

2005

Joel Sill v. Bill Hart d/b/a Hart Construction : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

JOEL SILL,

*

Plaintiff-Counterclaim
Defendant/Appellant,

*

*

Case No. 200502451/CA

v.

*

BILL HART d/b/a HART
CONSTRUCTION,

*

Defendant-Counterclaimant/
Appellee.

*

*

BRIEF OF APPELLANT

Appeal from a Final Judgment Entered by the Third Judicial District Court
For Summit County, State of Utah
The Honorable Bruce C. Lubeck and Deno G. Himonas, Presiding

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ORAL ARGUMENT REQUESTED BY APPELLANT

IN THE UTAH COURT OF APPEALS

JOEL SILL,	*	
Plaintiff-Counterclaim	*	
Defendant/Appellant,	*	Case No. 20050245-CA
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CONSTRUCTION,	*	
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Appellee.	*	

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Defendant-Counterclaimant/
Appellee.

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BRIEF OF APPELLANT

STATEMENT OF JURISDICTION

This is plaintiff-counterclaim defendant Joel Sill's appeal from a final judgment entered by the district court after a jury trial on the parties' competing breach-of-contract/unjust enrichment claims and defendant-counterclaimant Bill Hart dba Hart Construction's mechanic's lien foreclosure action. This Court has jurisdiction over the appeal under UTAH CODE ANN. § 78-2a-3(2)(j) (2002).

ISSUE PRESENTED FOR REVIEW

The issue presented for review is whether the trial court erred in not dismissing Bill Hart's mechanic's lien foreclosure action based on his failure to comply with UTAH CODE ANN. § 38-1-11(4)(a) (2001) when he served his counterclaim complaint on Sill, and in awarding Hart prejudgment interest and attorney fees in that action.

Sill preserved that issue for review in his post-verdict memorandum responses to Hart's motion for entry of judgment, decree of foreclosure, and award of prejudgment interest, attorney fees and costs (R. 1369-79, 1411-20).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

UTAH CODE ANN. § 38-1-11(4)(a) & (e) (2001)¹:

(a) If a lien claimant files an action to enforce a lien filed under this chapter involving a residence, as defined in Section 38-11-102, the lien claimant shall include with the service of the complaint on the owner of the residence:

(i) instructions to the owner of the residence relating to the owner's rights under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and

(ii) a form affidavit and motion for summary judgment to enable the owner of the residence to specify the grounds upon which the owner may exercise available rights under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.

* * *

(e) If a lien claimant fails to provide the owner of the residence the instructions and form affidavit required by Subsection 4(a), the lien claimant shall be barred from maintaining or enforcing the lien upon the residence.

¹ The version of § 38-1-11, as set forth here, was the version in effect in 2002 when Hart served his counterclaim complaint on Sill. In 2004, the legislature amended that section. *See* UTAH CODE ANN. § 38-1-11 (Supp. 2004). None of the amendments, however, is relevant to the issue before this Court, which must only construe the version of Subsection (4) of 38-1-11 that was in place in 2002 (Subsection (4) was enacted in 2001, effective April 30, 2001). Accordingly, all citations to § 38-1-11(4) that appear in this brief are to that version.

STATEMENT OF THE CASE

A. Nature of the Case, Course of Proceedings, and Disposition Below

The parties entered into an agreement by which Hart, a general contractor, was to build a home for Sill in The Colony subdivision in White Pine Canyon (“the Project”), and Sill was to pay him for that. The Project was to consist of a main house, an apartment attached to the main house, a garage, and a guesthouse. Hart also was to build a barn for Sill. Hart began construction in June 1999 and continued until approximately November 2001, when he left the job based on a disagreement with Sill concerning completion of the Project. At that point, Sill had paid Hart \$2,598,871. Thereafter, Sill paid others to complete the Project. (R. 1-33, 1050-52).

Sill sued Hart, and Hart counterclaimed. The principal claims advanced by the parties were based in contract, with Sill seeking to recover damages he contended resulted from Hart’s failure to complete the Project as agreed upon by the parties, and Hart counterclaiming for money he alleged Sill still owed him under their agreement. Hart also sued to foreclose on the mechanic’s lien he had filed against Sill’s property. (R. 1-33, 59-81).

The case was tried to a jury, which returned a verdict in favor of Hart of \$314,500.00 on his unjust enrichment and mechanic’s lien claims. Hart sought to reduce the verdict to judgment. Sill opposed that effort in one major respect, arguing that Hart’s mechanic’s lien action was barred (the court lacked jurisdiction to hear it) because Hart had failed to comply with UTAH CODE ANN. § 38-1-11(4)(a) (2001) when

he served his counterclaim complaint on Sill. Sill argued that Hart therefore was not entitled to foreclosure on his mechanic's lien or awards of prejudgment interest and attorney fees, the only basis for awards being the favorable verdict for Hart on his lien foreclosure action. (R. 1244-88, 1369-79, 1411-20).²

The trial court rejected Sill's arguments and entered judgment on the jury's verdict in Hart's favor, including the lien foreclosure action. (Judgment, Addendum 1). The court awarded Hart prejudgment interest and attorney fees under the statutory provision that permits an award of fees to the prevailing party in a mechanic's lien foreclosure action (UTAH CODE ANN. § 38-1-18(1) (2001)). In rejecting Sill's challenge to the lien action, the court said:

Hart readily admits that he did not serve the papers referenced [in § 38-1-11(4)(a)] on Sill. He also readily admits that he is not entitled to recover either prejudgment interest or attorney's fees on his unjust enrichment claim. But he vigorously disputes the notion that Subsection (4) applies to this dispute.

Both parties acknowledge that Subsection (4) is essentially dispositive of this issue and, therefore, contend that the Subsection's plain and unambiguous language requires the Court to rule in their favor. According to Sill, Hart's filing of his counterclaim constituted "fil[ing] an action to enforce a lien" and triggered the notice obligations set forth in Subsection (4). Not so, according to Hart; Subsection (4) applies, he asserts, only if a lien claimant "files an action" and serves a "complaint" (versus a counterclaim) on a homeowner. Hart is correct.

² The parties had reserved for post-verdict determination any issues concerning Hart's compliance with the statutory requirements for maintaining and enforcing a mechanic's lien. Stipulation on Mechanic's Lien Issues (R. 1050-52).

Memorandum Decision (hereafter “Decision,” copy contained in Addendum 2) at 2-3 (R. 1463-64).

B. Statement of Relevant Facts

It is undisputed that when Hart served his counterclaim complaint³ (setting forth the mechanic’s lien foreclosure action) on Sill in 2002, Hart did not include with the service of the counterclaim the instructions and forms described in UTAH CODE ANN. § 38-1-11(4)(a) (2001). Decision at 2. That is the principal fact relevant to the issue presented for review.

SUMMARY OF ARGUMENT

Under UTAH CODE ANN. § 38-1-11(4)(a) (2001), a provision within Utah’s mechanic’s lien statutes, a lien claimant who files an action against a homeowner to enforce a mechanic’s lien must serve on the owner certain instructions and forms with the complaint that initiates the action. If the lien claimant fails to do that, the claimant is barred from maintaining or enforcing the lien. § 38-1-11(4)(e). In short, Subsection

³ The term “counterclaim complaint” is used throughout this brief to refer to Hart’s pleading containing his mechanic’s lien foreclosure claim (just as that term was used below in Sill’s briefing to the trial court). The courts routinely use “counterclaim complaint” in this fashion. *See, e.g., Berckelely Investment Group, Ltd. v. Colkitt*, 259 F.3d 135, 138 (3rd Cir. 2001) (“Colkitt reasserted those counterclaims not dismissed with prejudice in an amended counterclaim complaint”); *Foundation for Interior Design Educ. Res. v. Savannah College of Art & Design*, 244 F.3d 521, 531 (6th Cir. 2001) (“College alleged in its counterclaim complaint * * *”); *Federal Kemper Life Assur. Co. v. Ellis*, 28 F.3d 1033, 1038 (10th Cir. 1994) (“Defendant then filed a motion for leave to file an answer and amended counterclaim complaint”). The Utah Supreme Court used the term in a recent decision. *Lundahl v. Quinn*, 2003 UT 11, ¶ 1, 67 P.3d 1000 (“she has filed a motion to intervene and an amended counterclaim complaint”).

(4)(a) of 38-1-11 is a jurisdictional provision, and a lien claimant's failure to comply with its requirements deprives a court of jurisdiction to hear the claimant's lien foreclosure action.

In the instant case, Hart, a lien claimant who brought an action to foreclose on the mechanic's lien he had filed against property owned by Sill, did not include the instructions and forms identified in Subsection (4)(a) with the counterclaim complaint (setting forth the lien foreclosure action) he served on Sill. Under the plain language of Subsection (4)(a), Hart was required to do that. The trial court therefore lacked jurisdiction to hear Hart's lien action and should have dismissed it. The court, however, erroneously construed Subsection (4)(a) to not apply to Hart's counterclaim complaint and improperly entered judgment in Hart's favor on the lien action.

Accordingly, this Court should reverse the judgment in favor of Hart on the lien action and the awards of prejudgment interest and attorney fees to Hart, the only basis for those awards being the erroneous judgment on the lien action.

ARGUMENT

The trial court erred in not dismissing – for lack of jurisdiction – Hart's mechanic's lien foreclosure action based on his failure to comply with UTAH CODE ANN. § 38-1-11(4)(a) (2001) when he served his counterclaim complaint on Sill.

A. Standard of Review

The trial court's determination that it had jurisdiction to consider Hart's mechanic's lien foreclosure action presents a question of law; therefore, this Court reviews that decision for correctness, owing the trial court no deference. *State v. Lara*,

2003 UT App 318, ¶ 10, 79 P.3d 951 (“Whether a court has subject matter jurisdiction is a question of law that we review for correctness.”). Further, the trial court’s interpretation of a statute presents a question of law reviewed for correctness. *Rushton v. Salt Lake County*, 977 P.2d 1201, 1203 (Utah 1999).

B. Under the plain language of UTAH CODE ANN. § 38-1-11(4)(a) & (e) (2001), the trial court lacked jurisdiction to consider Hart’s mechanic’s lien foreclosure action; therefore, that action should have been dismissed and Hart’s request for awards of prejudgment interest and attorney fees denied.

The issue on appeal is straightforward: Did the trial court err in concluding that with respect to Hart’s mechanic’s lien foreclosure action, he was not required to comply with UTAH CODE ANN. § 38-1-11(4)(a) (2001) when he served his counterclaim complaint on Sill? The resolution of that issue is critical to determining whether Hart is entitled to recover prejudgment interest and attorney fees, there being no dispute that Hart’s entitlement to both rests on his having a valid lien foreclosure action. In short, if the trial court incorrectly construed § 38-1-11(4)(a) as inapplicable to Hart’s counterclaim complaint, he is not entitled to recover either prejudgment interest or attorney fees.

1. The statutory scheme

To fully understand the issue presented for review, one must first examine the statutory scheme the legislature has adopted with respect to providing homeowners notice of their rights concerning mechanic’s liens against their property. Obviously intending to provide for notice of those rights to a homeowner very early on in the

relationship between a contractor and a homeowner, the legislature enacted the following provision requiring an original contractor to include such notice in the written contract with the owner:

Beginning July 1, 1995, the original contractor or real estate developer shall state in the written contract with the owner what actions are necessary for the owner to be protected under Section 38-11-107 from the maintaining of a mechanic's lien or other civil action against the owner or the owner-occupied residence to recover monies owed for qualified services.

UTAH CODE ANN. § 38-11-108(1) (2001).

The legislature's intent to require a contractor to give notice of the statutes providing a homeowner protection from mechanic's liens is further reflected in the lien notice provision, which again requires a contractor, who is filing a mechanic's lien, to inform the homeowner of those statutes:

(2) The notice required by Subsection (1) shall contain a statement setting forth:

* * *

(h) 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.

UTAH CODE ANN. § 38-1-7(2)(h) (2001).⁴

⁴ The version of § 38-1-7 in effect at the time Hart filed his lien notice is set forth here. That section was amended in 2004, and Subsection (2)(h) was renumbered (2)(a)(ix). The content of the subsection was not changed. *See* UTAH CODE ANN. § 38-1-7 (Supp. 2004).

Finally, the legislature adopted the strictest notice requirement for a lien claimant in a provision addressing the lien claimant's filing of an action against a homeowner to enforce a mechanic's lien:

(a) If a lien claimant files an action to enforce a lien filed under this chapter involving a residence, as defined in Section 38-11-102, the lien claimant shall include with the service of the complaint on the owner of the residence:

(i) instructions to the owner of the residence relating to the owner's rights under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and

(ii) a form affidavit and motion for summary judgment to enable the owner of the residence to specify the grounds upon which the owner may exercise available rights under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.

* * *

(e) If a lien claimant fails to provide the owner of the residence the instructions and form affidavit required by Subsection 4(a), the lien claimant shall be barred from maintaining or enforcing the lien upon the residence.

UTAH CODE ANN. § 38-1-11(4)(a) & (e) (2001). Subsection (4)(a) requires the lien claimant who sues to enforce the lien to provide the homeowner with certain instructions and forms concerning an owner's rights to removal of the lien under the Residence Lien Restriction and Lien Recovery Fund Act (hereafter "Residence Lien Act"). Subsection (4)(e) makes clear that a lien claimant's failure to provide a homeowner with the "instructions and form affidavit required by Subsection (4)(a)" bars enforcement of the mechanic's lien. That bar to enforcement is jurisdictional,

based on a failure to satisfy a statutory precondition to suit. *See Beaver County v. Utah State Tax Commission*, 919 P.2d 547, 552 (Utah 1996) (whether a statutory procedural requirement is jurisdictional depends on whether it is “mandatory” (jurisdictional) or merely “directory” (not jurisdictional)); *Madsen v. Borthick*, 769 P.2d 245, 249-50 (Utah 1988) (Governmental Immunity Act’s notice requirement for filing suit against a governmental entity is a precondition to suit; failure to satisfy a precondition to suit deprives the trial court of jurisdiction).

As previously noted, in the trial court Sill argued that, under Subsection (4)(e), Hart’s failure to include with the service of his counterclaim complaint the instructions and affidavit referenced in Subsection (4)(a) required dismissal of his lien foreclosure action and denial of his requests for prejudgment interest and attorney fees. Specifically, Sill argued that the commonly accepted definitions of the terms “action” and “complaint,” as used in Subsection (4)(a), include a counterclaim, and thus Hart was required to comply with Subsection (4)(a)’s notice requirements when he served his counterclaim complaint on Sill. The trial court disagreed.

2. The plain meaning of the terms “action” and “complaint,” and the purpose of Subsection (4)(a)

The trial court rejected Sill’s argument concerning Subsection (4)(a) on the ground that the term “complaint,” as used in that provision, is not reasonably interpreted to include a counterclaim. It reasoned:

The plain language of Subsection (4) compels the conclusion that the Utah Legislature limited the obligation of a lien claimant to serve a

homeowner with the materials referenced in Subsection (4)(a) to those instances in which the lien claimant was initiating an action through service of a complaint and not a counterclaim. First, while “[t]he word ‘action’ without more is arguably broad enough to encompass any type of judicial proceeding, including counterclaims” (*Local Union No. 38, Sheet Metal Workers’ Int’l v. Pelella*, 350 F.3d 73, 81 (2nd Cir. 2003) (citations omitted)), read in the context of Subsection (4), it is qualified by the reference to “service of the complaint.” Second, this reference to a complaint is to a pleading that is filed at the commencement of a lawsuit and that is commonly understood to be distinct from a counterclaim. See, e.g., *Local Union No. 38, Sheet Metal Workers’ Int’l v. Pelella*, 350 F.3d at 82; see also Utah Rules of Civil Procedure 3 (“A civil action is commenced (1) by filing of a complaint . . . , or (2) by service of a summons together with a copy of the complaint”) & 7(a) (distinguishing a complaint from other pleadings). Third, had the Legislature intended Sill’s construction, it could have easily provided for it (e.g., by substituting the words “initial pleading” for “complaint” in Subsection (4)(a)).

Decision at 3 (footnotes omitted).

Relying heavily on the Second Circuit’s 2-1 decision in *Local Union No. 38, Sheet Metal Workers Int’l v. Pelella*, 350 F.3d 73 (2nd Cir. 2003), the court concluded that a narrow construction of the term “complaint” (not to include a counterclaim) is in harmony with the mechanic’s lien statutes “general purpose * * * ‘to provide protection to those who enhance the value of a property by supplying labor or materials,’”

Decision at 4 (quoting *AAA Fencing Company v. Raintree Development and Energy Company*, 714 P.2d 289, 291 (Utah 1986)). The court believed “Sill’s construction [of ‘complaint’] is contrary to the lien law’s overarching purpose.” *Id.* at 5 n.9. Citing the majority opinion in *Pelella*, the court also found, as additional support for its narrow interpretation of “complaint,” that “the concerns that Subsection (4) guard

against are lessened when the homeowner has demonstrated a certain familiarity with the legal process by instituting suit against a lien claimant.” *Id.* at 4 n.5.

The problems with the trial court’s analysis begin with its notion that the requirements of Subsection (4)(a) are somehow tempered by the mechanic’s lien statutes’ “overarching purpose” to protect those who have enhanced the value of a property by supplying materials or labor. While that purpose is clear, it does not permit a court or a lien claimant to ignore prominent procedural requirements within the statutory scheme that plainly are intended to provide protection for the homeowner as opposed to the lien claimant. *See First General Services v. Perkins*, 918 P.2d 480, 486 (Utah Ct. App. 1996) (“Of course, ‘compliance with the [mechanics’ lien] statute is required before a party is entitled to the benefits created by the statute.’” (quoting *AAA Fencing Company v. Raintree Development and Energy Company*, 714 P.2d 289, 291 (Utah 1986))). Those requirements are noted above, and Subsection (4)(a) undeniably falls into the category of provisions intended to protect the homeowner from an improper mechanic’s lien through a requirement that the lien claimant inform the owner of rights under the Residence Lien Act when a lien enforcement action is initiated. The clear purpose of (4)(a) is to ensure that when a lien claimant sues a homeowner to enforce a lien, the owner is fully informed of those rights.

The trial court narrowly interpreted the term “complaint” in Subsection (4)(a) to mean only an initial complaint filed by a lien claimant as a plaintiff, and not to include a lien claimant’s counterclaim complaint filed in response to an owner’s suit against the

lien claimant. To accept the court's narrow interpretation of "complaint," one must necessarily accept the following odd, and ultimately unreasonable, conclusion: The legislature, concerned about protecting a homeowner's rights, intended to require a lien claimant to inform the homeowner of rights under the Residence Lien Act at the contracting stage (§ 38-11-108(1)), at the notice-of-lien stage (§ 38-1-7(2)(h)), and finally at the litigation stage (§ 38-1-11(4)(a)) when the lien claimant sues the homeowner – but only if the lien claimant brings the lien enforcement action as an original plaintiff rather than as a counterclaimant. That construction, which as explained below is not in harmony with the commonly accepted meaning of the terms "action" and "complaint" and the context in which they are used in Subsection (4)(a), defeats the obvious purpose of Subsection (4)(a) – that is, to ensure that a homeowner is informed of the Residence Lien Act rights at the time a lien claimant sues to enforce a mechanic's lien. It is illogical to conclude that the legislature, with that protective purpose in mind, intended to draw a distinction between a lien enforcement action brought in an original complaint filed by the lien claimant as a plaintiff and the very same action brought by the lien claimant in a counterclaim. The owner is in precisely the same position in each scenario: the defendant in an action brought by the lien claimant to enforce a mechanic's lien.

A court's "aim in construing a statute is to give effect to the legislature's intent in light of the purpose the statute was meant to achieve." *Board of Educ. of Jordan School Dist. v. Sandy City Corp.*, 2004 UT 37, ¶ 8, 94 P.3d 234. A court must "read

the plain language of the statute as a whole, and interpret its provisions in harmony with other statutes in the same chapter and related chapters.” *Miller v. Weaver*, 2003 UT 12, ¶ 17, 66 P.3d 592. Additionally, “[i]t is axiomatic that a statute should be given a reasonable and sensible construction and that the legislature did not intend an absurd and unreasonable result.” *State ex rel. Div. of Consumer Prot. v. GAF Corp.*, 760 P.2d 310, 313 (Utah 1988). To construe Subsection (4)(a) as the trial court did here defeats the obvious legislative intent to provide certain informational protection to a homeowner who is sued by a lien claimant to enforce the lien, and thus the court violated the foregoing principles of statutory construction.

The court’s contention that the concerns Subsection (4)(a) guards against are lessened when a homeowner sues the lien claimant first and the lien enforcement action is brought as a counterclaim is unpersuasive. Without explanation, the court concluded that a plaintiff homeowner “has demonstrated a certain familiarity with the legal process by instituting suit against a lien claimant,” and thus may be presumed not to require the information referenced in Subsection (4)(a). Decision at 4 n.5. Why that would be so is not at all clear. For example, the mere fact that a homeowner brings a breach-of-contract action against a contractor, as Sill did here, provides no basis for concluding that such an owner therefore has a better understanding of a homeowner’s rights under the Residence Lien Act than would an owner who is sued as a defendant in an action filed first by a lien claimant as a plaintiff to enforce a mechanic’s lien.

Furthermore, the trial court's construction of Subsection (4)(a) is contrary to the commonly accepted meaning of the key terms in that provision: "action" and "complaint." First, in *American Rural Cellular, Inc. v. Systems Communications Corp.*, 939 P.2d 185, 193 (Utah Ct. App. 1997), this Court interpreted the phrase "action brought to enforce any lien under this chapter" in UTAH CODE ANN. § 38-1-18(1) (2001)⁵ and held that "a counterclaim to foreclose [a] mechanics' lien * * * clearly qualifies as 'an action brought to enforce any lien' under the mechanics' lien statute." Four years after *American Rural Cellular* was issued, the legislature enacted Subsection (4)(a) of § 38-1-11, using the phrase "action to enforce a lien filed under this chapter," which is nearly identical to the phrase in § 38-1-18(1) the Court construed in *American Rural Cellular*: When construing a statute, a court assumes that when the legislature enacted the statute, it was aware of prior court decisions construing similar statutory language. *Donahue v. Warner Bros. Picture Distributing Corp.*, 2 Utah 2d 256, 261, 272 P.2d 177, 180 (1954). It must be assumed, therefore, that the reference in Subsection (4)(a) to "an action to enforce a lien filed under this chapter" was intended to have the same meaning as the similar statutory language construed in *American Rural Cellular* – i.e., the words "an action" include a counterclaim, like that filed by Hart in the instant case.

⁵ Section 38-1-18(1) states: "[I]n any action brought to enforce any lien under this chapter the successful party shall be entitled to recover a reasonable attorneys' fee, to be fixed by the court, which shall be taxed as costs in the action."

Second, the term “complaint,” which appears after the phrase “an action to enforce a lien filed under this chapter” in Subsection (4)(a), must be interpreted with reference to that preceding phrase. As this Court has said, “courts typically construe statutes on the assumption that ‘each term is used advisedly and that the intent of the Legislature is revealed in the use of the term *in the context and structure in which it is placed.*’” *State v. Paul*, 860 P.2d 992, 994 (Utah Ct. App. 1993) (quoting *Ward v. Richfield City*, 716 P.2d 265, 266 (Utah 1984) (emphasis added by this Court)). It is with that principle in mind that the meaning of the term “complaint,” as used in Subsection (4)(a), must be determined.

Again, Subsection (4)(a) reads:

If a lien claimant files an action to enforce a lien filed under this chapter involving a residence, as defined in Section 38-11-102, the lien claimant shall include [certain instructions and forms] with the service of the complaint on the owner of the residence[.]

Central to that provision is the filing of an “action” by a lien claimant to enforce a lien, and thus the term “complaint” must be read in that context. “Complaint” plainly refers to the vehicle by which the lien claimant files the “action,” which, as previously noted, this Court has held includes a counterclaim.

Because “complaint” is not defined in Subsection (4)(a), this Court “look[s] to its commonly understood meaning.” *State v. Winward*, 907 P.2d 1188, 1191 (Utah Ct. App. 1995). The commonly accepted meaning of “complaint,” when used as a legal term, is found in Black’s Law Dictionary 303 (8th ed. 2004): “The initial pleading that

starts a civil action and states the basis for the court's **jurisdiction**, the basis for the plaintiff's claim, and the demand for relief." *See also* Black's Law Dictionary 258 (5th ed. 1979) (defining "complaint" as "[t]he original or initial pleading by which an action is commenced under codes or Rules of Civil Procedure"); *State v. Tolano*, 2001 UT App 37, ¶ 17, 19 P.3d 400 (Court looks to Black's Law Dictionary to determine commonly accepted meaning of statutory term).

Here, Hart commenced his mechanic's lien foreclosure action by the filing of a counterclaim complaint (set forth in his answer). That was the initial pleading that started his lien action. Thus, the counterclaim was "the complaint," as that term is commonly understood, by which Hart "file[d] an action to enforce a lien." § 38-1-11(4)(a). That interpretation of "complaint" is in harmony with the well-settled principle in Utah that "[a] counterclaim is viewed as an original action, instituted by the defendant against the plaintiff and is tested by the same tests and rules as a complaint." *Harman v. Yeager*, 103 Utah 208, 134 P.2d 695, 696 (1943). *See also* Wright & Miller, *Federal Practice and Procedure*, § 1184 at 24-25 (3d ed. 2004) ("Since a counterclaim basically is a defendant's complaint, it is perfectly logical to oblige a plaintiff to respond to it." (emphasis added)); *Kane v. Kane*, 558 N.Y.S.2d 627, 629 (A.D. 1990) ("A counterclaim is in essence a complaint by a defendant against the plaintiff and alleges a present viable cause of action upon which the defendant seeks judgment. It is not a responsive pleading merely because it is contained in a responsive paper; to wit, the answer. It is not a defense. * * * The pleader of a counterclaim is a

plaintiff in his own right.” (internal quotation marks and citations omitted)).

Moreover, that interpretation advances the clear legislative purpose of Subsection (4)(a) to ensure that a homeowner is informed of rights under the Residence Lien Act when a lien claimant sues the owner to enforce a mechanic’s lien.

The trial court’s heavy reliance on *Pelella*, a split-panel decision from the Second Circuit, to arrive at the opposite conclusion is misplaced. The court first cited *Pelella*, 350 F.3d at 82, for the proposition that a complaint is distinct from a counterclaim. While the *Pelella* majority does draw that distinction in construing the statutory phrase “to institute an action” as not including a counterclaim, its analysis is not helpful in construing Subsection (4)(a) in this case. In *American Rural Cellular*, this Court construed the term “action” as used in the mechanic’s lien statutes to include a counterclaim. That, not *Pelella*, is the controlling authority, along with *Harman v. Yeager*, where the Utah Supreme Court stated, without qualification, that “[a] counterclaim is viewed as an original action, instituted by the defendant against the plaintiff and is tested by the same tests and rules as a complaint.” That view runs counter to the *Pelella* majority’s conclusion that “a defendant does not ‘institute’ an action when he asserts a counterclaim.” 350 F.3d at 82 (cited with approval by the trial court, Decision at 4).⁶

⁶ In a well-reasoned opinion, the dissenting judge in *Pelella* concluded that “the right ‘to institute an action’ includes the right to assert a counterclaim.” 350 F.3d at 92 (Straub, J., dissenting).

The trial court attempted to distinguish the statutory language interpreted in *American Rural Cellular* from that used in Subsection (4)(a), noting that “there are no words or phrases in [§ 38-1-18] that restrict the word ‘action’ in any way” and that § 38-1-18 “references ‘any action.’” Decision at 3 n.3. The flaw there is that in *American Rural Cellular* this Court did not give any significance to the modifier “any” in front of the word “action.” Indeed, the Court specifically said that a counterclaim to foreclose a lien “clearly qualifies as ‘an action brought to enforce any lien’ under the mechanics’ lien statute.” 939 P.2d at 193 (emphasis added). The words “an action” are precisely the words used in Subsection (4)(a), and they operate to compel a broad interpretation of the word “complaint,” which follows the phrase “an action to enforce a lien,” and must be construed in light of the meaning of that phrase. Given the structure of the sentence in which “complaint” is used, it simply is not reasonable to conclude, as the trial court did, that the word “complaint” serves to restrict the term “action,” such that “action” does not include the counterclaim this Court said it did in *American Rural Cellular*. See, e.g., *Wilson v. Baldwin*, 519 S.E.2d 251, 253 (Ga. App. 1999) (noting that the term “complaint” equates with the term “counterclaim” for purposes of the statute in issue); *Brink’s Inc. v. City of New York*, 533 F.Supp. 1122, 1123 (S.D.N.Y. 1982) (“The City’s argument that section 203(c) does not apply because the statute uses the term “complaint,” whereas in the instant case Brink’s is attempting to assert the recoupment against a “counterclaim” is without merit; indeed, it borders on the frivolous.”).

Finally, the trial court erroneously factored into its analysis that Sill ultimately was not eligible for any relief under the Residence Lien Act. The court viewed Sill's proposed construction of Subsection (4)(a) as "an interpretation that would restrict Hart's ability to recover for an otherwise valid lien based on Hart's failure to provide notice of an irrelevant statutory provision." Decision at 5 n.6. That view, however, simply reflects the court's disagreement with a legislative policy decision (*i.e.*, to require a lien claimant to give the Subsection (4)(a) notice to a homeowner who is sued by the lien claimant to enforce a mechanic's lien, whether or not the owner ultimately is eligible for relief under the Residence Lien Act). Such disagreement has no place in the process of statutory interpretation. *See Gottling v. P.R. Incorporated*, 2002 UT 95, ¶ 23, 61 P.3d 989 ("Indeed, this court cannot ignore or strike down an act because it is either wise or unwise. The wisdom or lack of wisdom is for the legislature to determine. We need not agree with the legislature as a matter of public policy. . . . What the legislature 'should' do is not the question. Rather it is what the legislature has done." (citations, brackets, and internal quotation marks omitted)).

At bottom, whether or not a homeowner is in a position to exercise rights under the Residence Lien Act is irrelevant to this Court's determination of what legislative intent the unambiguous language of Subsection (4)(a) reflects. Obviously, the legislature did not want the lien claimant deciding whether the homeowner in a given case is eligible for relief under the Residence Lien Act; it wanted to ensure that the sued owner would be the one making that determination, informed by the instructions

and forms served in compliance with Subsection (4)(a). Imparting notice of rights to the target owner is the clear purpose of (4)(a), and this Court must construe it accordingly. *See State v. Burns*, 2000 UT 56, ¶ 25, 4 P.3d 795 (“[O]ur primary goal in interpreting statutes is to give effect to the legislative intent, as evidenced by the plain language, in light of the purpose the statute was meant to achieve.”).

In sum, considering the plain meaning of the key terms in Subsection (4)(a) and the structure of that provision, along with the clear legislative purpose to protect the homeowner through the required notice of rights, Hart was required to comply with Subsection (4)(a)’s notice requirements when he served his counterclaim complaint on Sill. Hart’s failure to do so barred his mechanic’s lien foreclosure action. The trial court erred in concluding otherwise.

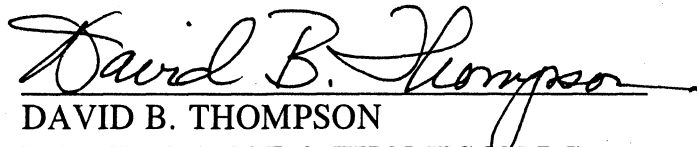
CONCLUSION

Based on the foregoing arguments, this Court should reverse the trial court’s judgment in favor of Hart on his mechanic’s lien foreclosure action, which should be dismissed. The Court also should reverse the trial court’s awards of prejudgment interest and attorney fees to Hart, the only basis for which are the favorable judgment on the lien action. Finally, based on those reversals, the Court should remand the case to the trial court with directions to award Sill his reasonable attorney fees and costs in defending against Hart’s invalid lien action at trial and on appeal, which Sill is entitled to under § 38-1-18(1).

STATEMENT REGARDING ORAL ARGUMENT

Because this case presents the first opportunity for a Utah appellate court to interpret § 38-1-11(4)(a) with respect to a counterclaim filed by a lien claimant, the Court should hear oral argument.

Dated this 28th day of June 2005.


A handwritten signature in cursive script, reading "David B. Thompson", written over a horizontal line.

DAVID B. THOMPSON
MILLER VANCE & THOMPSON PC
Attorneys for Plaintiff-Counterclaim
Defendant/Appellant

CERTIFICATE OF SERVICE

I certify that on June 28, 2005, I served the foregoing Brief of Appellant on the attorneys for Defendant-Counterclaimant/Appellee by mailing two copies, with postage prepaid, in an envelope addressed to:

P. Bruce Badger
Robert J. Dale
FABIAN & CLENDENIN, P.C.
P.O. Box 510210
Salt Lake City, Utah 84151-0210



DAVID B. THOMPSON
MILLER VANCE & THOMPSON PC
Attorneys for Defendant/Appellant

ADDENDUM

Tab 1

ADDENDUM 1

No. _____
FILED
FEB 24 2005 13:58
By _____ Court
Deputy Clerk, Summit County

Prepared by:

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Attorneys for Defendant/Counterclaimant/Third-Party Plaintiff Bill Hart

**IN THE THIRD DISTRICT COURT
SUMMIT COUNTY, STATE OF UTAH**

JOEL SILL,

Plaintiff/Counterclaim Defendant,

vs.

BILL HART, d/b/a HART CONSTRUCTION,

Defendant/Counterclaimant,

BILL HART, d/b/a HART CONSTRUCTION,

Third Party Plaintiff,

v.

KALLIE J. SILL, and DOES I-X,

Third Party Defendants.

**FINAL JUDGMENT, ORDER AND
DECREE OF FORECLOSURE**

Civil No. 020500012

Judge Deno G. Himonas

The Jury having rendered its verdict in this action on October 22, 2004, and the court having fully considered Defendant, Counterclaimant and Third Party Plaintiff Bill Hart's Motion for Entry of Judgment Upon a Verdict and For Decree of Foreclosure, Award of Prejudgment Interest, Attorneys Fees and Costs, three supporting joint affidavits in support of motion for award of attorneys fees, Amended Verified Memorandum of Costs, and the related motion papers, and having fully considered Plaintiff's opposing memoranda, and having heard oral argument from Plaintiff's and Defendant's respective counsel on January 31, 2005, and being otherwise fully advised in the premises, now enters judgment consistent with the court's Memorandum Decision entered February 4, 2005.

Accordingly, IT IS HEREBY ORDERED, ADJUDGED, DECREED AND DECLARED as follows:

1. Bill Hart is awarded judgment in his favor and against Joel Sill, whose address is 28 White Pine Canyon Road, Park City, Utah 84060, in the amount of \$314,500, plus prejudgment interest of \$98,480.88, plus costs of \$5,598.92, plus reasonable attorneys fees in the amount of \$199,225.75, pursuant to Utah Code Ann. § 38-1-18, which are taxed as costs in this matter, for a total judgment of \$617,805.55.

2. This judgment shall bear interest from entry hereof at the post-judgment rate specified in Utah Code Ann. § 15-1-4(3).

3. The Notice of Lien dated January 30, 2002, recorded on January 31, 2002, as Entry 00609900, in Book 1432, Page 511-512, of the official records of the Summit County Recorder, is a valid and enforceable lien against the property located in Summit County, State of

Utah, described as follows (the "Property"), and Defendant Bill Hart is entitled to a foreclosure of his lien on the Property:

All of Homestead No. 15, The Colony At White Pine Canyon, Phase 1 Amended Final Subdivision, according to the official plat thereof on file and of record in the office of the Summit County Recorder.

Also together with and subject to all rights, benefits, encumbrances and obligations set forth in the grant of easements recorded September 28, 1998 as Entry No. 518627 in Book 1186 at Page 128 of the official records.

Parcel # CWPC - 15 - AM

4. The Property is hereby foreclosed pursuant to Defendant's lien, and the Property, or such amounts as may be sufficient to pay the amounts due under this judgment and decree, together with accruing costs and interest, be sold at public auction by the Sheriff of Summit County, State of Utah, in the manner prescribed by Utah law for the sale of real property as in the case of foreclosure of mortgages. Plaintiff Joel Sill, and Third Party Defendants, including Kallie J. Sill, and each of them, and all persons and entities claiming by, through or under them or any of them, have no further estate, right, title, lien, or other interest of any kind in, on, or to the Property, except a right of redemption as the case may be as provided by law. Provided, however, that the Property be foreclosed and sold subject to any unnamed, non-party person or entity that holds any mortgage or interest that is prior to the interests of Defendant. Any party to this action may bid for the Property at the sale.

5. That all persons claiming under Plaintiff Joel Sill or Third Party Defendant Kallie Sill, whose interests do not appear of record in the Summit County Recorder's Office as of

Defendant's filing of the lis pendens of this action, are barred and foreclosed of all right, title, interest and equity of redemption in the Property.

6. The Sheriff, upon sale of the Property, shall distribute the proceeds from the sale as follows:

- a. to pay the Sheriff's cost of sale, disbursements and commissions;
- b. to pay to Bill Hart or his attorneys the accrued and accruing costs and attorneys fees of this action, together with the remaining amounts owing Bill Hart for the total judgment as set forth in paragraph 1 above;
- c. any surplus after payment of the amount set forth above be accounted for and paid over by the Sheriff to the Clerk of Court pending further order by this Court.

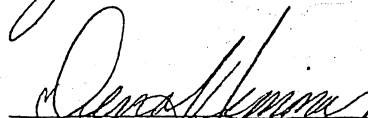
7. The person or entity purchasing the Property at the sheriff's sale thereof shall receive a Certificate of Sale from the sheriff and shall, subject to the rights of redemption, be entitled to immediate possession of the Property and the right to receive and collect all rents therefrom.

8. After the time allowed by law for redemption has expired, the Sheriff shall execute and deliver a Sheriff's Deed (the "Deed") to the purchaser at the sheriff's sale or the person entitled thereto, as provided for by the Utah Rules of Civil Procedure. The grantee named therein shall thereupon be entitled to and have possession of the Property.

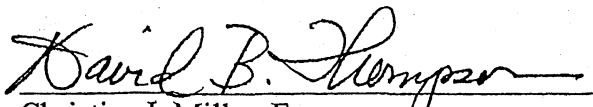
9. Defendant Bill Hart is hereby awarded a deficiency judgment against Plaintiff Joel Sill for any and all deficiencies remaining due after applying the net proceeds derived from the foreclosure sale of the Property to the judgment as herein provided.

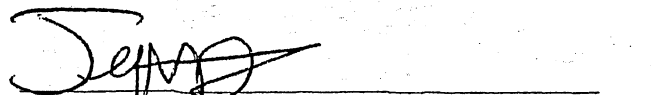
10. This judgment shall be augmented in the amount of reasonable costs and attorneys fees incurred by Defendant Bill Hart in collecting this judgment, by execution or otherwise, as shall be established by affidavit.

DATED this 24 day of February, 2005.


Third District Court

Approved as to form:

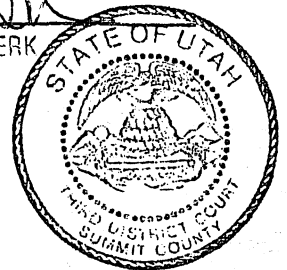

Christina I. Miller, Esq.
David B. Thompson, Esq.
Miller, Vance & Thompson, P.C.
Attorneys for Plaintiff Joel Sill


Jeffrey L. Silvestrini, Esq.
Cohne, Rappaport & Segal, P.C.
Attorneys for Third Party Defendant Kallie J. Sill

I CERTIFY THAT THIS IS A TRUE COPY OF AN ORIGINAL DOCUMENT ON FILE IN THE THIRD DISTRICT COURT, SUMMIT COUNTY, STATE OF UTAH.

DATE: February 28, 2005

DEPUTY COUNTY CLERK



Tab 2

ADDENDUM 2

**In the Third Judicial District Court
Summit County, State of Utah**

JOEL SILL,

Plaintiff,

vs.

**BILL HART, d/b/a HART
CONSTRUCTION,**

**Defendant and Third-Party
Plaintiff,**

vs.

KALLIE J. SILL and DOES I-X,

Third-Party Defendants.

MEMORANDUM DECISION

Case No. 020500012

Hon. Deno G. Himonas

From October 13-22, 2004, Defendant and Counterclaimant, Bill Hart d/b/a Bill Hart Construction ("Hart"), and Plaintiff and Counterclaim Defendant, Joel Sill ("Sill"), tried this matter to a jury. At the conclusion of the trial, the jury returned a verdict in Hart's favor of \$314,500.00 on his unjust enrichment and mechanics' lien claims.

Hart now seeks to reduce the verdict to a judgment. To this end, Hart has filed a Motion for Entry of Judgment Upon a Verdict and for Decree of Foreclosure, Award of Prejudgment Interest, Attorney's Fees and Costs (the "Motion"). Sill opposes the Motion on the grounds that (1) "Hart's lien action is barred" because "Hart failed to comply with Utah Code Ann. § 38-1-11(4)(a) (2001) when he served his counterclaim complaint on Sill;"¹ (2) Hart is not entitled to prejudgment interest and attorney's fees on his unjust enrichment claim; and (3) "Hart is entitled to only a portion of the costs he claims." Response to Motion, pp. 3 & 8. For the reasons set forth below, the Court is of the view that Hart's lien claim is valid and that he is entitled to prejudgment interest and attorney's fees as a result. The Court is also of the view that Hart is entitled to a large part of his costs.

¹By stipulation the parties reserved for "post-verdict determination . . . [a]ny issues concerning Hart's compliance with the statutory requirements for maintaining and enforcing a mechanic's lien." Response to Motion for Entry of Judgment Upon Verdict and for Decree of Foreclosure, Award of Prejudgment Interest, Attorney's Fees and Costs ("Response to Motion"), p. 2 (citation and internal quotations omitted).

ANALYSIS

Sill concedes that Hart is entitled to a judgment of \$314,500.00 “for his unjust enrichment claim.” Response to Motion, p. 2. He contests, however, Hart’s entitlement to a judgment on his mechanics’ lien claim. The nub of Sill’s argument is that when Hart filed his counterclaim, he failed to comply with the notice requirements set forth in Section 11(4) of Utah’s mechanics’ lien statute (Title 38, Chapter 1), which provides in pertinent part as follows:

(4)(a) If a lien claimant files an action to enforce a lien filed under this chapter involving a residence, as defined in Section 38-11-102, the lien claimant shall include with the service of the complaint on the owner of the residence: (i) instructions to the owner of the residence relating to the owner’s rights under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and (ii) a form affidavit and motion for summary judgment to enable the owner of the residence to specify the grounds upon which the owner may exercise available rights under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.

(b) The lien claimant may file a notice to submit for decision on the motion for summary judgment. The motion may be ruled upon after the service of the summons and complaint upon the nonpaying party, as defined in Section 38-11-102, and the time for the nonpaying party to respond, . . . , has elapsed.

* * *

(e) If a lien claimant fails to provide to the owner of the residence the instructions and form affidavit required by Subsection (4)(a), the lien claimant shall be barred from maintaining or enforcing the lien upon the residence.

Utah Code Ann. § 38-1-11(4) (2001)(emphasis added).² Specifically, Sill argues that Hart never served him with the instructions and “form affidavit and motion for summary judgment” identified in Subsection (4)(a) when he filed his counterclaim. He further argues that this failure dooms Hart’s request for prejudgment interest and attorney’s fees because Hart is only entitled to the same if he prevails on his lien claim.

Hart readily admits that he did not serve the papers referenced above on Sill. He also readily admits that he is not entitled to recover either prejudgment interest or attorney’s fees on his unjust enrichment claim. *See, e.g.*, Motion, pp. 8 & 10-13. But he vigorously disputes the notion that Subsection (4) applies to this dispute.

²The parties are in agreement that the mechanics’ lien statute in place when Hart filed his counterclaim (February 2002) governs this dispute. *See, e.g.*, Response to Motion, p. 3 n.1.

Both parties acknowledge that Subsection (4) is essentially dispositive of this issue and, therefore, contend that the Subsection's plain and unambiguous language requires the Court to rule in their favor. According to Sill, Hart's filing of his counterclaim constituted "fil[ing] an action to enforce a lien" and triggered the notice obligations set forth in Subsection (4). Not so, according to Hart; Subsection (4) applies, he asserts, only if a lien claimant "files an action" and serves a "complaint" (versus a counterclaim) on a homeowner. Hart is correct.

"[W]hen interpreting a statute," a court "looks first to the statute's plain language to determine" legislative intent. *Miller v. Weaver*, 2003 UT 12, ¶ 17, 66 P.3d 592 (citation omitted). In doing so, it must "read the plain language of the statute as a whole, and interpret its provisions in harmony with other statutes in the same chapter and related statutes." *Id.* (citations omitted). And where the statute is clear, the court must not "assess the wisdom of the legislation," but must "implement the law as it reads unless it results in an absurd outcome." *Reedeker v. Salisbury*, 952 P.2d 577, 586 (Utah App. 1998) (citations and internal quotations omitted).

The plain language of Subsection (4) compels the conclusion that the Utah Legislature limited the obligation of a lien claimant to serve a homeowner with the materials referenced in Subsection (4)(a) to those instances in which the lien claimant was initiating an action through service of a complaint and not a counterclaim. First, while "[t]he word 'action' without more is arguably broad enough to encompass any type of judicial proceeding, including counterclaims" (*Local Union No. 38, Sheet Metal Workers' Int'l v. Pelella*, 350 F.3d 73, 81 (2nd Cir. 2003) (citations omitted)), read in the context of Subsection (4), it is qualified by the reference to "service of the complaint."³ Second, this reference to a complaint is to a pleading that is filed at the commencement of a lawsuit and that is commonly understood to be distinct from a counterclaim. *See, e.g., Local Union No. 38, Sheet Metal Workers' Int'l v. Pelella*, 350 F.3d at 82; *see also* Utah Rules of Civil Procedure 3 ("A civil action is commenced (1) by filing of a complaint . . . , or (2) by service of a summons together with a copy of the complaint") & 7(a) (distinguishing a complaint from other pleadings). Third, had the Legislature intended Sill's construction, it could have easily provided for it (*e.g.*, by substituting the words "initial pleading" for "complaint" in Subsection (4)(a)).⁴

³Sill argues that the Utah Court of Appeals disposed of this issue in his favor in *American Rural Cellular, Inc. v. Systems Communications Corp.*, 939 P.2d 185 (Utah App. 1997), when it held that the word "action" in Section 38-1-18 of the mechanics' lien statute included a counterclaim. *Id.*, p. 193. Sill's reading ignores that there are no words or phrases in Section 18 that restrict the word "action" in any way. Indeed, the current statute references "any action." Utah Code Ann. § 38-1-18(1). Sill also ignores that the *American Rural Cellular* decision is in harmony with the purpose of the mechanics' lien statute, while his suggested interpretation is not. *Infra*, pp. 4-5; *American Rural Cell.*, 939 P.2d at 193.

⁴Sill counters that the reference to a "summons and complaint" in Subsection (4)(b) is proof that the Legislature intended the reference to a "complaint" in Subsection (4)(a) be broadly construed. Sill's conclusion just does not follow. Under Utah Rule of Civil Procedure 56, a party may not move for summary judgment until "the expiration of 20 days from commencement of the action." Subsection 4(b) simply makes clear that the motion for summary judgment identified in Subsection (4)(a) is not subject to the same restraint.

The Second Circuit Court of Appeals' decision in *Local Union No. 38, Sheet Metal Workers' Int'l v. Pelella*, 350 F.3d 73, is instructive. There, the Second Circuit was confronted with the question of whether the Labor-Management Reporting and Disclosure Act ("LMRDA") barred an employee's counterclaim because it was financed by an "interested employer." Under Section 101(a)(4) of the LMRDA, an employee could not "institute an action" that was financed by an "interested employer." Therefore, the union argued, Pelella could not maintain his employer-backed counterclaim. The Second Circuit, relying heavily on a decision of the Seventh Circuit Court of Appeals, disagreed. In doing so it noted that:

[A] defendant does not "institute" an action when he asserts a counterclaim. Rather, a plaintiff must commence the action by filing a complaint that names a defendant. This affords the defendant the ability to file a responsive pleading, namely the answer, . . . , in which he can include a claim for relief against the opposing party.

Local Union No. 38, Sheet Metal Workers' Int'l, 350 F.3d at 82. The Second Circuit further noted that this "narrow construction" better comported with legislative purpose, and that the "concerns" that Section 101(a)(4) "seeks to address" were lessened because, "[b]y taking the member to court, the union itself introduces the outside actor into what once had been an internal grievance and opens the door to some measure of interference." *Id.*, pp. 84-85.⁵

Sill counters that in *Harman v. Yeagar Et Ux.*, 134 P.2d 695, 696 (Utah 1943), the Utah Supreme Court wrote that "[a] counterclaim is viewed as an original action . . . tested by the same tests and rules as a complaint." He further counters that Black's Law Dictionary defines "complaint" to include a counterclaim.⁶ While these arguments are not without some persuasive value, they do not carry the day. Moreover, accepting these arguments would only create an ambiguity—an ambiguity that must be resolved in favor of Hart's construction.

To the extent that a statute is ambiguous, it is appropriate for a court to look beyond its language and to its legislative history⁷ and purpose. See *Stahl v. Utah Transit Authority*, 618 P.2d 480, 482 (Utah 1980) (citation omitted); *State v. Burgess-Benyon*, 2004 UT App 312, ¶ 7, 99 P.3d 383 (citation omitted). With respect to the statute at hand, it is well established that its general purpose is "to provide protection to those who enhance the value of a property by supplying labor or materials." *AAA Fencing Company v. Raintree Development and Energy Company*, 714 P.2d 289,

⁵In a similar fashion, the concerns that Subsection (4) guards against are lessened when the homeowner has demonstrated a certain familiarity with the legal process by instituting suit against a lien claimant.

⁶This is a secondary definition. The primary definition, at least according to Black's Law Dictionary, is "[t]he original or initial pleading by which an action is commenced."

⁷Because neither party addressed the legislative history of Subsection (4), the Court assumes that it is either nonexistent or unhelpful.

291 (Utah 1986); *see also Butterfield Lumbar, Inc. v. Peterson Mortgage Assoc.*, 815 P.2d 1330, 1334 (Utah 1991).⁸ That purpose is served by construing Subsection (4) narrowly and consistent with its plain language, as Hart urges.⁹


Finally, the Court rejects Sill's alternative challenge to Hart's entitlement to prejudgment interest and awards Hart the same on his mechanics' lien claim. The Court also awards Hart attorney's fees (as prayed for and established by affidavit) and costs of suit (as described by the Court at the January 31, 2005 hearing).

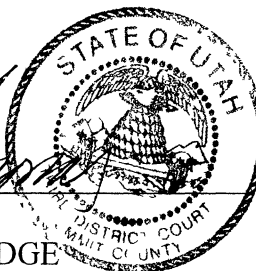
CONCLUSION

For the foregoing reasons, the Court grants the Motion in part and denies it in part. Counsel for Hart is to prepare, circulate, and submit a Judgment consistent with this Memorandum Decision.

Dated this 4th day of February, 2005, in Summit County, State of Utah.

BY THE COURT:


DENO G. HIMONAS
DISTRICT COURT JUDGE



⁸It is important to note that "[a] statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent." *Miller*, 2003 UT at ¶ 17 (emphasis added) (citations and internal quotations omitted).

⁹Sill admits that he was not eligible for relief under the Residence Lien Restriction and Lien Recovery Fund Act. Nevertheless, he urges the Court to adopt an interpretation that would restrict Hart's ability to recover for an otherwise valid lien based on Hart's failure to provide notice of an irrelevant statutory provision. While this point is certainly not dispositive, it does help emphasize that Sill's construction is contrary to the lien law's overarching purpose.