

# **The Construction Conversation**

## **Ohio's Legislative, Administrative, and Judicial Two-Way Newsletter**

December 2024

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### **Legislative: County Construction**

The General Assembly unanimously passed House Bill 497, to make numerous changes to statutes relating to county construction contracts. (Cont'd p. 2.)

### **Judicial: Lien Slander Requires Trial**

A Court of Appeals reversed a trial court finding that contractor was entitled to damages without trying the owner's claim of slander of title due to contractor's mechanics' lien. (Cont'd p. 2).

### **Judicial: Lien Slander Reckless**

The same Court of Appeals as above affirmed a trial court finding that contractor's work was untimely and unworkmanlike; therefore, contractor's mechanic's lien caused damages by filing a false lien. (Cont'd p. 3).

### **Legislative: Public Works Commission Renewal**

The Ohio General Assembly passed House Joint Resolution 8 to extend Ohio Public Works Commission funding for another 10 years. The initiative will appear on the May 6, 2025 ballot to amend the Constitution, as has been done since 1987 for local projects. (Cont'd p. 4).

### **Legislative: Electronic Applications**

After both the Ohio Senate and House passed Senate Bill 44, the Senate added the legislation to House Bill 315, to require all licensing agencies to accept electronic applications. (Cont'd p. 4).

### **Legislative: Expedited Building Appeals**

The General Assembly passed Substitute Senate Bill 41 unanimously as amended, to provide for expedited building appeals to the Ohio Board of Building Standards. (Cont'd p. 4).

### **Judicial: Prevailing Party Attorney Fees**

The Ohio Supreme Court issued guidance on when a party "prevails" for purposes of claiming an award of Attorney Fees under statutory language. (Cont'd p. 4).

### **Administrative: State Financial Support**

Several State programs continued award of low-interest loans and tax credits for construction projects across Ohio, including the Ohio Water Development Authority, Historic Preservation Tax Credits, and the Ohio Tax Credit Authority. (Cont'd p. 5).

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## **Legislative: County Construction (Cont'd)**

Sponsored by Representatives Brian Stewart (R, Ashville) and Roy Klopfenstein (R, Haviland), the law will take effect 90 days after the Governor's signature.

R.C. 153.31 requires the design-bid-build process for construction, but will no longer apply to any "minor repair", defined as "the reconstruction or renewal of any part of an existing building for the purpose of its maintenance when the work has limited impact on access, safety, or health."

R.C. 153.36 now requires approval of a majority of specified county officeholders for any courthouse or jail project over \$75,000.00.

Plans and specifications no longer will be held by the auditor, but by the commissioners and/or county engineer, R.C. 153.35-153.39.

Enacting a new section R.C. 307.901, a contract entered into by a county authority for the procurement of goods or services shall not include the following terms, or which terms otherwise are void ab initio:

(1) A provision that requires the county to indemnify or hold harmless another person;

(2) A provision by which the county agrees to binding arbitration or any other binding extra-judicial dispute resolution process;

(3) A provision that names a venue for any action or dispute against the county other than a court of proper jurisdiction in the county;

(4) A provision that requires the county to agree to limit the liability for any direct loss to the county for bodily injury, death, or damage to property of the county caused by the negligence, intentional or willful misconduct, fraudulent act, recklessness, or other tortious conduct of a person or a person's employees or agents, or a provision that otherwise imposes an indemnification obligation on the county;

(5) A provision that requires the county to be bound by a term or condition that is unknown to the county at the time of signing a contract, that is not specifically negotiated with the county, that may be unilaterally changed by the other party, or that is electronically accepted by a county employee;

(6) A provision that provides for a person other than the prosecuting attorney, or an attorney employed pursuant to section 305.14 or 309.09 of the Revised Code, to serve as legal counsel for the county;

(7) A provision that is inconsistent with the county's obligations under section 149.43 of the Revised Code;

(8) A provision that limits the county's ability to recover the cost for a replacement contractor.

## **Judicial: Lien Slander Requires Trial (Cont'd)**

Owner signed a contract in June 2019 with contractor to repair tornado damage to owner's building. When owner failed to pay for the work, contractor filed a mechanics' lien and sued. The trial court stayed the litigation pending arbitration.

In January 2022, the arbitrator determined that the parties never agreed

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upon a scope of work or price. Because contractor's initial, preparatory work was not apparent or priced, it would be unfair to award damages against the owner.

In May 2022, the trial court affirmed the arbitrator's decision. Nine months later, in February 2023, the trial court determined that the contractor's lien had no basis without a valid, underlying claim. The contractor waited until April 2023 to release the lien.

The owner sought damages due to the contractor not releasing the mechanics' lien at the time of the arbitrator's decision in January 2022. But the trial court overruled the owner's claim for damages, reasoning that the contractor "continued to have reasonable grounds to believe in the validity of its lien claim despite the arbitrator's decision".

The Court of Appeals reversed on the basis that the trial court's finding of "reasonable grounds" at a minimum stated a factual dispute and required trial. The Court held that case precedent "establishes the key principle that slander of title may involve filing an unfounded lien *or* failing timely to release a lien."

Accordingly, the owner is entitled to a trial on whether the contractor acted with reckless disregard in failing to timely release its lien.

*GC3, LLC v. Empowerment Temple, Inc.*, 2d Dist. Montgomery, 2024-Ohio-5509.

## **Judicial: Lien Slander Reckless (Cont'd)**

A concrete restoration contractor provided an estimate to restore the surface of a parking garage. The parties signed no written contract, but agreed to the price of

\$75,000.00 per floor, with an additional \$10,000.00 for initial mobilization and training.

The parties disagreed over project construction sequence and schedule. With no written agreement, the contractor began sending invoices for completed work, resulting only in partial payments. The contractor further requested change orders for additional work.

The owner expressed concern that the contractor was overbilling and behind schedule, when the owner terminated for cause.

The contractor filed a mechanics' lien, but failed to serve the owner. As a result, the owner's real estate financing was delayed when a title search revealed the lien. The delay to bond off the lien required a bonding fee and a substantially higher interest rate at the owner's cost.

The contractor sued to foreclose the lien. The owner claimed damages for the false lien, and additional damages to fix the contractor's defective work. The trial court agreed with the owner, awarding damages against the contractor.

The trial court ruled, "Ohio common law imposes upon builders and contractors a duty to perform their services in a workmanlike manner." With the substandard work and delay, the court found that the contractor breached the oral agreement.

The contractor committed the tort of slander of title "when the mechanics lien was recorded, the statement was false or made with reckless disregard of its falsity, and [the owner] was damaged by having to pay \$3,960 to bond off the lien."

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Thus, merely filing a lien does not result in slander; the owner must prove “reckless disregard” of the truth.

*Speedy Maint. Serv. v. Windsor Tower, LLC*,  
2<sup>nd</sup> Dist., Montgomery, 2024-Ohio-5841.

## **Legislative: Public Works Commission Renewal (Cont’d)**

Sponsored by Representatives Scott Oelslager (R, North Canton) and Dan Troy (D, Willowick), House Joint Resolution 8 was a bipartisan proposal to ask voter approval of \$250 million annually for ten years.

An affirmative vote will enact Section 2t of Article VIII of the Constitution of the State of Ohio to permit the issuance of additional general obligation bonds to fund public infrastructure capital improvements.

The Senate approved the measure by a vote of 30-1 after only two hearings. The House adopted the language 87-4 after two hearings.

The Resolution received support from the Ohio Society of Professional Engineers, the Ohio Contractors Association, the Associated General Contractors, the Ohio Chamber of Commerce, the Ohio Township Association, the County Commissioners Association of Ohio, ACEC Ohio, Greater Ohio Policy Center, and the County Engineers Association of Ohio.

## **Legislative: Electronic Applications (Cont’d)**

Sponsored by Senator Andrew Brenner (R, Delaware), the legislation mandates that all occupational licensing agencies require electronic applications for

initial review.

The agency may adopt a paper-application option.

The mandate applies to any “license, certificate, registration, or other authorization to a person to practice a trade or profession”. This definition may be broader than expected, as it contains no exceptions.

House Bill 315 which contains the language awaits the Governor’s signature.

## **Legislative: Expedited Building Appeals**

Sponsored by Senator Kristina Roegner (R, Hudson), the legislation will require the Board to hold a hearing within 5 days of any appeal commenced as an expedited appeal.

The bill became a vehicle for numerous other subjects which had not moved in the 2-year legislative session. These unrelated subjects include employee pay stub protections, waste energy recovery systems, a Broadband Pole Replacement Program, and a Sales Tax Exemption for certain farm owners.

Because of the numerous amendments, the Senate will be required to concur before sending the legislation to the Governor.

## **Judicial: Prevailing Party Attorney Fees (Cont’d)**

This case is significant, because many construction contracts contain similar language. And when litigation results, often plaintiffs claim that the other party committed a deceptive practice under law.

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The Ohio Deceptive Trade Practices Act authorizes claims for actual damages and injunctive relief and allows for an award of attorney's fees to a plaintiff who is a "prevailing party" in a lawsuit brought under the Act. R.C. 4165.03.

A real estate owner engaged a construction contractor to renovate the property. When the renovations did not occur, the owner successfully sued, receiving a court award of over \$30,000.00 for breach of contract.

The jury further found that the contractor had "engaged in at least one of the practices considered in the deceptive trade practices act", then awarded zero damages.

The owner demanded attorney fees as a "prevailing party". The Supreme Court required that "in accord with the principle that a party prevails by changing the legal relationship between the parties in his favor." This means award of at least \$1.00.

Significantly, the standard differs for a plaintiff and defendant. "A plaintiff prevails by altering the legal relationship between the parties through an award of damages or by injunctive relief; a defendant prevails by preventing the plaintiff from doing so."

*Goomai v. H&E Ent., LLC*, Ohio Supreme Court, 2024-Ohio-5711

## **Administrative: State Financial Support** **(Cont'd)**

The OWDA awarded more than \$2.5 million in low interest loans for five projects, including water and drain improvements in Akron at 3.84% interest, the City of Columbus for the Scioto main

trunk sewer, and \$1.6 million at 3.62% to the City of Milford in Clermont County for a 1-million-gallon water storage tank.

Historic Tax Credits were awarded for 37 projects totaling \$56 million, across 15 communities.

14 companies received state income tax rebates for creating or retaining Ohio jobs. Typical projects include energy retrofits and facilities expansion.

By example, Lithko Contracting is a West Chester Township (Butler County) concrete construction contractor, which expects to create 50 new full-time jobs and retain 90 positions with its planned expansion of its headquarters.

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Join us in

## **The Construction Conversation Call-In**

on

**Wednesday, January 15, 2025  
3:30 pm**

Luther L Liggett is inviting you to a  
scheduled Zoom meeting.

Join Zoom Meeting

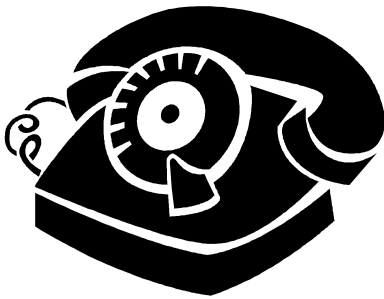
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Meeting ID: 893 3980 4996

Passcode: 995281

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