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“SLANDER OF TITLE”: THE COUNTER-PUNCH TO A MECHANIC’S LIEN

**Kyle S. Willems
Beth L. LaCanne
Michael J. Pfau
Bassford Remele, P.A.**

INTRODUCTION

The mechanic’s lien is one of the best weapons in a contractor or material supplier’s arsenal when it is not getting paid on a project. It may allow for the recovery of attorney’s fees, interest, payment, and the right to foreclose to get payment.

Because a mechanic’s lien is a powerful tool, Minnesota law allows for a powerful counterpunch. That counterpunch is called the “slander of title” claim. This is something that most contractors and material suppliers don’t know about but should – because it allows for the recovery of attorney’s fees and other damages for the responding party.

This article is designed to answer some of the basic questions about slander of title claims.

What is a slander of title claim?

Slander of title occurs when false statements are made with the intent to harm a property owner’s reputation or interfere with their ability to sell or transfer property. These false statements could include inaccurate information about the ownership history, liens, encumbrances, or other factors that negatively impact the property’s value or marketability.

A “slander of title” claim is a type of legal claim that is asserted in a lawsuit or arbitration against the slanderer. In the construction context, the alleged slanderer is a contractor or material supplier that falsely and maliciously records a mechanic’s lien against the title to a property, causing financial harm to the property’s owner. Typically, the slanderous lien causes financial harm because it prevents the sale of property, impacts the property owner’s ability to use the property as collateral in a financial transaction, and/or impacts the ability to refinance a mortgage.

What does a property owner have to show to prevail on a claim for slander of title?

A property owner must show that: (1) they owned the real property in question; (2) the defendant made a false statement concerning the real property; (3) the false statement was made to others; (4) the false statement was made with malice; and (5) making the false statement caused special damages.¹

¹ *Paidar v. Hughes*, 615 N.W.2d 276, 279-80 (Minn. 2000).

A statement is made with “malice” if it is made with knowledge of its falsity or substantial doubts about its truth. A slander of title claim will fail, however, if the party acts in good faith and records an instrument which they had a right to file.

Placing grossly inaccurate mechanic’s liens on real property can constitute “malicious conduct” for purposes of a slander of title claim. In one case, the court found that the mechanic’s lien was published maliciously because the lien contained claims for sums owed to the contractor for things clearly not “lienable” under Minnesota law including claims for liquidated damages, contents handling, items that were intentionally overcharged, amounts related to fraudulent invoices from subcontractors, amounts for items that the contractor purchased but expressly refused to release to the homeowners, work that was not done at the premises and work for which homeowners had already paid for and received lien waivers.²

What happens if the property owner wins on its slander of title claim?

If a property owner prevails on its slander of title, the property owner is entitled to damages that arise because of the cloud on the property’s title. For instance, the property owner may recover the diminution of value in the property’s sale price or additional expenses while the property cannot be sold due to the cloud on the title.³ Additionally, the property owner is entitled to recover its attorney’s fees, interest, and dispute-related costs.⁴

How do I prevent slander of title claims?

Anyone can assert a claim, but to get a slander of title counter-claim dismissed you should be able to show you had a good-faith basis to record the lien and the amount set forth in the lien. Double-check your math, have an accounting performed before the lien is recorded, and have all of the documents lined up that support the charges that make up the lien amounts.

CONCLUSION

Although a slander-of-title counterclaim seems unnerving, contractors and material suppliers should not shy away from filing a mechanic’s lien if they have not been paid. So long as they have the proper documentation to support their lien and they have double-checked (and maybe even triple-checked) their math before recording the lien, the property owner will be swinging at air and their slander-of-title counterpunch will miss its mark.

² *LeMaster Const., Inc. v. Woeste*, No. A08-0956, 2009 WL 1048194, at *2-3 (Minn. Ct. App. Apr. 21, 2009).

³ *Hahn v. Meier*, No. A08-0265, 2008 WL 5396868, at *2 (Minn. Ct. App. Dec. 30, 2008); *Aydt v. Hensel*, No. A17-0448, 2017 WL 6418083, at *5 (Minn. Ct. App. Dec. 18, 2017).

⁴ *Paidar v. Hughes*, 615 N.W.2d at 280; *Aydt v. Hensel*, 2017 WL 6418083, at *2, 7.

About the Authors



[Kyle Willems](#) is a shareholder and business litigation and trial attorney with the law firm Bassford Remele, P.A. He is also co-chair of the firm's construction practice group. Kyle focuses much of his practice representing businesses and business owners in the real estate and construction sectors. Kyle is licensed in Minnesota and Wisconsin. kwillems@bassford.com, 612-376-1604.



[Beth LaCanne](#) is an attorney at Bassford Remele, P.A. She represents clients in employment matters ranging from providing advice on employee handbooks to defending employers in administrative and legal proceedings. Beth is licensed in Minnesota and Wisconsin. blacanne@bassford.com, 612-376-1610.



[Michael Pfau](#) is a litigator at the law firm Bassford Remele, P.A. He focuses his practice in the areas of construction, employment, commercial litigation, and consumer finance. Michael is licensed in Minnesota and North Dakota. mpfau@bassford.com, 612-376-1672.

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