

HIGHLIGHTS (OR MAYBE LOWLIGHTS) OF
CONSTRUCTION LAW FOR 2009-2010

Utah State Bar Mid-Year Convention
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CASE SUMMARIES

Mechanic's Liens

Hutter v. Dig-It, Inc., 219 P.3d 918

- A mechanic's lien, which is of record, but unenforceable for some reason, is not "wrongful" under the Wrongful Lien Statute (Utah Code 38-9-1, et seq.).

Damages

Traco Steel Erectors, Inc. v. Control, Inc., 222 P.3d 1164

- Determination of damage is dependent upon the language of a contract, but "fair market value" and a determination of reasonableness of the damages is not improper as a matter of law.

Fraudulent Concealment

Anderson v. Kriser, 2009 WL 3674533

- Court held that merely because a party is a developer does not mean knowledge of collapsible or expansive soil is imputed to that developer, even if their normal practice would be to review soils samples.
- Also, developers do not have the same duties under Yazd that a "builder-contractor" would have.

Economic Loss Rule

Sunridge Development Corp. v. RB&G Engineering, 2010 WL 391858

- Assignment of claims does not allow a party to pursue claims barred by the economic loss rule.

Davencourt at Pilgrims Landing Homeowners Association v. Davencourt at Pilgrim's Landing, LC, 221 P.3d 234

- Reaffirmed that the economic loss rule is alive and well (Utah Code 78B-4-513 nailed that coffin on seeking that it be overruled).
- Still applies to contractual privity (no matter how "unique").

- Construction components integrated into the finished product do not constitute "other property" to take it out of the economic loss rule.
- Developer does not owe the same "independent duty" as a builder-contractor as specified in Yazd.
- When developer is in control of an HOA, they owe a fiduciary duty which gives rise to an independent duty and can exclude such a relationship from the bar of the economic loss rule (but only tort claims that arise out of that duty).
- No independent duty to conform to the building code.
- No independent duty to "act without negligence in the construction of a home".

Implied Warranty of Habitability/Workmanship

Davencourt at Pilgrims Landing Homeowners Association v. Davencourt at Pilgrim's Landing, LC, 221 P.3d 234

- Utah law recognizes the cause of action for breach of implied warranty of workmanlike manner and habitability in new home construction.
- Under Utah Law, in every contract for the sale of a new residence, a vendor in the business of building or selling such residences makes an implied warranty to the vendee that the residence is constructed in a workmanlike manner and fit for habitation.
- Is construed broadly and serves the effect of a merger.
- Does not require a builder-vendor/developer-vendor to insure against all defects.
- Elements of the offense:
 1. Purchase of a new resident from a builder-vendor/developer-vendor
 2. Residence Contains a Latent Defect
 3. Defect manifested itself after the purchase
 4. Defect was caused by improper design, material or workmanship, and
 5. The defect created a question of safety or made the house unfit for human habitation.
- Must be brought under 78B-2-225 within six years of completion.
- Contract and warranty claims regarding quality of construction are collateral to the conveyance of title. No Merger.

STATUTORY CHANGES

2009 Changes

Utah Code §38-1-7

- Added language of when "final completion" occurs if a contractor is terminated and a C/O is not issued (last day under which substantial work was done.)

Utah Code §38-1-40:

- Notice of Intent to File Notice of Completion
 - i. If a party is going to file a notice of completion, they must first file a Notice of intent to File Notice of Completion, if:
 1. The completion of performance time under the original contract is greater than 120 days;
 2. The total original construction contract price exceeds \$500,000; and
 3. The contractor or owner has not obtained a payment bond.
 - ii. Must be filed at least 45 days before the day on which the owner or contractor files or could have filed the notice of completion.
 - iii. Subs can then file an amendment to their preliminary notice including a good faith estimate of the total amount due, identification of contractors with whom that sub entered into a contract, and separate statement of all amounts in dispute.
 - iv. Once complied, a sub may then require a statement of adequate assurance from the owner or contractor no later than ten days after the day on which that owner or contractor files a balance statement.
 - v. Demand may include a statement from the owner that they have enough funds dedicated to the project.
 - vi. May bring legal action if it is not sufficient
 1. Court may require deposit of cash, bond or letter of credit or other security.

Utah Code §38-9-1:

- Adds definition for "record interest holder"

Bills Proposed in 2010

House Bill 45

- Adoption of the state building code

House Bill 126

- Eliminates the requirement to file a Notice of Commencement with respect to private construction projects
- Modifies who is required to file a preliminary notice
- Modifies provisions related to the Notice of Commencement
- Requires that certain documents be transmitted to the database to identify the county and tax identification number or parcel number for the property

House Bill 272

- Sought to include trust language when general contractors are paid but don't pay subcontractors.

House Bill 319

- Requires both the entity issuing the building permit to transmit the permit to the data base **and** the contractor to file a Notice of Commencement based upon the building permit issued.

Senate Bill 75

- Requires licensed contractors to display their license on their motorized vehicles.

Senate Bill 107

- Bars a person from maintaining a lien if contract is for less than \$5,000. But still allows for recovery from LRF.
- Simply allows a homeowner to get a COC if they can show they paid in full. No need for licensed contractor or for written contract.
- Also modifies the time for filing after an owner files bankruptcy.

Senate Bill 224

- Bars non-reciprocal construction contracts.