

## Timely Service of Notice of Furnishing is Required to Protect Lien Rights

A subcontractor/materials provider was denied its claim for damages and lien rights when the court held that it had not perfected its lien rights according to Ohio law.

Homeowners in Warren County, Ohio, hired a contractor to build a home on their property. The contractor entered into a verbal agreement with a subcontractor to provide construction materials for the project. The subcontractor/materials provider promptly sent a Notice of Furnishing via certified mail to the lender providing the homeowners' construction loan on May 14, 2007. The construction materials were first furnished the job site on May 15, 2007 and the lender received the Notice of Furnishing on May 17, 2007.

In February 2008, when the owners closed on the home, the lender disbursed the balance of the home construction loan based on the contractor's affidavit that all subcontractors had been paid in full. Three weeks later the subcontractor recorded a mechanic's lien stating that a balance was still owed for construction materials. The subcontractor filed suit against the lender claiming the lender was prima facie liable for gross negligence for failing to disburse funds pursuant to the lien and that the Notice of Furnishing put the lender on notice that there was a potential lien.

The court ultimately held that the Notice of Furnishing was not valid and the lien was not perfected because the Notice of Furnishing was received before materials were furnished to the job site.

Under Ohio lien law (R.C. 1311), in order to preserve its lien rights, a materials provider is required to serve a notice of furnishing within twenty-one days after furnishing the first materials. If service is made by certified mail, service is deemed complete on the date of the mailing, not on the date of receipt. Under these facts, even though the lender did not receive the notice of furnishing until May 17, the notice was deemed served on May 14 and the materials were not delivered until May 15, after the Notice of Furnishing was served.

To read the court's opinion, see *Halsey, Inc. v. Isbel*; 2010 Ohio 2052 (Decided May 10, 2010); 12th District, Warren County.