien Act does not include statutorily created liens that ultimately prove unenforceable. Because Dig-It filed a mechanic's lien, which is expressly authorized by statute, the lien, though unenforceable for the reasons stated above, is not wrongful

Id. ¶ 50-52.

Furthermore, this Court observed that “the Wrongful Lien Act defines ‘wrongful lien’ narrowly.” Anderson v. Wilshire Investments, L.L.C., 2005 UT 59, ¶ 10, 123 P.3d 393, 396 (Utah 2005). Interpreting the phrase “authorized by . . . statute” to include only enforceable statutory liens would create a very broad wrongful lien definition that, when considering the implications of such a broad definition, was clearly not the legislature’s intent.

For example, Utah Code § 38-9-7 (2008) provides that district courts “shall schedule a hearing within ten days to determine whether the document is a wrongful lien.” UTAH CODE ANN. § 38-9-7(3)(b) (2008). A determination of whether a statutory lien is enforceable often requires an inquiry into contested facts for which an expedited proceeding is impractical and unsuitable. In contrast, determining whether the right to file a particular lien is granted by statute without regard to whether the lien is enforceable can be done efficiently and effectively on an expedited basis.

Moreover, the Wrongful Lien Act vests county recorders with authority to “reject [the] recording of a lien if the county recorder determines the lien is a wrongful lien as defined in Section 38-9-1.” UTAH CODE ANN. § 38-9-3(1) (2008). In other words, county recorders are authorized to reject liens if they determine that the liens are not “expressly authorized by . . . statute.” UTAH CODE ANN. § 38-9-1(6) (2008).

In addition, the remedy available to lien claimants whose liens have been rejected by the county recorder as wrongful under the Wrongful Lien Act provides further evidence that the legislature intended for the phrase “authorized by . . . statute” to simply

identify liens that were codified by statute without regard to their enforceability. The Wrongful Lien Act provides that “[a] lien claimant whose document is rejected [by the county recorder] may petition the district court . . . for an expedited determination that the lien may be recorded or filed.” UTAH CODE ANN. § 38-9-6(1) (2008). However,

A summary proceeding under this section is only to determine whether or not a contested document, *on its face*, shall be recorded by the county recorder. The proceeding *may not determine the truth of the content of the document* nor the property or legal rights of the parties beyond the necessary determination whether or not the document shall be recorded.

UTAH CODE ANN. § 38-9-6(4) (2008) (emphasis added).

If the legislature expected that district courts would be able to refer solely to the “face” of the lien in reviewing a county recorder’s determination that a “lien [was] a wrongful lien as defined in Section 38-9-1,” then the legislature necessarily must have expected that the courts would be able to determine whether a lien was “authorized by . . . statute” by examining the “face” of the lien without regard to the “truth of the content” of the lien. In many cases, district courts cannot determine whether a statutory lien is enforceable without looking past the “face” of the document. In contrast, whether the right to file a particular lien is granted by statute can always be determined solely by reference to the “face” of the contested document.

As the foregoing evidences, Peterson Plumbing Supply’s mechanics’ liens are not wrongful under the Wrongful Lien Act even if the Court finds that Peterson Plumbing Supply failed to timely file its mechanics’ lien notices since unenforceable mechanic’s liens are still “authorized by . . . statute.”

B. Peterson Plumbing Supply is “Entitled to a Lien under Section 38-1-3.”

Utah Code § 38-9-2(3) provides that the Wrongful Lien Act “does not apply to a person entitled to a lien under Section 38-1-3 who files a lien pursuant to Title 38, Chapter 1, Mechanics’ Liens.” UTAH CODE ANN. § 38-9-2(3) (2008). In *Foothill Park*, the Utah Court of Appeals concluded that untimely mechanics’ liens are wrongful liens. *See Foothill Park, LC v. Judston, Inc.*, 2008 UT App 113, ¶¶ 18-20, 20 n.11, 182 P.3d 924, 930 (Utah Ct. App. 2008).

This conclusion was premised on the notion that a mechanics’ lien claimant cannot be “entitled to a lien” when the lien rights have been voided due to the passage of lien deadlines. *Id.* ¶¶ 17-20. However, this Court of Appeals interpretation of Utah Code § 38-9-2(3) is inconsistent with the rules of statutory construction and the legislative history of the Wrongful Lien Act. Under the rules of this Court,

Statutory enactments are to be construed as to render all parts thereof relevant and meaningful. Likewise, we are compelled to give the statutory language meaning and to assume that each term in the statute was used advisedly We will avoid an interpretation which renders portions of, or words in, a statute superfluous or inoperative.

Labelle v. McKay Dee Hosp. Center, 2004 UT 15, ¶ 16, 89 P.3d 113, 116 (Utah 2004) (citations omitted).

In interpreting Utah Code § 38-9-2(3), the Court of Appeals isolated the phrase “entitled to a lien” from the phrase “entitled to a lien under section 38-1-3.” *See Foothill Park, LC v. Judston, Inc.*, 2008 UT App 113, ¶ 19, 182 P.3d 924, 930 (Utah Ct. App. 2008). As a result, the Court of Appeals defined entitlement to a mechanics’ lien

generally in the overall context of lien validity under the entire Mechanics' Lien Act, including the filing provisions set forth in Utah Code § 38-1-7 and 38-1-11, rather than by reference to “section 38-1-3.” *Id.* ¶¶ 18-20. This interpretation renders the phrase “under section 38-1-3” irrelevant, meaningless, superfluous, and inoperative. If the legislature intended for entitlement to be defined by compliance with the Wrongful Lien Act, then the phrase “under section 38-1-3” is unnecessary.

Moreover, “statutory construction presumes that the expression of one should be interpreted as the exclusion of another. Thus, we should give effect to any omission in the ordinance language by presuming that the omission is purposeful.” Carrier v. Salt Lake County, 2004 UT 98, ¶ 30, 104 P.3d 1208, 1216 (Utah 2004) (internal quotation marks and citations omitted). The legislature chose to define whether a lien claimant is “entitled to a lien” by exclusive reference to “section 38-1-3.” *See* UTAH CODE ANN. § 38-9-2(3) (2008).

Accordingly, it must be presumed that the legislature’s omission of any reference to the other provisions of the Mechanics’ Lien Act, or a reference to the Mechanics’ Lien Act in general, evidences legislative intent to restrict the entitlement inquiry to whether the mechanics’ lien claimant is identified in section 38-1-3, which is the section of the Mechanics Lien Act that defines those who “shall have a lien upon the property”:

Contractors, subcontractors, and all persons performing any services or furnishing or renting any materials or equipment used in the construction, alteration, or improvement of any building or structure or improvement to any premises in any manner and licensed architects and engineers and artisans who have furnished designs, plats, plans, maps, specifications, drawings, estimates of cost, surveys or superintendence, or who have rendered other like professional service, or

bestowed labor, shall have a lien upon the property upon or concerning which they have rendered service, performed labor, or furnished or rented materials or equipment for the value of the service rendered, labor performed, or materials or equipment furnished or rented by each respectively, whether at the instance of the owner or of any other person acting by his authority as agent, contractor, or otherwise

UTAH CODE ANN. § 38-1-3 (1997).²

Interpreting the phrase “entitled to a lien” in conjunction with the phrase “under section 38-1-3” leads to a three-prong test for determining whether a lien claimant is “entitled” to a mechanics’ lien: (1) the lien claimant must be identifiable as a contractor, subcontractor, licensed architect, or as belonging to one of the other groups identified in Utah Code § 38-1-3; (2) the lien claimant must have “rendered service, performed labor, or furnished or rented materials or equipment” upon the property; and (3) the work performed must have been performed “at the instance of the owner or of any other person acting by his authority as agent, contractor, or otherwise.” *See* UTAH CODE ANN. § 38-1-3 (2008).

If a mechanics’ lien is filed and these conditions are met, then the mechanics’ lien claimant is “entitled to a lien under section 38-1-3.” *See* UTAH CODE ANN. § 38-9-2(3) (2008). If a mechanics’ lien is filed and these conditions are not met, then the mechanics’ lien claimant has filed a common law lien disguised as a mechanics’ lien since the lien claimant is not “entitled to a lien under section 38-1-3.”

² Utah Code § 38-1-3 has not been amended since 1994. *See* UTAH CODE ANN. § 38-1-3 (2009).

Furthermore, statutory provisions should be “interpreted in harmony with other provisions in the same statute and with other statutes under the same and related chapters.” Oman v. Davis Sch. Dist., 2008 UT 70, ¶ 35, 194 P.3d 956, 966–67 (Utah 2008) (citation omitted). This interpretation of Section 38-9-2(3) is consistent with the Wrongful Lien Act’s definition of “wrongful lien” set forth in Utah Code § 38-9-1(6) insofar as the definition limits the applicability of the Wrongful Lien Act to common law liens while Utah Code § 38-9-2(3) ensures that the Wrongful Lien Act is still applicable to common law liens disguised as mechanics’ liens.

To demonstrate, if an individual is irritated with an elected representative and files a mechanics’ lien notice on property owned by the elected representative, but that individual has not “rendered service, performed labor, or furnished or rented materials or equipment” to the property, then the individual has filed a common law lien disguised as a mechanics’ lien. Similarly, if a realtor that has successfully sold a client’s property files a mechanics’ lien on another parcel of property owned by the client upon the failure of the client to pay the realtor’s commission, then the realtor has filed a common law lien disguised as a mechanics’ lien.

In contrast, the Court of Appeals interpretation of entitlement is at odds with this Court’s interpretation of the Wrongful Lien Act’s definition of “wrongful lien.” Although the definition of “wrongful lien” set forth in Utah Code § 38-9-1(6) “does not include statutory liens that ultimately prove unenforceable,” *see Hutter v. Dig-It, Inc.*, 2009 UT 69, ¶ 52, the Court of Appeals interpretation of the scope limitation set forth in

Utah Code § 38-9-2(3) would apply the Wrongful Lien Act to mechanics' liens that ultimately prove unenforceable. *See Foothill Park, LC v. Judston, Inc.*, 2008 UT App 113, ¶¶ 18-20, 20 n.11, 182 P.3d 924, 930 (Utah Ct. App. 2008).

Likewise, the Court of Appeals interpretation is also contrary to the legislative history of the Wrongful Lien Act. The legislative history laid out by the Court in *Hutter* establishes that the legislature, in originally enacting the Wrongful Lien Act, did not intend for the Wrongful Lien Act to be applicable to invalid mechanics' liens. *See Hutter v. Dig-It, Inc.*, 2009 UT 69, ¶ 50-52. It was for this reason that the original version of the Wrongful Lien Act provided, "This chapter is not intended to be applicable to mechanics' or materialmen's liens." UTAH CODE ANN. § 38-9-1 (1985).³ Since then, the legislature has never manifested an intent to apply the Wrongful Lien Act to mechanics' lien filed by lien claimants identified in Utah Code § 38-1-3 regardless of the enforceability of the mechanics' lien claim.

In addition, the other amendments to the Wrongful Lien Act in 1997 reinforce the conclusion that the determination of whether a document is a wrongful lien is to be made by a facial review of the documents and not by an adjudication of timeliness, accuracy or other factors affecting the validity of the lien. Although the penalty provisions of the

³ Since this language does not address the standing of the lien claimant, it leaves open the possibility of the filing of common law liens disguised as mechanics liens. Interpreting Utah Code § 38-9-2(3) as advocated herein closes that loophole while still preserving the overarching purpose of the Wrongful Lien Act: "to impose penalties on those filing common law liens on the property of public officials in retaliation for prosecution." *See Hutter v. Dig-It, Inc.*, 2009 UT 69, ¶50.

original version of the Wrongful Lien Act served as an incentive for those inclined to file groundless common law liens to remove those liens after they were filed, it did not provide a mechanism by which county recorders could prevent the filing of groundless common law liens or for expedited adjudication of wrongful lien claims. *See* UTAH CODE ANN. § 38-9-4 (1985).

In 1997, the Wrongful Lien Act was amended to vest county recorders with authority to prevent the filing of groundless common law liens, *see* UTAH CODE ANN. § 38-9-3 (1997) (“A county recorder may reject recording of a lien if the county recorder determines the lien is a wrongful lien as defined in Section 38-9-1.”), and to expedite the process by which those burdened with groundless common law liens could remove the liens from their property, *see* UTAH CODE ANN. § 38-9-7 (1997) (“the court shall schedule a hearing within ten days to determine whether the document is a wrongful lien”).

Under the original version of the Wrongful Lien Act, county recorders would not be able to easily identify wrongful liens since they were defined by what was subjectively known by the person filing the lien. *See* UTAH CODE ANN. § 38-9-1 (1985) (“A person who claims an interest in, or a lien or encumbrance against, real property, who causes or has caused a document asserting that claim to be recorded or filed in the office of the county recorder, *who knows or has reason to know* that the document is forged, groundless, or contains a material misstatement or false claim” (emphasis added)).

To aid county recorders (who could now refuse to record wrongful liens) and district courts (which now had to determine whether a lien was wrongful at an expedited proceeding) in determining whether a particular lien was wrongful, the legislature crafted an objective, concise definition of what constitutes a wrongful lien:

(6) “Wrongful lien” means any document that purports to create a lien or encumbrance on an owner's interest in certain real property and at the time it is recorded or filed is not: (a) expressly authorized by this chapter or another state or federal statute; (b) authorized by or contained in an order or judgment of a court of competent jurisdiction in the state; or (c) signed by or authorized pursuant to a document signed by the owner of the real property.

UTAH CODE ANN. § 38-9-1(6) (1997) (emphasis added).

In crafting the definition of “wrongful lien” in such a way as to identify common law liens by entirely excluding statutory liens from the wrongful lien definition, it was no longer necessary for the legislature to explicitly state that the Wrongful Lien Act was “not intended to be applicable to mechanics’ or materialmen’s liens” as it did in the original version of the Wrongful Lien Act. Nonetheless, the legislature still found it desirable to provide that the Wrongful Lien Act “does not apply to a person entitled to a lien under Section 38-1-3 who files a lien pursuant to Title 38, Chapter 1.” UTAH CODE ANN. § 38-9-2(3) (1997).⁴

In view of the fact that county recorders do not have the expertise to adjudicate the timeliness or other factors affecting the validity of a lien, it would make little sense for this Court to adopt the logic of *Foothill Park* by expanding the entitlement inquiry to

⁴ Section 38-9-2(3) has not been substantively amended since 1997. See UTAH CODE ANN. § 38-9-2(3) (2009).

whether the mechanics' lien claimant has complied with the filing provisions of the Mechanics' Lien Act. On the other hand, it makes a great deal of sense for the legislature to attempt to prevent the filing of common law liens disguised as mechanics' liens by providing that the Wrongful Lien Act is not applicable "to a person entitled to a lien under Section 38-1-3."

In this case, Peterson Plumbing Supply's mechanics' lien notices were not common law liens disguised as mechanics' liens. Peterson Plumbing Supply is (1) a plumbing materials supplier that (2) supplied materials for the construction of Petitioners' condominiums (3) pursuant to a contract with Pace Plumbing, Inc.⁵ Since Peterson Plumbing Supply "is entitled to a lien under Section 38-1-3" and filed its lien pursuant to the Mechanics' Lien Act, the Wrongful Lien Act is not applicable even if the Court finds that Peterson Plumbing Supply's mechanics' lien notices were not timely filed.

CONCLUSION

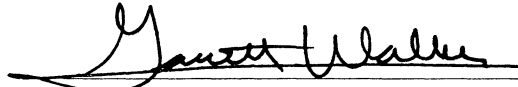
Peterson Plumbing Supply respectfully requests that the Court reverse the district court's determination that Peterson Plumbing Supply's mechanics' liens were not timely filed. In addition, Peterson Plumbing Supply respectfully requests that the Court reverse the district court's nullification of Peterson Plumbing Supply's mechanics' liens under the Wrongful Lien Act.

⁵ Petitioner General Construction & Development, Inc., the entity that developed and built the condominiums, contracted with Pace Plumbing, Inc. to do plumbing work on the condominiums.

ADDENDUM

No addendum is necessary.

RESPECTFULLY SUBMITTED this 18th day of December, 2009.

A handwritten signature in black ink, appearing to read "Dana T. Farmer", is written over a horizontal line.

DANA T. FARMER

GARRETT A. WALKER

Attorneys for Appellant Peterson Plumbing Supply

CERTIFICATE OF SERVICE

I hereby certify that I caused to be mailed, postage prepaid, two true and correct copies of the foregoing **OPENING BRIEF OF THE APPELLANT PETERSON PLUMBING SUPPLY** to the following this 18th day of December, 2009:

Paul D. Dodd
Fillmore Spencer, LLC
3301 North University Avenue
Provo, Utah 84604


Legal Assistant