

Bob Ebinger

From: Chris Gray [cgray@cgraylaw.com]
Sent: Monday, March 26, 2007 11:36 AM
To: JESSELAZ@YAHOO.COM; AUBYNA@INTERBEL.NET; ONEIL@CENTURYTEL.NET;
PERRYSD35@AOL.COM; larry@imt.net; CSJUNEAU@3RIVERS.NET; LYN DAMOSS@IMT.NET;
DAVEEW@GMAIL.COM; CWILLIAMS@MONTANADSL.NET
Cc: BUFFALOJUMP@YCSI.NET
Subject: {Spam?} Support for HB 657

To: Chair and Members, Montana Senate Judiciary Committee
From: Christopher B. Gray, Bozeman
Re: Comments in Favor of HB 657

My name is Christopher Gray. I write in support of HB 657 which is the subject of hearing in front of the Montana Senate Judiciary Committee on March 27, 2007. I am sole-practitioner attorney in Bozeman whose practice includes representing contracting owners, subcontractors and contractors in the construction law field.

The substantive provisions of HB 657 allow the posting of security in lieu of a construction lien in the form of cash or bond within 30 days of the service of a lawsuit to foreclose the construction lien. This brief but important language change closes a loop hole and creates an opportunity for contracting owners to have a way to continue their projects during disputes with contractors. It also continues the "no harm" circumstance where contractor's claims under liens remain fully protected during the dispute.

The necessity of this legislation comes from the practice of some members of the contractors bar who simultaneously file a construction lien and a lawsuit to foreclose the lien. These actions under the current text of 71-3-551(1), MCA give the owner no legal remedy to post security if the lien or the amount of the lien is in dispute. The practical result to owners who are financing their construction project is that lending institutions can and will cut off the funding stream until the dispute is resolved. This causes the construction project to come to a stand still for the period of time it takes to resolve the lawsuit. As you know, lawsuits can last for months and years depending on the jurisdiction. The tactic of simultaneous filing amounts to undue pressure on the owners who are given the choice to either litigate and assert their legitimate defenses or fold in the face of the contractor's strategy because of their individual financial circumstances.

The legislation also creates a circumstance where owners are not faced with a "rush to the courthouse" to file the security not knowing whether the contractor will or will not file suit. An owner would have at least a 30 day window to file security from the time they are put on notice of the construction lien. This will allow owners and contractor's time to work through their differences regarding legitimate disputes related to the lien without the necessity of utilizing the courts and the time and expense that goes along with lawsuits.

HB 657 is nothing new, it merely gives an owner at least 30 days in which to post the security. In the context of my representation of contractors and subcontractors, the preference is clear to pursue a case where security in the form of 150% of the lien amount has been posted with the court. This comes in the form of cash or a bond backed by the financial strength of a properly admitted surety company. The idea has always been to get the rightfully earned money in the hands of the hardworking builders and tradespersons as soon as possible rather than have them spend their profits on attorney's fees to pursue foreclosure and priority fights in the courts. When the security is posted it in turn gives the contractors security that their bills will be paid when the dispute is resolved. In addition, it provides incentive for the owner to settle because their cash or credit interest is bound with the court.

I encourage you to lend your support to this common sense legislation which provides a "win-win" to both the contractors and owners alike.

Thank you for your consideration.

Christopher Gray