

ACT 284

S.B. NO. 986

A Bill for an Act Relating to Nonconsensual Common Law Liens.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 507D-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Party in interest” means any owner, title holder, mortgagee, or other person holding a recorded or perfected security interest in real or personal property.”

SECTION 2. Section 507D-2, Hawaii Revised Statutes, is amended by amending the definitions of “lien”, “lien claimant”, and “nonconsensual common law lien” to read as follows:

““Lien” means a recorded instrument that creates an encumbrance on or affects title or ownership of property.

“Lien claimant” means the [purported lien holder.] person who executes or records or causes or materially assists in causing the lien to be prepared, executed, or recorded.

“Nonconsensual common law lien” means a lien that:

- (1) Is not provided for by a specific statute;
- (2) Does not depend upon, require by its terms, or call for the consent of the owner of the property affected for its existence; and
- (3) Is not a court-imposed equitable or constructive lien.”

SECTION 3. Section 507D-4, Hawaii Revised Statutes, is amended to read as follows:

“[[§507D-4]] **Contesting validity of recorded instruments[.]; injunctions.** (a) [Any person whose real or personal property is subject to a recorded claim of nonconsensual common law lien, who believes the claim of lien is invalid, may file a petition to commence a proceeding in the appropriate circuit court to contest the validity of that instrument.] **Any party in interest in real or personal property which is subject to a claim of nonconsensual common law lien, who believes the claim of lien is invalid, may file a petition in the appropriate circuit court to contest the validity of that purported lien and to enjoin the lien claimant from making further filings with the registrar.** The petition shall state the grounds upon which relief is requested, and shall be supported by the affidavit of the petitioner or the petitioner’s attorney setting forth a concise statement of the facts upon which the petition is based. **The procedure for obtaining injunctions and temporary restraining orders shall apply in cases brought under this section or section 507D-7(b).**

(b) Subsection (a) shall not apply to any instrument that is recorded by the United States, the State, or any county.

(c) In any action brought under subsection (a), the court may rule without a hearing, on the basis of the affidavits submitted by the parties, unless one of the parties establishes a genuine issue of material fact.

(d) If the court finds that the petition raises a genuine issue of material fact, it shall issue an order, which may be granted ex parte, directing the lien claimant to appear before the court at a time no earlier than six nor later than twenty-one days following the order, and show cause, if any, why the claim of lien should not be stricken and other relief granted. The order shall clearly state that if the lien claimant fails to appear at the time and place stated, the claim of lien shall be stricken and released and the lien claimant shall be ordered to pay actual damages, costs, and reasonable attorneys' fees. The order shall further state that if the court finds the lien to be frivolous, the court may order the lien claimant to pay either actual damages or \$5,000, whichever is greater.]”

SECTION 4. Section 507D-7, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

“(a) If the circuit court finds the purported lien invalid, it shall order the registrar to expunge the instrument purporting to create it, and order the lien claimant to pay actual damages, costs of suit, and reasonable attorneys' fees. This order shall be presented to the registrar for recordation[,] and shall have the effect of voiding the lien from its inception. If the circuit court finds the purported lien is frivolous, the prevailing party in any action brought under section 507D-4 shall be awarded costs of suit, reasonable attorneys' fees, and either actual damages or \$5,000, whichever is greater. The foregoing award shall be made in the form of a joint and several judgment issued in favor of the prevailing party and against each lien claimant and also against each person who owns or controls the activities of the lien claimant if the lien claimant is not a natural person.

(b) [If any person submits or is responsible for submitting an instrument for recordation which is frivolous, as determined by the court, more than two times in a calendar year, upon application of either the person aggrieved, the registrar, or the government counsel representing the government officer or employee affected by the lien, the appropriate circuit court may issue an order to the registrar directing the registrar not to record during the next five years any further instruments submitted for recordation by that person, unless that person obtains leave of court to file another instrument.] If the circuit court finds the purported lien is frivolous, upon application of a party in interest, the registrar, or the government counsel representing the government officer or employee affected by the purported lien, the court may also issue appropriate injunctive relief against the lien claimant to preclude further filings of any kind with the registrar for a period of five years, unless that person obtains leave of court to file another instrument with the registrar. The order shall be enforced in the manner for enforcement of injunctions. This order may be presented to the registrar for recordation. [This] Proceedings under this subsection shall not preclude a person from proceeding under subsection (a) of this section or section 507D-4 and recovering damages, penalties, costs, and attorneys' fees.

(c) Nothing in this chapter shall inhibit or preclude any [person] party in interest from seeking any other common law, statutory, or other equitable remedy.”

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

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SECTION 6. This Act shall apply to all nonconsensual common law liens, whenever executed or recorded.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved June 21, 1997.)