

FILED

2010 MAR -5 PM 4: 35

SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

**HEIDI CASTINO dba UNI-ARC, S.K. CONSTRUCTION, INC., HUA
SHENG INTERNATIONAL GROUP, LTD., YEONG SUN KIM dba SUN
ELECTRICAL SERVICES, JONG UL HONG dba UL H.
CONSTRUCTION, PAN DOL PARK dba P.D. CONSTRUCTION and
HAWAIIAN ROCK PRODUCTS, Plaintiffs-Appellants, and
G.C. CORPORATION, Defendant-Counterclaimant/Appellant,**

v.

**G.C. CORPORATION and GUAM RESORTS, INC.,
Defendants-Appellees.**

Supreme Court Case No. CVA09-009
(Consolidated with CVA09-010, CVA09-011, and CVA09-012)
Superior Court Case No. CV0091-08, CV0015-08, CV1474-07, CV1491-07 and CV0137-08

OPINION

Cite as: 2010 Guam 3

Appeal from the Superior Court of Guam
Argued and Submitted on October 9, 2009
Hagåtña, Guam

91
20100499

Submitted on Briefs for Plaintiff-Appellant:

Heidi Castino dba Uni-Arc
Thomas M. Tarpley, Jr., *Esq.*
Thomas McKee Tarpley, P.C.
Suite 904 GCIC Bldg.
414 W Soledad Ave.,
Hagåtña, GU 96910

Appearing for the Defendant-Appellee:

Guam Resorts, Inc.
James L. Canto II, *Esq.*
Shimizu Canto & Fisher
Suite 101 De La Corte Bldg.
167 E Marine Corps Dr.
Hagåtña, GU 96910

Appearing for the Plaintiffs-Appellants:

S.K. Construction, Inc., Hua Sheng
International Group Ltd., Yeong Sun Kim dba
Sun Electrical Services, Jong Ul Hong dba Ul
H. Construction, Pan Dol Park dba P.D.
Construction
Thomas C. Sterling, *Esq.*
Blair Sterling Johnson Martinez & Leon
Guerrero, P.C.
Suite 1008 DNA Bldg.
238 Archbishop F.C. Flores St.
Hagåtña, GU 96910

Hawaiian Rock Products
Mitchell F. Thompson, *Esq.*
Maher & Thompson, P.C.
140 Aspinall Ave., Suite 201
Hagåtña, GU 96910

Appearing for the Defendant-
Counterclaimant/Appellant:

G.C. Corporation
Joyce C.H. Tang, *Esq.*
Civille & Tang, PLLC
330 Hernan Cortez Ave., Suite 200
Hagåtña, GU 96910

BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

TORRES, C.J.:

[1] Several mechanics' lien claims that stemmed from the Guam Okura Hotel construction project were recorded and subsequent foreclosure actions were filed. All cases relating to this construction project were consolidated at the trial court level and were consolidated again on appeal. Plaintiffs-Appellants and Defendant-Counterclaimant/Appellant appeal from the trial court's *sua sponte* dismissal for lack of subject matter jurisdiction over all foreclosure causes of action because each party's lien claim failed to meet the requirements of 7 GCA § 33301(a) or 7 GCA § 33302(i), or both, thus rendering the lien claims invalid. The trial court held that the invalid lien claims removed the subject matter jurisdiction of the court, which allowed the trial court to dismiss the cases *sua sponte*.

[2] We **REVERSE** and find that the mechanics' lien claims met the formation requirements for giving preliminary notice of a lien claim and recording a valid lien claim under 7 GCA §§ 33301(a) and 33302(i).

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] G.C. Corporation ("GC") signed a construction agreement with Guam Resorts, Inc. ("GRI") to be the prime contractor on the Guam Okura Hotel Project ("Project"). GRI owns the Project, located at the Hotel Okura in Tumon, Guam. Thereafter, GC subcontracted with Plaintiff-Appellants S.K. Construction, Inc., Hua Sheng International Group Ltd., Yeong Sun Kim dba Sun Electrical Services, Jong Ul Hong dba Ul H. Construction and Pan Dol Park dba P.D. Construction, (collectively, "S.K. Group"), as well as Heidi Castino dba Uni-Arc ("Uni-

Arc”) and Hawaiian Rock Products (“HRP”), to provide labor or materials or both for the Project. The following subsections explain each party’s factual and procedural background.

A. GC

[4] GC and GRI signed a construction agreement where GC performed labor and furnished materials that were used in the renovation and improvement of GRI’s property. GRI stopped paying GC, the project was delayed, and GRI denied GC access to certain portions of the Project site. GC suspended work on the Project and notified GRI that GC would not work unless GC was paid what was due under their construction agreement and the delay issues were resolved. GRI then notified GC’s counsel by letter that GRI had terminated the construction agreement. That same day, GC delivered a pre-lien notice to GRI. Just over two weeks later, GC filed and recorded its lien claim with the Department of Land Management.

[5] Subsequently, GRI filed a Complaint for Quiet Title against GC, seeking to invalidate GC’s lien claim. GC answered and counterclaimed seeking foreclosure of its lien claim. GRI then filed a Reply to GC’s Counterclaim.

B. Uni-Arc

[6] Uni-Arc served a pre-lien notice to GRI and GC, and subsequently recorded a lien claim. Uni-Arc then filed a complaint for foreclosure of its mechanics’ lien claim.¹

C. S.K. Group

[7] The members of the S.K. Group each served pre-lien notices to GRI and GC and subsequently recorded mechanics’ liens to secure the amounts owed to them for working as

¹ Uni-Arc did not appear at Oral Arguments because its sole issue on appeal was the trial court’s interpretation of the 15-day notice requirement of 7 GCA § 33301(a), which remained uncontested by GRI who filed a Statement that No Appellee’s Brief Will Be Filed and a Statement of Non-Opposition.

subcontractors on the Project. The S.K. Group also filed a complaint to foreclose on the lien claims.

D. HRP

[8] HRP sent a preliminary notice of lien to GRI and GC and thereafter recorded a mechanics' lien.

[9] HRP filed a complaint, which HRP later amended, against GRI and GC to foreclose its mechanics' lien. HRP also filed a Motion for Summary Judgment on its claim. Subsequently, GRI filed a Rule 12(b)(1) and Rule 12(b)(6) motion to dismiss, an Opposition to HRP's Motion for Summary Judgment, a Motion to Dismiss HRP's First Amended Complaint, and a Reply in Support of its Motion to Dismiss.

E. Consolidation and Dismissal at the Trial Level and Consolidation at the Appellate Level

[10] GC filed a motion to consolidate all the pending cases arising from the Project which the trial court granted. The court then proceeded to hear the pending motions in the consolidated cases after which the trial court issued its 5th Consolidation Order requiring the plaintiffs of the consolidated cases to provide a memorandum addressing certain issues including pre-lien notice under 7 GCA § 33301(a) and verification under 7 GCA § 33302(i). Uni-Arc, GC, S.K. Group, and HRP each filed a memorandum complying with the 5th Consolidation Order.

[11] Less than one week later, all foreclosure actions were dismissed by the court, *sua sponte*, for lack of subject matter jurisdiction because each party's lien claim failed to meet the requirements of 7 GCA § 33301(a) or 7 GCA § 33302(i), or both, thus invalidating the liens. The court held that "[a] Claim of Lien must be verified either by a jurat acknowledgment, not a mere notarial acknowledgment or in accordance with 6 GCA § 4308 to be valid" and that ". . . all

parties who filed a claim of lien against GRI's property must have complied with 7 GCA § 33301(a); failing to do so means that all subsequent claim of liens filed are invalid." Uni-Arc Excerpts of Record ("Uni-Arc ER") at 20 (Dec. & Order, Apr. 7, 2009) (footnote omitted).

[12] An appeal from each lien claimant followed and the cases were consolidated by this court. GC filed statements that no appellees' brief will be filed for S.K. Group and HRP. GC and GRI both did not oppose Uni-Arc on appeal of its sole issue of preliminary lien notice under 7 GCA § 33301(a). GRI then filed a Statement of Non-Opposition to Uni-Arc's appeal.

II. JURISDICTION

[13] This court has jurisdiction over an appeal from a final judgment of the Superior Court pursuant to 48 U.S.C.A. § 1424-1(a)(2) (West Supp. 2009); 7 GCA §§ 3107(b) and 3108(a) (2005).

III. STANDARD OF REVIEW

[14] The standard of review for a trial court's dismissal for lack of subject matter jurisdiction is *de novo*. *Amerault v. Intelcom Support Servs., Inc.*, 2004 Guam 23 ¶ 9. The standard of review for questions of statutory interpretation is also *de novo*. *Apana v. Rosario*, 2000 Guam 7 ¶ 9 (per curiam).

IV. DISCUSSION

A. Subject Matter Jurisdiction

[15] The trial court held that because there was a defect in the requirements for a claim of lien under the mechanics' lien statute, 7 GCA § 33302, the court lacked subject matter jurisdiction to hear the claims, thereby making the statute's requirements jurisdictional. We disagree with the conclusion that the court did not have subject matter jurisdiction.

[16] In *Arbaugh v. Y. & H. Corp.*, the Supreme Court specifically addressed the issue of statutory compliance and subject matter jurisdiction. 546 U.S. 500, 503 (2006). Ms. Arbaugh, a waitress/bartender, sued her former employer, Y & H, for sexual harassment under Title VII. *Id.* at 503-04. After a jury verdict and judgment in Arbaugh’s favor, Y & H moved to dismiss for lack of subject matter jurisdiction, claiming for the first time that it had fewer than 15 employees, which is a prerequisite to Title VII’s application. *Id.* at 504. Y & H argued that since the court had no jurisdiction, Y & H was therefore not amenable to suit under Title VII. *Id.* The trial court agreed that the 15-or-more employee requirement was jurisdictional and vacated its prior judgment. *Id.* The Circuit Court of Appeals affirmed. *Id.* at 509. The Supreme Court reversed, holding that while the employee numerosity requirement relates to the substantive adequacy of Arbaugh’s claim, it did not circumscribe the federal court of subject matter jurisdiction. *Id.* at 504. Rather, it was a defect in the plaintiff’s claim that, if not timely asserted before the conclusion of trial on the merits, was deemed waived. *Id.*

[17] Moreover, nothing in Title VII indicated that Congress intended courts, *sua sponte*, to assure that the employee-numerosity requirement was met. *Id.* at 515. The Court held that if the Legislature clearly stated that a threshold limitation on a statute’s scope was jurisdictional, then, courts and litigants would be duly instructed and would not be left to wrestle with the issue. *Id.* at 515-16. The Court did not dispute that if a requirement in a statute was jurisdictional, failure to comply with that requirement divested the court of subject matter jurisdiction. *Id.* at 515. However, that was not the case with the Title VII employee numerosity requirement. The Court said that “when Congress does not rank a statutory limitation on coverage as jurisdictional, courts should treat the restriction as nonjurisdictional in character.” *Id.* at 516. The Court reasoned that if Congress meant to make the employee-numerosity requirement “jurisdictional”

as it has made the amount-in-controversy threshold an element of subject matter jurisdiction for federal courts, it would have specified so in the statute itself. *Id.* at 514-15. Therefore, if the statute was meant to have jurisdictional restrictions, it would have been written in such a way so as to indicate that intent. As such, the mechanics' lien statute clearly was not.

[18] The Supreme Court in *Arbaugh* further stated that judicial opinions “often obscure the issue by stating that the court is dismissing ‘for lack of jurisdiction’ when some threshold fact has not been established, without explicitly considering whether the dismissal should be for lack of subject matter jurisdiction or for failure to state a claim.” *Id.* at 511. (quoting *Da Silva v. Kinsho Int’l Corp.*, 229 F.3d 358, 361 (2d Cir. 2000) (internal quotation marks omitted)). These are known as “drive-by jurisdictional rulings.” *Id.*; see also *Permalab-Metalab Equip. Corp. v. Mayland Casualty Co.*, 102 Cal. Rptr. 26, 29 (Ct. App. 1972) (citing 1 Witkin, Cal. Procedure, Jurisdiction § 71 (2d ed. 1970)) (the failure to fully comply with a statutory requirement of a mechanics' lien claim is generally considered to be only a defective statement of the cause of action and the failure to comply with the requirements does not go to the jurisdiction of the court).

[19] The Guam mechanics' lien statute does not refer to any element of the lien claim as being a jurisdictional requirement. 7 GCA § 33302 (2005). The Guam Legislature did not clearly express any intent to make the elements of a mechanics' lien claim jurisdictional. Therefore, the trial court had jurisdiction over the consolidated cases which involve foreclosure actions of real property in Guam and the asserted claims fell under the statutory authority of 7 GCA § 3105. The trial court's finding that imperfect lien claims invalidated those claims and defeated the court's subject matter jurisdiction over the foreclosure actions was a “drive-by jurisdictional ruling” and in error.

B. Waiver of Affirmative Defense

[20] Having determined that failure to comply with the mechanics' lien statutory requirements does not divest a court of subject matter jurisdiction, we must still review whether GRI waived its right to raise an affirmative defense of non-compliance with 7 GCA § 33302(i) before even addressing the trial court's statutory interpretation of 7 GCA § 33302(i). S.K. Group and HRP both argue that GRI waived its affirmative defense that the lien claims did not fully comply with 7 GCA § 33302(i) because GRI did not timely raise the issue that the lien claims each lack the verification required under section 33302(i). Failure to comply with 7 GCA § 33302(i) is an affirmative defense that can be waived. *See Permalab-Metalab Equip. Corp. v. Maryland Casualty Co.*, 102 Cal. Rptr. 26, 28-29 (Ct. App. 1972). However, GRI has yet been required to raise this affirmative defense in the case involving HRP because GRI filed a Rule 12(b) motion to dismiss instead of filing an answer. *Hawaiian Rock Products v. G.C. Corp.*, CV1474-07, Docket 8/29/08. Moreover, GRI did assert this affirmative defense through its reply and answer to GC's counterclaim. G.C. Corp. Excerpts of Record ("GC ER"), tab 3 at 2 (Reply to Counterclaim, Jan. 11, 2008). Therefore, this affirmative defense has been raised in one case and in the other, the time in which to raise the affirmative defense has not yet passed. There has been no waiver by GRI of any affirmative defenses. Accordingly, we must examine in more detail the statutory formation requirements of a mechanics' lien claim.

C. Statutory Interpretation of the Guam Mechanics' Lien Law

[21] Although previous Guam case law refers to the statutory interpretation of the Guam mechanics' lien statute as a "fair and reasonable" construction and a plain reading construction when the statute is clear on its face, this court has yet to define what constitutes a "fair and reasonable" construction. We now take this opportunity to elaborate on and clarify the definition

of the “fair and reasonable” construction in determining whether the formation requirements for a valid mechanics’ lien claim were met.

[22] Guam adopted its mechanics’ lien statutes from California. *Apana v. Rosario*, 2000 Guam 7 ¶ 11. Therefore, California case law interpreting those mechanics’ lien statutes are persuasive authority. *Cf. Zurich Ins. (Guam), Inc. v. Santos*, 2007 Guam 23 ¶ 7. In *Zurich Ins., Inc.*, the court stated “California case law is persuasive when there is no compelling reason to deviate from California’s interpretation” when it interpreted the Guam Code of Civil Procedure, which has substantially the same language as the California Code of Civil Procedure. *Id.*; *see Holmes v. Territorial Land Use Comm’n*, 1998 Guam 8 ¶ 6 (observing that “since Guam’s mandamus statutes were adopted from the California Civil Code, California cases applying the mandamus standard are persuasive authority”); *see Ueda v. Bank of Guam*, 2005 Guam 23 ¶ 16 n.7 (finding “California case law [is] persuasive authority in the interpretation of Title 21 GCA § 1254, as that section was derived from California Civil Code § 711”); *see also People v. Agualo*, 948 F.2d 1116, 1118 (9th Cir. 1991) (noting that they have previously held that “decisions of California courts are persuasive on issues of statutory construction and the effect of laws which predate the enactment of the territorial laws of Guam and which precisely follow California statutes”).

[23] California courts have held that lien claimants need only substantially comply with the mechanics’ lien statute. *See, e.g., M. Arthur Gensler, Jr., & Assoc., Inc. v. Larry Barrett, Inc.*, 499 P.2d 503, 508 (Cal. 1972) (“In an action to foreclose a mechanics’ lien the plaintiff must plead and prove facts showing his substantial compliance with the statutory requirements relative to the filing of his claim of lien.”); *Clements v. T.R. Bechtel Co.*, 273 P.2d 5, 12 (Cal. 1954) (finding that a complaint to foreclose a mechanics’ lien must show a substantial compliance with

the statute.); *Stanislaus Lumber Co. v. Pike*, 124 P.2d 190, 193 (Cal. Dist. Ct. App. 1942) (“Mechanics’ liens are creatures of statute which are dependent for their existence and enforcement upon substantial compliance with the letter of the law.”).

[24] S.K. Group, HRP, and GC, argue that the California case law articulating a liberal interpretation of the mechanics’ lien statutes using substantial compliance should be followed by this court. GRI asserts that based on prior decisions, this court should strictly construe mechanics’ lien statutes that are clear on their face. Moreover, GRI believes that California courts likewise strictly construe lien requirements regarding creation of liens and substantial compliance fails to satisfy 7 GCA § 33302(i).

[25] In *Manvil Corp. v. E.C. Gozum & Co., Inc.*, the court set out, for the first time, Guam’s standard for statutory interpretation of its mechanics’ lien statute. 1998 Guam 20. The court declared:

We adopt a fair and reasonable construction and application of our mechanics’ lien statutes to the facts in each particular case, so as to afford materialmen and laborers the security intended by the legislation’s remedial purpose. Where the statutes are clear on their face, however, we will not read further.

Id. ¶ 17. Although the court set out this “fair and reasonable” statutory construction and a plain reading construction when the statute is clear on its face, the “fair and reasonable” language did not come from California case law and was not defined in any existing Guam case law. For clarity and for guidance in interpreting the mechanics’ lien statutes, we now further examine and explain the application of both the “fair and reasonable” construction and the plain reading construction.

1. Guam’s Fair and Reasonable Construction and Plain Reading Construction

[26] In *Manvil*, the court first adopted a “fair and reasonable” construction of the mechanics’ lien statute to the facts when it found that the lien claimant failed to timely file his lien claim

because he failed to file within ninety days from the date the project was completed. *Id.* ¶ 17. Although the court did not specify whether that standard was strict or liberal, the words “fair and reasonable” do not suggest strict compliance. The court did not extensively discuss this issue of statutory construction because it did not affect the holding in that case. However, the timely filing requirement in the mechanics’ lien statute was very clear on its face and therefore did not lend itself to any interpretation.

[27] In *Apana v. Rosario*, the court also restated and purported to apply the “fair and reasonable” construction, as used in *Manvil*, for interpretation of the mechanics’ lien statute. 2000 Guam 7 ¶ 17. The issue in *Apana* was whether the lien claimant timely filed his mechanics’ lien. *Id.* ¶ 1. The court found that the trial court misinterpreted the time limits in the statute by misreading them. *Id.* ¶ 18. The court concluded that the trial court erred in “strictly interpreting” 7 GCA § 33302(b) by holding that the lien claimant did not timely file its lien claim. *Id.* ¶ 26. The court reasoned that the trial court failed to read 7 GCA § 33302(d)(3) with 7 GCA § 33302(b) in determining whether or not the lien claim was timely filed. *Id.* ¶ 26. Title 7 GCA § 33302(b) states that if no notice of completion is filed, the lien claimant has ninety days after completion of work to file the claim in accordance with section 33302(c). 7 GCA § 33302(b) (2005). Title 7 GCA § 33302(d)(3) states that “completion of work” is equivalent to cessation of labor for a continuous period of sixty days after work has been done. 7 GCA § 33302(d)(3) (2005). Rather than only having ninety days after the completion of the work to file the claim as sections 33302(b) and 33302(c) state, a lien claimant actually had 150 days to record the lien claim because sections 33302(b) and 33302(d)(3) should be read and applied together. *Apana*, 2000 Guam 7 ¶¶ 16-18. Thus, the court actually applied the plain reading construction because the statutory sections in question were clear on their face.

[28] In another case, *Guam Pacific Enter., Inc. v. Guam Poresia Corp.*, the court stated that it adopted the “fair and reasonable” construction from *Manvil* but a closer examination reveals the court did not need to use the “fair and reasonable” construction in reaching its decision. 2007 Guam 22 ¶ 15. In *Guam Pacific Enter.*, the court was faced with the issue of whether a notice of non-responsibility complied with the requirements of the mechanics’ lien statute in order to relieve the owner from the lien on the property. *Id.* ¶ 24. The court acknowledged that the purpose of the mechanics’ lien statute is to protect not only those who provided labor or materials, but also the rights of the property owner. *Id.* ¶ 13. The court stated that it adopted from *Manvil* both the rule of plain reading of a statute that is clear on its face and also the rule of fair and reasonable construction of the mechanics’ lien statutes. *Id.* ¶ 15. The court further held “[i]t is clear under section 33203(b), that an owner must provide written notice [of non-responsibility] by posting and recording the notice within ten days after obtaining knowledge of construction on the property, and we will not read further.” *Id.* ¶ 22. While the court acknowledged both the “fair and reasonable” construction and plain reading construction, the court quite obviously applied the plain reading construction because the statutory requirements of posting and recording the notice of non-responsibility are clear on their face.

[29] Based on these cases, GRI claims that Guam did not follow California’s liberal interpretation, therefore, Guam has adopted a strict compliance standard. While it may appear to some that we have adopted a strict compliance construction and completely abandoned California’s liberal interpretation requiring substantial compliance because of our adoption of the “fair and reasonable” construction, this is not the case. The courts in *Manvil*, *Apana*, and *Guam Pacific Enterprise* dealt with requirements of timely filing and notice that were clearly and specifically laid out in statutes. A plain reading construction is appropriate where the statute lays

out specific requirements and indicates exactly what is necessary for compliance without ambiguous terms.

[30] We have clearly articulated that a plain reading construction is used when the mechanics' lien statute is clear on its face, and in turn, we now announce that the "fair and reasonable" construction is to be used when the statute is not clear on its face. In applying the "fair and reasonable" construction, the court must determine whether the lien claimant or property owner complied to some extent with the statutory requirements and whether such compliance is sufficient to constitute substantial compliance. The only "strict" part of this test is the requirement of having to comply (to some degree) with every statutory requirement, because there cannot be substantial compliance if there is no compliance at all; if one required element is omitted, then the court cannot determine whether the claimant has substantially complied with that requirement.

[31] There are three steps a lien claimant must take in order to perfect a claim of lien: (1) give the property owner and original contractor written notice of intent to claim a lien under the owner's property, (2) file for record the lien claim, and (3) timely commence a foreclosure action on the lien claim. 7 GCA §§ 33301, 33302, and 33402 (2005). S.K. Group, HRP, and GC each served proper notice and commenced timely foreclosure actions in accordance with 7 GCA §§ 33301(a) and 33402. The dispute here stems from whether each lien claim of S.K. Group, HRP, and GC complies with the second step concerning recording the lien claim, under section

//

//

//

//

33302(i).² Each lien claim contains the information and proper signatures as required in section 33302(i). At issue is the compliance with the verification requirement of section 33302(i).

2. Verification Requirement of 7 GCA § 33302(i)

a. Trial Court’s Holding on Verification

[32] The trial court’s Decision and Order held that for the purposes of section 33302(i), a claim of lien must be verified “either by a jurat acknowledgment . . . or in accordance with 6 GCA § 4308 to be valid.” Uni-Arc ER at 20 (Dec. & Order, April 6, 2009).

[33] Black’s Law Dictionary states that “Jurat” comes from the Latin word “jurare” meaning “to swear.” *Black’s Law Dictionary* 866 (8th ed. 2004). It further reads that a jurat typically starts out by saying “Subscribed and sworn to before me” which indicates that a jurat acknowledgment is equivalent to a sworn statement. *Id.* Because section 33302(i) does not require a sworn verification, the trial court misinterpreted section 33302(i) by stating that a “jurat acknowledgment” was required to satisfy the verification requirement of section 33302(i).

² Title 7 GCA § 33302(i) provides:

(i) A claim of lien filed for record by any person claiming the benefit of this Chapter shall be signed and verified by the claimant or some person on his behalf and shall contain the following:

- (1) a statement of his demand after deducting all just credits and offsets;
- (2) the name of the owner or reputed owner, if known;
- (3) a general statement of the kind of work done or materials furnished by him, or both;
- (4) the name of the person by whom he was employed or to whom he furnished the materials;
- (5) a description of the property sought to be charged with the lien sufficient for identification.

[34] Likewise, the language of section 33302(i) makes no explicit reference to 6 GCA § 4308. Title 6 GCA § 4308 provides suggested guidelines for appropriate unsworn declarations made under penalty of perjury as shown below.

(1) If executed outside of Guam: “I declare (or certify, verify or state) under penalty of perjury under the laws of Guam that the foregoing is true and correct. Executed on (date). (Signature).”

(2) If executed within Guam, or within a state having a rule of law or procedure similar in effect to this Section: “I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).”

6 GCA § 4308 (2005). This section states that it applies to “any matter [that] is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath or affidavit, in writing of the person making the same.” *Id.* The unsworn declarations under section 4308 listed above are examples of acceptable “verification” for section 33302(i), but section 33302(i) does not refer to section 4308 as the specific method for proper verification.

[35] Section 33302(i) does require a claim of lien to be verified, but it is not clear from the statute itself how one specifically meets this verification requirement. An oath is not required for a verified claim of lien³, and there is no language in section 33302(i) that indicates a verification must be made by jurat acknowledgment or must comply with 6 GCA § 4308. Therefore, the trial court erred in holding that in order for a lien claim to be valid, the lien claim can only be verified with a jurat acknowledgment or in accordance with 6 GCA § 4308.

³ There is no requirement that the verification be sworn or made “by oath” because the mechanics’ lien statute does not specifically require an oath. 7 GCA § 33302(i) (2005). Looking at the legislative history of the California version of this statute (California Code of Civil Procedure § 1193.1), from which 7 GCA § 33302(i) was taken, the section originally required that the claim of lien be “verified by oath.” 1955 California Code of Civil Procedure (West). However, when Guam adopted the California Code of Civil Procedure in 1962, California had already deleted the “by oath” requirement. This further shows legislative intent not to require verifications to be made “by oath” and all the parties here agree that verification by oath is not required.

b. The Verification Requirement is Ambiguous

[36] This case is unlike *Manvil*, *Apana*, and *Guam Pacific Enterprise* because the verification requirement of 7 GCA § 33302(i), which is at issue here, is not clear and specific. Section 33302(i) of the mechanics' lien statute simply states that "a claim of lien shall be signed and verified by the claimant or some person on his behalf" without providing any guidance as to what constitutes verification. 7 GCA § 33302(i) (2005).

[37] The requirement in section 33302(i) that the lien claim be "signed and verified" is ambiguous, particularly to the general public who does not possess legal knowledge as to what "verified" means. Even Black's Law Dictionary has conflicting definitions of the term "verification."⁴ Where the verification requirement is clear and specific, anything short of that should be held as non-conforming.

[38] Where the statute does not prescribe specifically what is required for "verification," the court should allow fair and reasonable interpretations of such requirement as sufficient to meet that requirement. For example, in *Irvine v. McDougall*, the court held that a lien claimant who wrote the words "subscribed and sworn to before me" at the end of his lien claim was valid verification under the statutory requirements. 4 Alaska 702, 704 (D. Alaska 1913). The court stated that it would be better to have verification in the form of an affidavit, but because the statute did not prescribe the form for verification, the court was not inclined to say that the lien claim was invalid. *Id.* The lien law was designed to simplify proceedings and the court said this

⁴ In Black's Law Dictionary 1593 (8th ed. 2004), "verification" is defined as a "formal declaration made in the presence of an authorized officer, such as a notary public, or (in some jurisdictions) under oath but in the presence of such an officer, whereby one swears to the truth of the statements in the documents," as well as "an oath or affirmation that an authorized officer administers to an affiant or deponent," and is also described as an acknowledgment or any act of notarizing.

form of verification may be what the legislature intended. *Id.* Thus, the court ruled the lien claim verified. *Id.*

[39] S.K. Group, GC and HRP each interpreted the ambiguous statutory language differently. Without a definition or instruction of what must be done to verify a lien claim, we cannot use the plain reading construction in determining whether or not the lien claims complied with the verification requirement. Rather, a “fair and reasonable” construction for statutory interpretation must be used in order to determine whether the lien claims they recorded substantially comply with the mechanics’ lien statute, thus making the lien claims valid.

3. Factors for Determining Substantial Compliance

[40] Whether there is substantial compliance with a particular statutory requirement depends on the degree of non-compliance, the underlying policy of the requirement, and the prejudice the property owner or third parties may have suffered as a result of the non-compliance. *Tigard Sand & Gravel Co., Inc. v. LBH Const., Inc.*, 941 P.2d 1075, 1077 (Or. Ct. App. 1997).

a. Underlying Policy for Verification

[41] California courts have held that the verification of a mechanics’ lien claim must indicate in some way that the facts in the claim are true, because the statute does not specify a required method for such verification. *See Arata v. Tellurium Gold & Silver Mining Co.*, 4 P. 195, 195-96 (Cal. 1884) (verification of a lien must affirm the claim is true, but does not require verification to be in form like that attached to a pleading); *Parke & Lacy Co. v. Inter Nos Oil & Dev. Co.*, 82 P. 51, 52 (Cal. 1905) (verification may be done by any person who has sufficient knowledge of the subject to make the verification since there are no express statutory requirements to verification under the mechanics’ lien statute). We do not find any compelling reason to deviate from this California case law. We find that the underlying policy for the requirement of

verification set forth in section 33302(i) is for a lien claimant to at least indicate in some way that the facts set forth in the lien claim are true.

[42] We will now separately examine the degree of non-compliance by the lien claimants and the prejudice GRI or third parties may have suffered as a result of the non-compliance.

b. Degree of Non-Compliance and Prejudice

i. S.K. Group's Lien Claims

[43] Each lien claim filed by a member of the S.K. Group was signed by a representative of the claimant company, contained all the information required under section 33302(i), and was acknowledged by the representative before a notary public for the uses and purposes therein contained. S.K. Group's lien claims also made affirmative statements that the required information "is a correct statement of the claim demanded for materials and labor furnished." S.K. Group Excerpts of Record at 13-46 (Compl., Exs. A-J, Jan. 8, 2008). The lien claims filed by each of the S.K. Group members met the purpose of the verification requirement and the underlying policy of ensuring the veracity of the statements in a lien claim. Not only do the lien claims indicate that the statements are correct, but the veracity of the statements in the lien claims were never challenged by GRI on appeal of this issue. Finally, the S.K. Group lien claims did not prejudice GRI in any way because GRI had notice of the claims at least nineteen days before each claim was recorded and there is no indication of fraud in the lien claims by the S.K. Group members. We find that the S.K. Group's lien claims more than substantially comply with the requirements of section 33302(i) and constitute valid lien claims.

ii. HRP and GC's Lien Claims

[43] HRP's lien claim was acknowledged before a notary public and provided confirmation that a duly authorized representative of the lien claimant signed the lien. GC's lien claim also

contained a similar notarial acknowledgment. HRP and GC's lien claims do not, however, have language indicating the statements are true, although the lien claims have all the other required information of section 33302(i). HRP Excerpts of Record at 33-35 (First Am. Compl., Ex. 3, Aug. 19, 2008); GC ER, tab 2 (Answer and Countercl., Ex. C, Dec. 27, 2007). Further, both parties made a good faith effort to comply with what they believed was required to have the lien claims "verified" in getting notarial acknowledgments. The underlying policy behind the verification requirement is to ensure that the statements in a lien claim are true. Although there is no language that the statements in the lien claims are true, GRI did not challenge the veracity of HRP or GC's lien claims on appeal of this issue. Finally, since the labor and materials provided were under direct contract with GRI, GRI was well equipped to assess the validity and the accuracy of the lien claims, and was not prejudiced by the lack of formal verification of the lien claims. Thus, we find that HRP and GC's lien claims substantially comply with section 33302(i). Although acknowledgment is not the same as verification, all other requirements of section 33302(i) were met by HRP and GC, good faith efforts were taken in an attempt to comply with the verification requirement, the underlying policy for verification was met, and there was no prejudice to GRI or third parties. Therefore, under the "fair and reasonable" construction using substantial compliance, HRP and GC's lien claims are also valid.⁵

4. Lack of Formal Verification under 7 GCA § 33302(i) is a Non-Fatal Defect

[44] Further support that HRP and GC's lien claims are valid under section 33302(i) is found in California cases which have held that mere defects in form should not defeat a lien claim.

Patten & Davies Lumber Co. v. Hayden, 298 P. 129, 130 (Cal. Dist. Ct. App. 1931); *Indus.*

⁵ This court's finding that a mechanics' lien claim lacking a formal verification nonetheless meets the requirements of 7 GCA § 33302(i) should not be an issue in future mechanics' lien cases because the new Mechanics' Lien Laws of Guam removed the requirement that lien claims be "verified" upon recording the claim of lien. 7 GCA § 33101 *et seq.* (2008) (repealed and reenacted by Guam Pub. L. 29-119 (Dec. 15, 2008)).

Asphalt, Inc. v. Garrett Corp., 226 Cal. Rptr. 17, 19 (Ct. App. 1986); *Wand Corp. v. San Gabriel Valley Lumber Co.*, 46 Cal. Rptr. 486, 490 (Dist. Ct. App. 1965). In the instant case, the trial court held that the lack of verification of the lien claims was a fatal defect, thus invalidating the lien claims and removing subject matter jurisdiction over the claims from the court. However, in *Patten*, the court held that the lien claimant's omission to verify the statement of materials furnished is a mere defect of form that does not necessarily forfeit the right of lien, in absence of notice of the defect or demand for such verification. *Patten & Davies Lumber Co.*, 298 P. at 130. The court in *Patten* further held that a mere defect in form of the statement of materials furnished for a lien claim does not work a forfeiture of lien. *Id.* The *Patten* court held that the owner was given a complete and accurate statement of everything required by statute and that it was evidently a mere inadvertence and defect that caused the omission of the verification. *Id.* The court stated that because the claimant received no notice of defect or omission of the verification, the claimant did not purposefully refuse to comply with the statute. *Id.* Thus, the court affirmed the foreclosure of the mechanics' lien. *Id.*

[45] Uni-Arc, S.K. Group, HRP, and GC were first asked to address the issue of proper verification under the trial court's 5th Consolidation Order. The court did not notify the lien claimants that their lien claims were not properly verified. Therefore, like the lien claimant in *Patten*, HRP and GC did not refuse to comply with the requirements of the mechanics' lien statutes, but inadvertently failed to properly verify lien claims which, under persuasive California precedent, does not invalidate the lien claims.

[46] California courts have uniformly classified the mechanics' lien laws as remedial legislation, to be liberally construed for the protection of laborers and materialmen. *E.g.*, *Connolly Dev., Inc. v. Super. Ct. of Merced County*, 553 P.2d 637, 653 (Cal. 1976); *Indus.*

Asphalt, Inc. v. Garrett Corp., 226 Cal. Rptr. 17, 19 (Ct. App. 1986). The unifying thread that is found throughout California case law is the principle that where the purpose of the requirement of the statute is achieved and no one is prejudiced, technical requirements shall not stand in the way of achieving the purpose of the mechanics' lien law. *Wand Corp. v. San Gabriel Valley Lumber Co.*, 46 Cal. Rptr. 486, 490 (Dist. Ct. App. 1965). The court in *Wand* also cited to *Consolidated Pipe Co. v. Wolski*, 296 P. 277 (Cal. 1931), which also held that liens of mechanics or materialmen will not be invalid unless they tend to defraud or fail to impart notice. *Id.* at 489. S.K. Group, HRP and GC's lien claims have not been questioned on the issues of fraud or failure to impart notice. Under persuasive California case law, finding no compelling reason to deviate from California's interpretation of their mechanics' lien statutes, the lien claims should be held valid because the lien claimants gave proper notice and did not file fraudulent lien claims.

[47] The California Supreme Court declared that the recordation of a mechanics' lien inflicts upon the property owner a minimal deprivation of property, while the laborer and materialman have an interest in the specific property subject to the lien since their work and materials have enhanced the value of that property. *Indus. Asphalt, Inc. v. Garrett Corp.*, 226 Cal. Rptr. 17, 20 (Dist. Ct. App. 1986) (quoting *Connolly Dev., Inc. v. Super. Ct. of Merced County*, 553 P.2d 637, 653 (Cal. 1976)). California state policy strongly supports the preservation of laws that give the laborer and materialman security for their claims. *Id.* The court in *Industrial Asphalt* stated that it took into account the social effect of the liens and the interests of the workers and materialmen the liens are designed to protect, and measured those valued interests against the loss, if any, caused to the property owner. *Id.* at 20-21. This shows strong legislative intent to protect the interests of the laborers and materialmen.

[48] In *Industrial Asphalt*, the lien claimant served a pre-lien notice on the property owner, but did not also serve the pre-lien notice to the general contractor, as the mechanics' lien statute required. *Id.* at 19. The court did not believe that the statute's purpose should, or does, lead to an aridly formalistic result, but rather that ancient authority enunciates the purpose of the mechanics' lien: to prevent unjust enrichment of a property owner at the expense of a laborer or material supplier. *Id.* The court said that to construe the statute strictly would require the court to invalidate a lien against an owner who received notice because someone else, the original contractor, did not receive notice. *Id.* Thus, the court held that the lien claimant's notice to the owner satisfied the prerequisites for a valid lien claim even though the notice failed to meet the full notice requirement of the mechanics' lien statute. *Id.*

[49] In both the *Industrial Asphalt* and *Wand* cases, the courts held that minor defects in a lien claim should not defeat the lien claim, and to rule otherwise would go against the legislative intent to provide a statutory remedy protecting laborers and materialmen, especially when the general purpose of the lien claim requirements, such as notice, was met.

[50] GRI argued that the law is clear in stating that a lien claim without proper verification suffers an incurable and fatal defect that renders the lien claim invalid and unenforceable. However, GRI ultimately failed to produce any Guam or California case law to affirm its argument, and only cited cases from other jurisdictions that expressly define what constitutes compliance with the statutory requirements, unlike the verification requirement of the Guam mechanics' lien statute.

[51] GRI has never claimed on appeal that HRP or GC's lien claims were, in any way, fraudulent, which suggests that GRI has not suffered any prejudice due to the lack of formal verification. Moreover, the purpose of the mechanics' lien statute was achieved because the

property owner and general contractor both received timely notice of the lien claims with specific details as required under 7 GCA §§ 33301 and 33302. Under California case law, the technical requirement of formal verification should not stand in the way of the lien claims of HRP and GC, and there is no reason set forth by GRI to depart from such persuasive authority. We do not find any compelling reasons to deviate from California’s convincing authority in this case.

[52] Based on the strong legislative intent to protect laborers and materialmen through the remedial mechanics’ lien statute, we find that a defect in the verification requirement of section 33302(i) is a non-fatal defect that does not invalidate the entire lien claim.

D. 15-Day Notice Requirement of 7 GCA § 33301(a)

[53] Title 7 GCA § 33301(a) states that anyone who is able to claim a lien under this section must give written notice to the property owner and original contractor “not later than fifteen (15) days prior to the filing of a claim of lien” as a prerequisite to filing a valid claim of lien.⁶ 7 GCA § 33301(a) (2005). The trial court held that Uni-Arc, S.K. Group, and HRP’s lien claims were invalid under section 33301(a) because pre-lien notices were given *more than* fifteen days before the lien claims were recorded.

⁶ Title 7 GCA § 33301(a) provides:

Except one under direct contract with the owner or one performing actual labor for wages, every person who furnishes labor, service, equipment or material for which a lien otherwise can be claimed under this Article, must, as a necessary prerequisite to the validity of any claim of lien subsequently filed, cause to be given not later than fifteen (15) days prior to the filing of a claim of lien, a written notice as prescribed by this section, to the owner or reputed owner and to the original contractor. The notice shall contain a general description of the labor, service, equipment or materials furnished, the name and address of such person furnishing such labor, services, equipment or materials, and the name of the person who contracted for purchase of such labor, services, equipment or materials. If an invoice for such materials contains this information, a copy of such invoice, transmitted in the manner prescribed by this section, shall be sufficient notice. The notice may be sent at any time after any labor, service, equipment or materials are furnished, but in no event later than fifteen (15) days prior to the expiration of the time within which to file a claim of lien.

7 GCA § 33301(a) (2005).

[54] Uni-Arc, S.K. Group, and HRP argue that the trial court misinterpreted section 33301(a), because the purpose of the statute is to give the owner of the property *at least* fifteen days notice that his property may be sold under foreclosure. Uni-Arc served a pre-lien notice eighteen days before recording the lien. S.K. Group members each served a pre-lien notice at least nineteen days prior to recording the liens. HRP served a pre-lien notice twenty-three days before recording its lien.⁷

[55] The Legislature's intent in requiring a pre-lien notice is to give the property owner advance notice of the potential filing of a claim of lien in order to protect the property owner's rights as well as the rights of the lien claimant. *Alta Bldg. Material Co. v. Cameron*, 20 Cal. Rptr. 713, 716 (Dist. Ct. App. 1962). Giving a property owner adequate notice of at least fifteen days is part of that protection. *Id.* The words "not later than" may seem confusing, leading one to think that a lien claimant must both give notice and record the lien within fifteen days, which is what the trial court held. Allowing a party to give notice of a lien claim and subsequently to record the lien claim within fifteen days of serving notice would not provide a property owner with adequate time to respond to possible foreclosure of property. The trial court's interpretation of this notice provision within the statute does not advance the statute's purpose because it allows a lien claimant to give notice one day and record the lien the next day or even earlier (within fifteen days of giving notice).

[56] Therefore, the trial court erred by misinterpreting the 15-day preliminary notice of lien claim provision under section 33301(a) and holding that giving a property owner more than

⁷ GRI did not contest the arguments from Uni-Arc, S.K. Group, HRP, or GC that each lien claim fully complied with 7 GCA § 33301(a). Nonetheless, we still conduct an independent review of the issue. *Cf. Zurich Ins. (Guam), Inc. v. Santos*, 2007 Guam 23 ¶ 5.

fifteen days of notice before recording the lien claim rendered the subsequent recorded lien claim invalid.

V. CONCLUSION

[57] In conclusion, we hold that the trial court erred in dismissing the cases for lack of subject matter jurisdiction because lien claims that have formalistic defects do not defeat the court's jurisdiction to hear those claims.

[58] We further hold that Guam's "fair and reasonable" construction of statutory interpretation is applicable when a mechanics' lien statute is not clear on its face. In order to determine compliance with ambiguous statutory language in a mechanics' lien law, the substantial compliance test requires examination of the relevant statutory language as a whole and evaluation of the degree of non-compliance, the underlying policy of the statutory requirement, and the prejudice suffered by the property owner or third parties from non-compliance. However, where a statute is clear on its face, the court shall not read further. Because the verification requirement in 7 GCA § 33302(i) is ambiguous, a "fair and reasonable" construction of statutory interpretation applying the specific facts of the consolidated cases, results in the lien claims of S.K. Group, HRP, and GC being valid because the lien claims substantially complied with section 33302(i) as a whole. Furthermore, to hold the lien claims as invalid for the technical, non-fatal defect of lack of formal verification would go against public policy and legislative intent.

[59] Moreover, we hold that the trial court erred in dismissing Uni-Arc, S.K. Group, and HRP's foreclosure actions because the trial court misinterpreted the 15-day notice of lien claim provision of 7 GCA § 33301(a). Uni-Arc, S.K. Group, and HRP each timely served a pre-lien notice in accordance with 7 GCA § 33301(a) and their subsequent recorded lien claims are valid.

[60] Accordingly, the trial court's *sua sponte* dismissal of these mechanics' lien cases is **REVERSED** and this matter is **REMANDED** for further proceedings consistent with this opinion.

Original Signed: F. Philip Carbullido
By
F. PHILIP CARBULLIDO
Associate Justice

Original Signed: Katherine A. Maraman
By
KATHERINE A. MARAMAN
Associate Justice

Original Signed: Robert J. Torres
By
ROBERT J. TORRES
Chief Justice