
The “officially released” date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the “officially released” date appearing in the opinion. In no event will any such motions be accepted before the “officially released” date.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the electronic version of an opinion and the print version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest print version is to be considered authoritative.

The syllabus and procedural history accompanying the opinion as it appears on the Commission on Official Legal Publications Electronic Bulletin Board Service and in the Connecticut Law Journal and bound volumes of official reports are copyrighted by the Secretary of the State, State of Connecticut, and may not be reproduced and distributed without the express written permission of the Commission on Official Legal Publications, Judicial Branch, State of Connecticut.

DiPENTIMA, J., dissenting. I respectfully dissent from the conclusion reached by the majority in part II. The majority holds that the requirement of General Statutes § 49-34 that a mechanic's lien be "subscribed and sworn to by the claimant" is not met by the following certification:

"IN WITNESS WHEREOF, I set my hand and seal this 8th day of July, 2003.

"LOUIS GHERLONE EXCAVATING, INC.

"

"BY:

"ITS CREDIT MANAGER DULY AUTHORIZED

"Subscribed and sworn to before me the day and year above written.

"

"ALFRED J. ZULLO, Notary"

In reaching this conclusion, the majority relies on *J. C. Penney Properties, Inc. v. Peter M. Santella Co.*, 210 Conn. 511, 555 A.2d 990 (1989), and *Red Rooster Construction Co. v. River Associates, Inc.*, 224 Conn. 563, 620 A.2d 118 (1993), which it reads as requiring a statement on the face of the lien certificate to the effect that the facts contained therein are true.

Our Supreme Court in *J. C. Penney Properties, Inc. v. Peter M. Santella Co.*, supra, 210 Conn. 511, held that an "oath must appear in writing on the certificate of the mechanic's lien" The Supreme Court in *Red Rooster Construction Co.* cited *J. C. Penney Properties, Inc.*, for the proposition that "the mechanic's lien statute requires the performance or execution of an oath swearing that the facts contained in the document are true." *Red Rooster Construction Co. v. River Associates, Inc.*, supra, 224 Conn. 577–78. The court thereupon refused to "validate a mechanic's lien certificate without any evidence that the claimant performed some act or form of ceremony indicating that the claimant consciously undertook the obligation of an oath" *Id.*, 579. Viewed in concert, *Red Rooster Construction Co.* and *J. C. Penney Properties, Inc.*, interpret § 49-34 as requiring a lien claimant to evidence on the face of the lien certificate that it took an oath to the effect that the facts alleged in the lien certificate are true. Neither case, either explicitly or by implication, requires a written oath on the face of the lien certificate stating in effect "I, claimant, swear that the facts contained herein are true. /s/ claimant."

The certification on the lien in the present case contains an affirmation by a notary that the lien was "[s]ubscribed and sworn" before him by the president of the claimant. This affirmation makes apparent on the face

of the lien certificate, absent a showing to the contrary, that the claimant's agent made an oath. "An oath . . . is a solemn and formal declaration that the contents of a declaration, written or oral, are true" (Internal quotation marks omitted.) *Red Rooster Construction Co. v. River Associates, Inc.*, supra, 224 Conn. 578. The affirmation by the notary that an oath was taken, therefore, informs the reader that the claimant's agent performed an oath swearing that the contents of the lien document were true. Thus, to require that the claimant state in the lien certificate that its agent took an oath swearing that the facts alleged therein are true, is redundant.¹

To invalidate the certificate here exalts form over substance.

I would reverse the judgment of the trial court.

¹ The defendant North Main Bridge, LLC, also alleges that the lien certificate is invalid because it fails to state that the amount claimed is "justly due." North Main Bridge, LLC, did not brief this claim; however, I address it briefly. General Statutes § 49-34 requires that a lien certificate state "that the amount claimed is justly due, as nearly as the same can be ascertained." The claimant here avers in the lien certificate that it has a lien "in the amount of ONE HUNDRED SEVENTY FOUR THOUSAND THIRTY SEVEN AND 05/100 (\$174,037.05), as nearly as the same can be ascertained."

"Provisions of mechanics' lien law should be liberally construed so as to reasonably and fairly implement its remedial intent. . . . Generosity of spirit does not, however, permit departure from reasonable compliance with specific provisions of the statute." (Citation omitted; internal quotation marks omitted.) *J. C. Penney Properties, Inc. v. Peter M. Santella Co.*, supra, 210 Conn. 514. Reasonable compliance is "measured by whether the lienor's mistake was made in good faith and by whether prejudice resulted from the mistake." *First Constitution Bank v. Harbor Village Ltd. Partnership*, 230 Conn. 807, 818, 646 A.2d 812 (1994). The claimant stated in the lien certificate the amount it claims is due on the lien. There is no evidence to suggest that the omission of "justly due" was made in bad faith. Presumably, the purpose of the statutory requirement is to inform the party subject to the lien the amount sought by the claimant, an objective that was met here. Furthermore, the fact that the claimant's agent swore to the contents of the lien certificate implies that the amount sought was proper.