IN THE SUPREME COURT OF GUAM

GUAM RESORTS, INC.,
Plaintiff-Appellee,

v.

G.C. CORPORATION,
Defendant-Appellant,

GUAM RESORTS, INC.,
Plaintiff-Appellee,

v.

G.C. CORPORATION and DONG YANG CORPORATION,
Defendants-Appellants.

Supreme Court Case No. CVA10-020
Superior Court Case Nos. CV1491-07 and CV0137-08

OPINION

Cite as: 2012 Guam 13

Appeal from the Superior Court of Guam
Argued and submitted on May 31, 2011
Hagåtña, Guam

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

TORRES, J.:

[1] Defendant-Appellant G.C. Corporation ("GC") appeals from a decision of the trial court invalidating GC's mechanic's lien and granting summary judgment for Plaintiff-Appellee Guam Resorts, Inc. ("GRI"). Guam's mechanic's lien statute expressly provides that a claimant forfeits his mechanic lien if such person willfully includes in the claim of lien work not performed upon, or materials not furnished for, the property described in its claim of lien. The trial court held that GC forfeited its mechanic's lien claim by willfully including amounts for work and materials not performed upon or not furnished for the Okura Hotel Project. We agree with the trial court's finding that "intent to defraud" is not required in order for a claimant to forfeit the lien if the claimant willfully includes in the claim of lien work not performed or materials not furnished for the property described in the claim. Nevertheless, the trial court erred in forfeiting GC's lien and granting GRI's motion for summary judgment, as the issue of whether GC acted willfully is a question of fact to be decided by a jury. Accordingly, we affirm in part, reverse in part, and remand for a jury trial on the issue of willfulness.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] GC signed a construction agreement with GRI to serve as general contractor for the renovation and expansion of the Aurora Resorts Hotel formerly known as the Guam Okura Hotel ("Project") which was owned by GRI. GC subcontracted with others to provide labor or materials or both for the Project. Six months later, a dispute arose, causing GRI to stop payments and to deny GC access to the Project site. GC advised GRI that it would suspend work until it was paid what was due under the construction agreement and the delay issues were

resolved. GRI thereafter notified GC of its intent to terminate the construction agreement. Later that day, GC delivered a pre-lien notice to GRI. GC filed and recorded its claim of lien with the Department of Land Management two weeks later. GRI in turn filed a Complaint for Quiet Title against GC to invalidate GC's mechanic's lien claim. GC answered and counterclaimed, seeking foreclosure of its lien claim and made a demand for a jury trial. In addition to the dispute between GRI and GC, a total of eleven cases arising out of the renovation and construction work for the Project were eventually filed by various subcontractors or material suppliers, and were assigned to different judges. The trial court consolidated the eleven cases and held a bench trial on the consolidated cases in CV1491-07 and CV137-08. One of the claims for relief in CV1491-07, seeking foreclosure of the mechanic's lien, was dismissed for lack of jurisdiction by the trial court but reversed and remanded by this court on appeal in *Castino v. G.C. Corp.*, 2010 Guam 3.

[3] Following the remand, GRI moved for summary judgment arguing that GC's mechanic's lien was invalid because: (1) GC did not directly furnish labor and materials, (2) GC never completed its contract with GRI, and (3) the lien was forfeited when GC willfully included claims for work not performed or materials not furnished for the Project. Record on Appeal ("RA"), tab 338 (GRI's Not. of Mot. and Mot. for Summ. J., July 7, 2010). In its Decision granting summary judgment, the trial court held that 7 GCA § 33302(j)[1] was clear on its face and GC forfeited its lien since it willfully included work not performed upon and materials not furnished for the property described in the lien. In so holding, the court referred to discrepancies between GC's lien claims and its subcontractors' lien claims, testimony at trial as well as admissions by GC that some of the materials were delivered to GRI after the mechanic's lien was

[1] Title 7 GCA § 33302(j) provides: "Any person who shall willfully include in his claim of lien filed for record pursuant to this Title, work not performed upon, or materials, appliances or power not furnished for, the property described in such claim, shall thereby forfeit his lien." 7 GCA § 33302(j) (2005).

filed. The trial court also relied on evidence that GC billed for undelivered or uninstalled materials, office supplies, truck repair, and work that was never completed for the Project. The court did not rule on GRI's other challenges to the validity of the lien—that GC did not directly furnish labor or materials and that GC never completed its contract—because it found "the Mandatory Forfeiture is dispositive." RA, tab 391 at 5 (Dec. & Order, Nov. 5, 2010). GC timely appealed.

II. JURISDICTION

[4] A trial court order invalidating a mechanic's lien is immediately appealable under 7 GCA § 25102(e). *Guam Top Builders, Inc. v. Tanota Partners*, 2006 Guam 3 ¶ 7 ("Title 7 GCA § 25102(e) (2005), specifically allows an appeal in a civil action or proceeding to be taken '[f]rom an order discharging or refusing to discharge an attachment . . . . [A] mechanic's lien is analogous to an attachment, therefore an interlocutory appeal . . . is a matter of right provided for by law.").

III. STANDARD OF REVIEW

[5] A trial court's decision to grant a motion for summary judgment is reviewed *de novo*. *Guam Top Builders*, 2006 Guam 3 ¶ 8. Summary judgment is only proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Guam R. Civ. P. 56(c). "In rendering a decision on a motion for summary judgment, the court must draw inferences and view the evidence in a light most favorable to the non-moving party." *Guam Top Builders*, 2006 Guam 3 ¶ 8 (quoting *Bank of Guam v. Flores*, 2004 Guam 25 ¶ 7). Issues of statutory construction are reviewed *de novo*. *Guam Greyhound, Inc. v. Brizill*, 2008 Guam ¶ 6.

IV. ANALYSIS

A. Forfeiture of Lien under 7 GCA § 33302(j)

[6] The central dispute before us is whether the trial court erred in invalidating GC's mechanic's lien for willfully including amounts for work not performed upon, and materials not furnished for, the Project in violation of 7 GCA § 33302(j).[2] 7 GCA § 33302(j) (2005). GC contends that in determining legislative intent, a statute should be read as a whole and section 33302(j) should be construed in conjunction with section 33401. GC argues that under Guam's mechanic's lien laws, forfeiture should occur only when errors were "made willfully with the intent to defraud"[3] and there was no evidence presented showing fraud on GC's part in order to invalidate the lien. Appellant's Br. at 12 (Feb. 14, 2011). Essential to GC's argument is the presumption that including work not performed or materials not furnished for a property covered by 33302(j) also amounts to a section 33401 "mistake or error[] in the statement of demand." 7 GCA § 33401 (2005). As GC asserts, "[t]he Mechanic's Lien Law read as a whole does not automatically invalidate liens that contain mistakes or errors of calculations or statements of amounts due. Rather, forfeiture only occurs where *errors* are made willfully with the intent to defraud." Appellant's Br. at 12 (emphasis added). GRI counters that the additional requirement of fraud is found nowhere in 7 GCA § 33302(j), but even if fraud were required, the lien should

[2] Title 7 GCA § 33302(j) was repealed by Public Law 29-119. However, pursuant to 7 GCA § 33112(c), "[f]or all works of improvement that have been *completed* prior to the effective date of [P.L. 29-119], the prior Guam Mechanics' Lien Law will continue to apply." 7 GCA § 33112(c) (emphasis added).

GC stopped its construction work for a continuous period of sixty days, thereby satisfying one of the requirements of section 33302(d)(3) that is the equivalent to "completion." *Castino*, 2010 Guam 3 ¶ 27. Because GC's works of improvement were "completed," and its mechanic's lien was filed prior to the effective date of Public Law 29-119, sections 33302 and 33401 of the prior Mechanics' Lien Law is applicable.

[3] GC submits that "willfully with the intent to defraud" is the proper standard for evaluating whether one forfeits a lien for mistakes or errors in a claim of lien. Appellant's Br. at 12. However, the phrase "willfully with the intent to defraud" is only found in 7 GCA § 33104(a), as part of the current Mechanic's Lien Law, which is not applicable here. A separate section of the applicable prior Mechanics' Lien Law, 7 GCA § 33401 does, however, provide that "[n]o mistake or errors . . . shall invalidate the lien . . . unless the court finds that such mistake or error . . . was made with the intent to defraud." 7 GCA § 33401.

still be forfeited because GC's false statements were made intentionally and in bad faith. Appellee's Br. at 4-7 (Mar. 13, 2011).

1. Statutory Interpretation

[7] Statutory interpretation always begins with the language of the statute. *Aguon v. Gutierrez*, 2002 Guam 14 ¶ 6. "In cases involving statutory construction, the plain language of a statute must be the starting point." *Bank of Guam v. Guam Banking Bd.*, 2003 Guam 9 ¶ 19. When the plain reading of a statute is "clear on its face" and yields to an unambiguous definition, we will not look past that plain reading. *Castino*, 2010 Guam 3 ¶¶ 29, 30 ("A plain reading construction is appropriate where the statute lays out specific requirements and indicates exactly what is necessary for compliance without ambiguous terms."). However, if the text of the statute is ambiguous or results in absurd or unworkable consequences, the "fair and reasonable" construction is applied. *Id.* ¶ 58 (internal quotation marks omitted); *see also Manvil Corp. v. E.C. Gozum & Co., Inc.*, 1998 Guam 20 ¶ 17 ("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."). When examining the statute's language, the court must consider whether the language is "plain and unambiguous," which is determined by "reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Aguon,* 2002 Guam 14 ¶ 6 (*quoting Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997)); *see also Macris v. Guam Mem'l Hosp. Auth.*, 2008 Guam 6 ¶ 19 (quoting *Aguon*, 2002 Guam 14 ¶ 9) (stating that a statute "must be examined within its *context*,' which 'includes looking at other provisions of the same statute and other related statutes'").

[8] We begin our analysis by examining the relevant statutory language. Section 33302(a) addresses the requirements of an enforceable claim of lien, stating that "[e]very original contractor . . . and every person, other than an original contractor . . . may file for record with the Department of Land Management . . . a claim of lien as provided in subdivision (i) of this section." 7 GCA § 33302(a) (2005). Subdivision (i) of section 33302 requires that a claim of lien be verified and include: (1) a statement of 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; (4) the name of the person by whom claimant was employed or to whom the claimant furnished the materials; and (5) a description of the property sought to be charged with the lien sufficient for identification. 7 GCA § 33302(i) (2005). Subdivision (j) of section 33302 expressly states that "[a]ny person who shall willfully include in his claim of lien . . . work not performed upon, or materials, appliances or power not furnished for, the property described in the claim, shall thereby forfeit the lien." 7 GCA § 33302(j). However, section 33401 states:

> No mistake or errors in the statement of demand, or of the amount of credits and offsets allowed or of the balance asserted to be due to claimant, or in the description of the property against which the claim is filed, shall invalidate the lien, unless the court finds that such mistake or error in the statement of the demand, credits and offsets, or of the balance due, was made with the intent to defraud, or the court shall find an innocent third party, without notice, direct or constructive, has, since the claim was filed, become the bona fide owner of the property liened upon, and that the notice of claim was so deficient that it did not put such party upon further inquiry in any manner.

7 GCA § 33401.

[9] The plain language of section 33401 grants relief in situations where errors or mistakes might otherwise produce harsh results. *See L.A. Bd. of Adjusters v. Bailes*, 116 Cal. App. 316, 318 (1931) (holding that the true purpose of California's identical forfeiture statute is to relieve a

lien claimant from the consequences of forfeiture for mistakes or errors); *Diamond Match Co. v. Sanitary Fruit Co.*, 70 Cal. App. 695, 701(1925) (stating that the forfeiture lien was "adopted to prevent a denial of the benefits of a lien duly filed merely because of immaterial or unsubstantial mistakes or errors in the taking of the steps prescribed or doing the things required to perfect a lien"). However, this statute provides specifically for relief in only two of the five requirements regarding the contents of a claim of lien.[4] Courts have generally refused to grant relief for mistakes other than those in the two categories. *See, e.g.*, *Norton v. Bedell Eng'g Co.*, 88 Cal. App. 777, 783 (3d Dist. 1928) (stating that the statute was designed "to relieve one from the unimportant errors occurring with respect to an effort to specify the exact balance due to the claimant, or the amount of credits to be allowed, or inaccuracy in the description of the property sought to be charged with the lien"); *Diamond Match Co.*, 70 Cal. App. at 700 (stating that "within the mistakes or errors enumerated [by the statute] which will not be treated as having the effect of invalidating a claim of lien is not included a mistake or error in stating the name of the owner or the reputed owner of the property to which it is intended that a lien shall attach"). Section 33302(j), on the other hand, relates to the third requirement set forth in a claim of lien that is, the statement of the work done or materials furnished. *Compare* 7 GCA § 33302(j), *with* 7 GCA § 33401.

[10] Furthermore, the language of sections 33302(j) and 33401 impose different state of mind requirements. In order to forfeit a lien under section 33302(j), a claimant must "willfully" include in the claim of lien work not performed or materials not furnished. Instead of a "willfulness" standard, section 33401 invalidates a lien when the mistake or error in the

[4] The two claim of lien categories where mistakes or errors will not invalidate the lien if not made with intent to defraud are errors or mistakes in (1) the statement of demand, or of the amount of credits and offsets allowed, or of the balance asserted to be due to the claimant, and (5) in the description of the property against which the claim is filed. *See* 7 GCA § 33302(i); 7 GCA § 33401.

statement of the demand, credits and offsets, or of the balance due, was made with the "intent to defraud." 7 GCA § 33401. Although the terms "willful" and "intent to defraud" are generally recognized as separate legal state of mind standards, these terms are not specifically defined in Guam's mechanic's lien statutes. When a statute does not define a term, it is appropriate for the reviewing court to "start with the assumption that the legislative purpose is expressed by the ordinary meaning of the words used." *Russello v. United States*, 464 U.S. 16, 21 (1983) (internal quotation marks omitted) (quoting *Richards v. United States*, 369 U.S. 1, 9 (1962)).

[11] Black's Law Dictionary defines "willful" as "voluntary and intentional." Black's Law Dictionary 1737 (9th ed. 2009); *see also McLaughlin v. Richard Shoe Co.*, 486 U.S. 128, 133 (1998) (stating that the word willful "is generally understood to refer to conduct that is not merely negligent"). Decisions defining "willful" for the purpose of mechanic's lien statutes commonly include "knowingly" and "intentionally." *See, e.g., Gibbs v. Hanchette*, 51 N.W. 691, 692 (Mich. 1892) (internal quotation marks omitted) ("A person knowingly and willfully claims more than his due only when he claims something which he knows not to be due, and not when he claims what he honestly, though mistakenly, believes to be due him."); *Uthoff v. Gerhard*, 42 Mo. App. 256, 257 (1890) ("We do not intend to . . . intimate that [the lien claimants] intended to cheat anybody. It is sufficient for us to see . . . that they included . . . this large amount . . . not as the result of inadvertence or mistake, but knowing that it was not due . . . .").

[12] By contrast, intent to defraud generally means "acting willfully and with specific intent to deceive or cheat, usually for the purpose of getting financial gain for one's self or causing financial loss to another." *United States v. Moede*, 48 F.3d 238, 241 (7th Cir. 1995); *see Harrington v. Dep't of Real Estate*, 263 Cal. Rptr. 528, 531-32 (Ct. App. 1989) (defining intent to defraud as "intent to deceive" for the purpose of gaining material advantage and to accomplish

that purpose by false statement or representation or by other deceptive act); *United States v. Lewis*, 67 F.3d 225, 233 (9th Cir. 1995) (in the context of bank fraud); *Shipe v. Mason*, 500 F. Supp. 243, 244-45 (E.D. Tenn. 1978) *aff'd*, 633 F.2d 218 (6th Cir. 1980) (in the context of odometer law).

[13] It is clear that willful neither means nor implies intent to defraud and courts, in various contexts, have agreed. *See, e.g., United States v. Ellis*, 739 F.2d 1250, 1251-53 (7th Cir. 1984) (stating that civil liability for knowingly or willfully violating the Odometer Act does not serve as proof of fraudulent intent); *Pickering v. United States*, 691 F.2d 853, 855 (8th Cir. 1982) (assessing civil penalties for willfully understating corporation tax liability does not require intent to defraud or evil motive); *Mortenson v. United States*, 910 F. Supp. 1325, 1331 (N.D. Ill. 1995) ("Willfulness does not require a 'specific fraudulent intent or evil motive;' rather, an individual 'willfully' fails to turn over withheld taxes to the government if he permits the disbursal of funds to other creditors when he is aware that the employer has not paid withholding taxes owed to the government."); *In re Claim of Forbes*, 181 A.D.2d 956, 956 (N.Y. App. Div. 1992) (finding that forfeiture for willfully making false statements in unemployment benefit forms does not require criminal intent to defraud); *State v. Kennedy*, 277 N.W.2d 590, 591 (S.D. 1979) (holding that conviction for falsely obtaining aid to dependent children program "by means of a willfully false statement" does not require specific intent to defraud). Accordingly, the two provisions provide for different standards.

[14] Even though the language of sections 33401 and 33302(j) appears plain and unambiguous, GC argues that the Mechanic's Lien Law should be read as a whole, and that including work not performed or materials not furnished for a property covered by 33302(j) also amounts to a section 33401 "mistake or erro[r] in the statement of demand"; in such cases, intent

to defraud is required. It is well settled that "a statute should be read as a whole," and accordingly, each section should be construed in conjunction with other parts or sections to produce a harmonious whole. *Amerault v. Intelcom Support Servs., Inc.*, 2004 Guam 23 ¶ 14 (internal quotation marks omitted); *see also Sumitomo Constr., Co. v. Gov't of Guam*, 2001 Guam 23 ¶ 17 (quoting *Kelly v. Robinson*, 479 U.S. 36, 43 (1986)) ("In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.").

[15] We are, however, unconvinced that knowingly, intentionally, and willfully including in a claim of lien work that the claimant knew it did not perform or materials that it did not furnish is equivalent to a "mistake or error" in the statement of demand. If GC's interpretation were correct—that the actions proscribed in section 33302(j) amount to a section 33401 "mistake or error"—then section 33302(j) would be virtually meaningless and useless. As a rule of statutory construction, a statute should be construed in such a way that "no clause, sentence, or word shall be superfluous, void, or insignificant." *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (internal quotation marks omitted) (citing *Wash. Market Co. v. Hoffman*, 101 U.S. 112, 115 (1879)).

[16] Moreover, if the legislature intended to prescribe a heightened "intent to defraud" standard for forfeiture of a lien under section 33302(j), it could have done so explicitly, as it did in section 33401. It is well stated that "[w]here [the legislature] includes particular language in one section of a statute but omits it in another section of the same [statute], it is generally presumed that [the legislature] acts intentionally and purposely in the disparate inclusion or exclusion." *Bates v. United States*, 522 U.S. 23, 29-30 (1997) (internal quotation marks omitted) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)). In *Bates*, the United States Supreme Court contrasted the language of 20 U.S.C. § 1097(a) against § 1097(d)'s express "intent to

defraud" element, stating that "§ 1097(a) never contained . . . an 'intent to defraud' requirement, a requirement present from the start and still contained in § 1097(d)."[5] *Id.* at 31; *see also In re Claim of Marinelli*, 195 A.D.2d 741, 741 (N.Y. App. Div. 1993) (internal quotation marks omitted) ("The term willful as used in Labor Law § 594 does not imply a criminal intent to defraud but means knowingly, intentionally or deliberately making a false statement").

2. California's Interpretation of Its Forfeiture Statutes

[17] Notwithstanding the plain, unambiguous and contrasting language of sections 33302(j) and 33401, GC still urges that an "intent to defraud" state of mind is a required, albeit inexplicit, element for forfeiture of a lien under section 33302(j). Appellant's Br. at 12. To further bolster its argument, GC asserts that because Guam adopted its mechanics' lien statutes from California, California case law interpreting those mechanic's lien statutes should be persuasive authority and a string of California decisions have imported "intent to defraud" as an element to its identical mechanic's lien statute.[6] *Id.* at 13-15. At first blush, it may appear that some California decisions have conflated section 1193.1(k) with section 1196.1 by requiring intent to defraud in both sections. *See, e.g.*, *Distefano v. Hall*, 32 Cal. Rptr. 770 (Ct. App. 1963); *B. & J. Constr. Co. v. Spacious Homes, Inc.*, 22 Cal. Rptr. 41 (Ct. App. 1962); *Henley v. Pac. Fruit Cooling & Vaporizing Co.*, 127 P. 800 (Cal. Ct. App. 1912). However, a closer examination of these cases reveals that—where an intent to defraud standard was required—did not involve a claimant

[5] The text of 20 U.S.C. § 1097(a) provides: "Any person who knowingly and willfully embezzles, misapplies, steals, or obtains by fraud, false statement, or forgery, or fails to refund any funds, assets, or property provided or insured under this subchapter . . . shall be fined not more than $20,000 or imprisoned for not more than 5 years, or both . . . ." 20 U.S.C. § 1097(a) (2012). By contrast, the text of § 1097(d) provides: "Any person who knowingly and willfully destroys or conceals any record relating to the provision of assistance under . . . Title 42 . . . with intent to defraud the United States . . . ." 20 U.S.C. § 1097(d) (2012).

[6] Sections 33302(j) and 33401 mirror each other and are respectively derived from sections 1193.1(k) and 1196.1 of the California Code of Civil Procedure, and their predecessors, sections 1202 and 1203 of the California Civil Code.

willfully including work not performed or materials not furnished for a property. Rather, the facts of these cases involved errors or mistakes in the two categories of a claim of lien where errors or mistakes might otherwise be productive of harsh results and statutory relief is provided. The circumstances involved thus triggered section 1196.1, not 1193.1(k), explaining why an "intent to defraud" standard was applied in each instance.

[18] One of the first California Supreme Court cases which actually addressed the willful inclusion of work not performed or materials not furnished is *Schallert-Ganahl Lumber Co. v. Neal*, 91 Cal. 362, 365 (1891). In *Schallert-Ganahl*, the defendants moved for a judgment of nonsuit against one of the plaintiff claimants alleging that it appeared from the evidence that the claimant willfully and knowingly filed a notice of lien for more than it was entitled to as prohibited by section 1202.[7] The court recognized that the section of the statute provides that the "claimant shall forfeit his lien *in toto* for a violation of its provisions" and "must be strictly construed." *Id.* at 365. Moreover, "the evidence under which it is invoked should be clear and convincing that the violation was *willful* and *intentional*." *Id.* (emphasis added). The court held that the grounds on which the motion for nonsuit advanced were not the grounds specified in section 1202, and there was no proof that the claimant willfully included in the claim materials not furnished for the property described in the claim. *Id.* at 365-66. Interestingly, *Schallert-Ganahl* only required a showing of a "willful and intentional," rather than "intent to defraud," state of mind in discussing when a lien is forfeited under section 1202.

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[7] Section 1202, the predecessor to section 1193.1(k) of the California Code of Procedure, provides:

> Any person who shall willfully give a false notice of his claim to the owner under the provisions of section 1184 shall forfeit his lien. . . . Any person who shall willfully include in his claim, filed under section 1187, work or materials not performed upon or furnished for the property described in the claim, shall forfeit his lien.

Cal. Civ. Code § 1202.

[19] In *Henley v. Pacific Fruit Cooling & Vaporizing Co.*, the defendants claimed that the evidence "show[ed] on its face a violation of section 1187"[8] of California's Code of Civil Procedure, "which declares that 'any person who shall willfully include in his claim, filed under section 1187, work or materials not performed upon or furnished for the property described in the claim, shall forfeit his lien.'" 127 P. 800, 801-02 (Cal. Ct. App. 1912). In denying the defendants' motion to strike the claim of lien upon the ground that the claim was fatally defective, the trial judge stated: "My conviction is that the plaintiff has not willfully attempted to assert a lien for something he did not believe he was entitled to . . . ." *Id.* at 802. The appellate court affirmed the trial court's decision not to strike plaintiff's claim of lien from the records even though the trial court had later disallowed portions of the claim. *Id.* at 801. The California Court of Appeal, relying on *Schallert-Ganahl*, recognized that section 1202 was penal in its character and not only must be strictly construed, but the evidence under which it is invoked should be a clear and convincing showing that the violation was willful and intentional. *Id.* at 802. They determined that the trial court's conclusion that the plaintiff did not willfully attempt to assert a lien for something he was not entitled to was not unwarranted. *Id.* Interestingly,

[8] The court mistakenly stated that section 1187, not section 1202, "declares that 'any person who shall willfully include in his claim, filed under section 1187, work or materials not performed upon or furnished for the property described in the claim, shall forfeit his lien.'" *Henley v. Pac. Fruit Cooling & Vaporizing Co.*, 127 P. 800, 801-02 (Cal. Ct. App. 1912). However, the actual language of 1187 is:

> Every original contractor, within sixty days after the completion of his contract, and every person, save the original contractor, claiming the benefit of this chapter, must, within thirty days after the completion of any building, improvement, or structure, or after the completion of the alteration or repair thereof, or the performance of any labor in a mining claim, file for record with the County Recorder of the county in which such property, or some part thereof, is situated, a claim containing a statement of his demand, after deducting all just credits and offsets, with the name of the owner or reputed owner, if known, and also the name of the person by whom he was employed or to whom he furnished the materials, with a statement of the terms, time given, and conditions of his contract, and also a description of the property to be charged with the lien, sufficient for identification, which claim must be verified by oath of himself or of some other person.

Cal. Civ. Code § 1187.

while the defendant primarily relied on section 1187, the court of appeal *sua sponte* also separately discussed the potential application of section 1203, the predecessor to section 1196.1, and found that when the motion for nonsuit was made, there was no evidence of fraud. *Id.* Therefore "the lien [could not] be defeated merely because it turns out on the trial that the claim as filed was for too much." *Id.*

[20] In a case decided the same day as *Henley*, the Court of Appeal for the Third District of California in *Blanck v. Commonwealth Amusement Corp.*, rejected the defendants contentions that the claims of liens filed were void because of the alleged willful and fraudulent inclusion of materials not actually used in the building under construction. 127 P. 805, 807 (Cal. Ct. App. 1912). The court mentioned that the materials were delivered and actually used in the construction and upheld the trial court's finding that in each instance, the mistakes and errors of the several claims of lien were unintentional and free from fraud. *Id.* Accordingly, under section 1203a, the mistake or error in the statement of the claim of lien will not invalidate it unless the court finds the mistake or error was made with intent to defraud.

[21] Section 1202 was again analyzed in *Shumway v. Woolwine*, wherein a claimant erroneously included the cost of uncompleted work in his lien, but made no claim for the amount at trial.[9] 257 P. 898, 900 (Cal. Ct. App. 1927). The court saw no error in the trial court's finding that the claim was made inadvertently and the filing of the lien inadvertently including this amount did not invalidate the lien as there was no evidence that this amount was willfully included. *Id.* The court expressly stated that under section 1202, "a lien is not forfeited unless a

[9] Less precision is required in the lien claim than in the allegations of a complaint. *See Jarvis v. Frey*, 175 Cal. 687, 689 (1917). The discrepancy between a complaint correctly alleging a fact and a claim of lien that mistakenly or erroneously makes a statement with no intent to defraud is not a fatal variance. *See, e.g., McGaw v. Master Craft Homes*, 233 P.2d 185 (Cal. Ct. App. 1951). GC's complaint continued to seek recovery for materials not furnished or work not performed on the property. Appellant's Br. at 22.

person shall willfully include in his claim . . . work or materials not performed or furnished for the property described in the claim." *Id.* The court used the willfulness standard and did not even discuss a requirement of intent to defraud. *See id.*

[22] In *B. & J. Construction Co. v. Spacious Homes, Inc.*, the plaintiff appealed from a judgment which awarded partial recovery against the contractor but extinguished its mechanic's lien based on the trial court's finding, sitting without a jury, that plaintiff willfully failed to give proper credits or that it willfully charged too high a price. 22 Cal. Rptr. 41, 42 (Ct. App. 1962). On appeal, the appellate court observed that it was inexplicable how the trial court calculated the reasonable value, or which of the two forfeiture statutes, sections 1193.1(k) or 1196.1, the trial court applied to forfeit plaintiff's lien. *Id.* at 43-44. After referring to the language of sections 1193.1(k) and 1196.1, the court mistakenly cites *Henley* for the proposition that section 1193.1(k), which "sets apart two kinds of false claims," is applicable "only where there is an actual intent to defraud. Other errors, such as demanding an excessive price, or failing to give credit for all payments made on account, are not mentioned in section 1193.1, subdivision (k)." *Id.* at 44 (internal citation omitted). Nevertheless, the court went on to state that "the fact that a lien claimant willfully charges more than the court finds the services are worth does not necessarily indicate fraud." *Id.* (citing *Harmon v. San Francisco & S. R. Co.*, 25 P. 124 (Cal. 1890); *Schallert-Ganahl*, 91 Cal. at 362; *Snell v. Payne*, 115 Cal. 218, 222 (1896)). Moreover, "the fact that one willfully fails to give a credit which the court ultimately decides should have been given does not invalidate the lien, absent a finding of intent to defraud." *Id.* (citing *Cal. Portland Cement Co. v. Wentworth Co.*, 118 P. 103, 113 (Cal. Ct. App. 1911)). Thus, when discussing fraud, the court was reviewing mistakes or errors in the statement of demand, or in the amount of credits and offsets allowed or of the balance asserted to be due, and not whether the

claimant willfully included in its claim of lien, labor or equipment not furnished for the property on which the plaintiff sought to enforce the lien. While it may appear from the court's reference to section 1193.1(k) and *Henley* that the court believed section 1193.1(k) contained a fraud element, the court later explained that the trial court "made no finding that plaintiff intended to defraud *or* that its *claim of lien contained amounts which plaintiff knew were not due*," thereby suggesting that it believed there was a distinction between the two different statutes. *Id.* (emphasis added).

[23] The court then analyzed the defendant's three theories upon which it relied to argue that plaintiff had forfeited his lien: (1) that plaintiff had willfully included work he did not perform on a property; (2) that he failed to give due credits; and (3) that he demanded an excessive amount of money. Based on these theories alone, it is clear that section 1193.1(k) applies to the first theory, while section 1196.1 applies to the latter two. *Id.* at 45. In the court's analysis of the first theory—that plaintiff willfully included work and materials he did not furnish on one particular tract—the court found that the plaintiff was unaware that he was working on two separate properties as there was no physical boundary between the two properties. *Id.* As such, the plaintiff was entitled to a lien on the entire tract until he had been paid for all the work of improvement. *Id.* Although the property owner tendered a check containing a partial release for work done on one of the two properties, the plaintiff claimed a lien on both tracts. *Id.* The court acknowledged that the plaintiff was wrong in claiming a lien on both tracts in the recorded notice, but held that the evidence did not support the finding that plaintiff included claims for labor and equipment not furnished on the tract not covered by the partial release. *Id.* Significant in its analysis, the court did not suggest that a finding of fraud was necessary under this theory. This is in stark contrast to the court's analysis of the second theory—that plaintiff failed to give a

credit to the amount due—where the court stated that the trial court "did not find any *intent to defraud* unless fraud is a necessary consequence of a 'willful' failure of one payee to give credit for the full face amount of a joint check." *Id.* (emphasis added). As for the third theory—that plaintiff demanded an excessive amount of money—the court considered whether the excessive amount was due to allegation that plaintiff had willfully included work he did not actually perform or if the rates charged by the plaintiff were unreasonable. *Id.* at 46. In rejecting the former theory, it is notable that the court made no mention of "intent to defraud." *Id.* at 46-47. By contrast, in discussing the latter theory, the court remarked on several occasions that the defendant failed to show that the plaintiff's action of charging an excessive amount was fraudulent.[10]

[24] A month later, the California Court of Appeal decided *Callahan v. Chatsworth Park, Inc.* The plaintiff in that case appealed from a summary judgment rendered against him which extinguished his lien before defendant even had to answer the complaint for foreclosure of a mechanic's lien. 22 Cal. Rptr. 606, 608 (Ct. App. 1962). The motion for summary judgment

[10] We note that the court mentioned fraud several times in its analysis on whether the plaintiff had overcharged. Particularly the court stated:

> Britton testified that the rates charged by plaintiff were unreasonable and were above the rates which plaintiff had quoted before the work began. He also testified that the machines were idle a large amount of the time for which plaintiff charged. . . . Our understanding of defendants' theory of collusive overcharging is somewhat beclouded by the fact that defendant Britton has at all times been represented in this action by the same attorney as the other defendants. Under defendants' theory, if the overcharges were *fraudulent*, defendant Britton was a party to the *fraud*. The absence of this ugly word from the findings of fact, as well as its absence from defendants' pretrial contentions, is understandable as a vain attempt by *defendants to defeat plaintiff's lien by some theory not requiring actual fraud.*
>
> Defendants' theory that Britton was colluding with plaintiff to build up excessive charges seems to ignore the underlying relationships which are set forth both in the pretrial statement and the findings. . . . Any *overcharge* by plaintiff would fall directly upon Britton, and none of the financial dealings between plaintiff and Britton would concern the owner so long as plaintiff received an amount equal to the reasonable value of its services. It is of course possible that some of the parties abandoned their original relationships and joined in a scheme to *defraud*, but the findings of fact do not say so.

B&J Constr. Corp., 22 Cal. Rptr. at 47 (emphasis added).

was supported by an affidavit from Chatsworth Park's president that enumerated credits and offsets that Chatsworth Park was entitled to but not mentioned in the notice of mechanic's lien. *Id.* at 608-09. On appeal, the defendant Chatsworth Park argued the summary judgment ruling was sustainable by application of section 1193.1(k), and that the minute order indicated this was the basis of the trial court's ruling. *Id.* Like *Henley*, the court did not outright reject the defendant's reliance on section 1193.1(k), but nevertheless suggested that section 1196.1 was relevant to the particular facts of the case. *Id.* at 613 ("The above quoted sections must be construed and harmonized with § 1196.1, Code of Civil Procedure . . . ."). Indeed in reversing the grant of summary judgment, the court held:

> The question of whether evidence is clear and convincing that there has been a violation of §§ 1190.1(e) and 1193.1(k) necessarily involves a weighing of the evidence, and that is not the function of the court upon a motion for summary judgment. Likewise an intent to defraud always presents a factual question and the duty of the judge hearing a motion . . . is to find upon the existence of triable issues, not to solve them.

Id. at 613. The court further stated that "[t]he cases decided under § 1196.1 and its predecessors, §§ 1203 and 1203a, make it clear that *mistakes and errors, including those with respect to the amount due*, will not invalidate a lien in the absence of a finding of intent to defraud." *Id.* at 613-14 (emphasis added). The *Callahan* court clearly recognized that sections 1193.1(k) and 1203 contain different requirements.

[25] The case primarily relied upon by GC is *Distefano v. Hall*, wherein the defendant argued that plaintiff forfeited his lien in violation of section 1193.1(k) "by recording a willfully misstated verified claim of lien." 32 Cal. Rptr. 770, 784 (Ct. App. 1963). There did not appear to be any question that the material was furnished and the labor and services performed. *Id.* at 780 n.21. Instead, the misstatement claimed was that plaintiff not only included work performed

by him personally, but also all amounts claimed to be due to all subcontractors and materialmen. *Id.* at 784. Defendant Hall contended that the excessive amount in plaintiff's lien, which ultimately dropped from $128,458.05 to $60,702.00 at the time of trial, could only be the result of a willful misstatement. *Id.* Turning to section 1193.1(k), the California appellate court once again stated that the statute "must be construed and harmonized with section 1196.1" and that "[t]he two sections apply only where there is an actual intent to defraud," again suggesting that section 1193.1(k) implicitly includes an intent to defraud element. *Id.* The court held that the question of the validity or forfeiture of the lien would have to be retried because application of these sections is not one of law but one of fact. *Id.* It was undisputed that the work was performed and the material was furnished; consequently, the question of whether a claimant may include in his claim of lien work performed by his subcontractors did not implicate "willfully includ[ing] . . . work not performed upon, or materials, appliances or power not furnished for, the property described in such claim." *Id.* The work was actually performed for the property to be charged, albeit by someone other than the claimant. The facts in *Distefano* required an analysis under section 1196.1's intent to defraud standard rather than section 1193.1(k)'s willfullness standard.

[26] Nevertheless, to the extent that *Distefano* and the cases cited therein suggest that section 1193.1(k)'s counterpart 7 GCA § 33302(j) requires an intent to defraud, we respectfully decline to follow those cases as it runs contrary to numerous canons of statutory construction. *See Aguon*, 2002 Guam 14 ¶ 6. It is telling that the case most often cited in support of the position that California's 1193.1(k) contains an element of fraud, *Schallert-Ganahl*, did not adopt an "intent to defraud" state of mind.

[27] Moreover, we consider the fact that California's successive legislatures have continued to use virtually identical language in its successive versions of sections 1193.1(k) and 1196.1 as manifesting clear legislative intent that the provisions are different and both should be given effect since they govern different situations and have different standards. For instance, the language of the repealed section 3118 of the California Civil Code, the successor to section 1193.1(k), is substantially similar to the text of section 1193.1(k) in that it provides: "Any person who shall *willfully include in his claim of lien labor, services, equipment, or materials not furnished for the property* described in such claim *shall thereby forfeit his lien.*" Cal. Civ. Code § 3118 (West 1971) (repealed 2010); *see also* Cal. Civ. Proc. Code 1193.1(k) (West 1951) (repealed 1969). Likewise, section 3261 of the California Civil Code, enacted at the same time as section 3118, is identical to its predecessor section 1196.1. *Compare* Cal. Civ. Code § 3261 (West 1971) (repealed 2010), *with* Cal. Civ. Proc. Code § 1196.1 (West 1951) (repealed 1969).

[28] In fact, a review of the recent comprehensive revision and recodification of California's mechanic's lien law supports the intent of the California legislature to continue to treat the willful inclusion in a claim of lien of labor, services or material not furnished for property as a separate basis to forfeit the lien, not requiring intent to defraud. When California Senate Bill 190 was introduced to combine and recodify the substance of former sections 3118 and 3261 as section 8422 of the Civil Code of California, it only provided that "erroneous information contained in a claim of lien relating to the claimant's demand, credits and offsets deducted, or the work provided, invalidates the claim of lien if the court determines . . . [that] [t]he claim of lien was made with intent to defraud." Cal. Civ. Code § 8422(b) (West 2010). The original version of the bill did not include any provision regarding the forfeiture of a lien for willfully including in a claim of lien labor, services, equipment, or materials not furnished for the property described

in the claim. Bill No. 190 was later amended to "make various technical, conforming changes related to the recodification of the law for enforcing mechanics liens," and, more importantly, to "require that a person *forfeit his or her lien if the person willfully includes labor or materials in a lien claim that were not furnished to the property in the claim.*" S.B. 190, Reg. Sess. (Cal. 2011) (emphasis added). The inclusion of such language in section 8422 manifests clear intent by the California legislature that the two statutes should be treated as independent from one another and be given full effect. Indeed, according to the "Law Revision Commission Comments" of section 8422 of the California Civil Code, the statute was designed to "combin[e] the substance of former Sections 3118 and 3261" and, more importantly, that "[s]ubdivision (c) *continues former Section 3118 without substantive change.*" Cal. Civ. Code § 8422 cmt. (West 2010) (emphasis added); *cf. Huff v. Fetch*, 143 N.E. 705, 707 (Ind. 1924) (internal quotations omitted) (noting that "[t]he use of the same language in [an amended act] does not show a legislative intent to make any change in the law by the re-enactment of the former language, but the unchanged portions of the statute are continued in force, with the same meaning and same effect after the amendment that they had before"). If intent to defraud was required in order to forfeit a lien for the willful inclusion of labor or materials not furnished, the California Legislature would not have had to amend the statute in the manner that it did since under the previous introduced version of 8422, the lien would have been invalidated. The fact they believed it was important to insert the existing willful inclusion language from section 3118 reflects how the legislature acted intentionally and purposely, thus implying that a separate standard would apply.

[29] In light of our analysis above, we conclude that 7 GCA § 33302(j), which applies exclusively to circumstances where a claimant willfully includes in his claim of lien work not performed upon, or materials, appliances or power not furnished for, the property described in

such claim, does not require a finding of "intent to defraud." Rather, the statute mandates a "willfulness" standard. There is evidence that GC's lien claim may have included work not performed upon or materials not furnished for the Project. First, GC included in its lien charges for photocopying, staples, binders, paper, and truck repair which were not for the Project. The trial court also found that GC claimed on behalf of its contractors a total of approximately $244,000.00 in inflated amounts over those amounts the subcontractors were actually claiming for themselves. Third, GC conceded during trial that some of the materials included in GC's lien claim were only transferred to GRI after the lien was filed. Lastly, there was some evidence that GC billed for undelivered or uninstalled materials as well as for work that was never completed at the Project.[11] Therefore, the trial court did not err in finding that 7 GCA § 33302(j), not section 33401, was applicable to the facts of this case.

3. Willfulness on a Motion for Summary Judgment

[30] Now that we have determined that the standard under 7 GCA § 33302(j) is "willfulness," and not "intent to defraud," we focus our attention on whether the trial court should have determined in a motion for summary judgment that GC willfully included these items in its claim of lien. The answer is quite simply no. The question of whether a person acted "willfully" is a question of fact for the trier of fact and involves the weighing of evidence. *See Biotec Biologische Naturverpackungen GmbH & Co. KG v. Biocorp, Inc.*, 249 F.3d 1341, 1356 (Fed.

[11] GRI argues that even if section 33401's intent to defraud standard applies to this case, the lien should still be forfeited because GC's false statements were made intentionally and in bad faith. Appellee's Br. 4-8. As GRI contends: "Assuming *arguendo* that an additional finding of fraud is necessary . . . GC Corp.'s failure to ever correct those statements is clear and convincing circumstantial evidence of GC Corp.'s intent to defraud." *Id.* at 4. However, fraud is a question to be resolved by the trier-of-fact. *Wilkinson v. Jones*, 2004 Guam 14 ¶ 20; *see also Callahan*, 22 Cal. Rptr. at 613 ("[A]n intent to defraud always presents a factual question and the duty of the judge hearing a motion under § 437c is to find upon the existence of triable issues, not to solve them."). Therefore, even if intent to defraud was the standard, this is a factual issue not appropriate for summary judgment, and a jury trial was necessary.

Cir. 2001) (noting that willfulness of patent infringement is quintessentially a question of fact); *Driscoll v. United States*, 376 F.2d 254, 254 (1st Cir. 1967) ("Willfulness is a question of fact for the jury . . . ."); *Inland Freight Lines v. United States*, 191 F.2d 313, 315 (10th Cir. 1951); *Murray v. Chic. Youth Ctr.*, 864 N.E.2d 176, 195 (Ill. 2007) (noting that willful is a question of fact).

[31] Summary judgment is appropriate when there is no genuine issue of material fact and the prevailing party is entitled to judgment as a matter of law. Guam R. Civ. P. 56(c). In determining whether the moving party has shown that there is no genuine issue of material fact, courts must assess the factual evidence and all inferences to be drawn therefrom in the light most favorable to the non-moving party. Guam R. Civ. P. 56(c). The application of section 33201(j) (and section 33401 for that matter) is not one of law but one of fact, and we conclude that there was a genuine issue of material fact as to whether GC willfully included in its mechanic's lien work not performed upon or materials not furnished for the Okura Project, thus precluding summary judgment. The trial court therefore erred in granting summary judgment.

B. Forfeiture of Lien under 7 GCA §§ 333201 and 33302.

[32] GRI presents two additional challenges to the validity of GC's mechanic's lien, arguing that the lien was properly forfeited because GC is not a proper claimant under section 33201 and because GC never completed its construction contract with GRI. The trial court granted summary judgment in favor of GRI solely on the basis of its finding that GC had forfeited its lien for willfully including work not performed upon and materials not furnished for the property described in the lien. Because the trial court did not make any determination as to these alternative challenges, there is no error to review on appeal.

V. CONCLUSION

[33] In conclusion, we hold that the trial court did not err in its reading of 7 GCA § 33302(j). Section 33302(j) does not require a finding of an "intent to defraud" before forfeiture of a claimant's lien. However, we hold that the trial court erred in forfeiting GC's lien and granting GRI's motion for summary judgment, as the issue of whether GC acted willfully is a question of fact to be decided by a jury. Accordingly, we **AFFIRM** in part, **REVERSE** in part, and **REMAND** in part for a jury trial on trial on whether (1) GC willfully included in its claim of lien, work not performed upon or materials not furnished for the Project or (2) if any mistakes or errors in GC's statement of demand, or of the amount of credits and offsets allowed or of the balance asserted to be due were made with intent to defraud.

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

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

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