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PROPERTY LAW—Under Certain Circumstances, New Mexico Law Now Allows Mechanics' Liens on Property Where Construction Never Took Place: *Cubit v. Hausler*

I. INTRODUCTION

In *Cubit Corporation v. Travis M. Hausler*,¹ the New Mexico Supreme Court held that when an owner abandons a construction project through no fault of the lien claimant, no actual or visible work on the ground is necessary for a mechanics' lien to attach to the property.² *Cubit* presented an issue of first impression in New Mexico. Before *Cubit*, New Mexico courts had not addressed the question of whether a mechanics' lien can attach to property where construction never began due to the owner's abandonment of a project. Under these specific circumstances, the New Mexico Supreme Court in *Cubit* allowed an architect to attach a mechanics' lien to the owner's property.³ In reaching its decision, however, the *Cubit* court ignored existing principles of New Mexico's mechanics' lien law, and instead based its decision solely on public policy. This Note provides a brief history of New Mexico's mechanics' lien law, examines the rationale of *Cubit*, and explores the implications of the court's decision.

II. STATEMENT OF THE CASE

In June of 1983, Travis M. Hausler engaged Cubit Corporation to provide planning and design services in connection with a planned community development in Lincoln County, New Mexico. Hausler owned the real estate involved. Shortly after Cubit completed the designs, Hausler abandoned the project due to a lack of financing. No construction ever took place on the property. In 1984, Cubit sought to foreclose a mechanics' lien against Hausler for the value of its services. In May of 1991, the trial court entered a judgment for Cubit.⁴ In a majority decision, the New Mexico Supreme Court affirmed.⁵

III. HISTORICAL AND CONTEXTUAL BACKGROUND

Mechanics' lien statutes were first introduced in 1791 when statesmen including Thomas Jefferson and James Madison sought to encourage construction of our nation's capitol.⁶ They argued that a statute which

1. 114 N.M. 602, 845 P.2d 125 (1992).

2. *Id.* at 606, 845 P.2d at 129.

3. *Id.* at 607, 845 P.2d at 130.

4. *Id.* at 602, 845 P.2d at 125.

5. *Id.* at 607, 845 P.2d at 130.

6. See Thomas Warner Smith III, *Mechanics' Lien Priority Rights for Design Professionals*, 46 WASH. & LEE. L. REV. 1035, 1037 (1989) (discussing the historical development of mechanics' liens).

provided builders with a security interest in the improved land would encourage them to build under contract for a fixed price. On December 19, 1791, the Maryland General Assembly passed our nation's first mechanics' lien law.⁷ Since then, all fifty states have enacted mechanics' lien statutes.⁸

Early mechanics' lien statutes provided protection for builders and construction contractors only.⁹ Since then, however, almost all statutes have been extended to provide at least some protection to design professionals such as architects.¹⁰ Some states have expressly provided mechanics' lien rights for architects in the wording of their statutes. Others have liberally construed the language of generally worded statutes to include protection for architects.¹¹

New Mexico is an example of the latter. New Mexico's mechanics' lien statute reads:

Every person performing labor upon . . . any mining claim, building, wharf, bridge, ditch, flume, tunnel, fence, machinery, railroad, road or aqueduct to create hydraulic power, or any other structure, . . . has a lien upon the same for the work or labor done¹²

In an 1885 decision, the New Mexico Supreme Court declared that the purpose of New Mexico's mechanics' lien statute is "to protect those who, by their labor, services, skill or materials furnished, have enhanced the value of the property sought to be charged."¹³ In 1900, the court in *Johnson v. McClure*¹⁴ liberally construed the words "every person" to include architects.¹⁵ In *Johnson*, the New Mexico Supreme Court held that an architect who provides plans for a building is entitled to a mechanics' lien for his services so long as he also superintends the construction of the building.¹⁶ The *Johnson* court assumed that an architect who superintends a project explains his plans and specifications to the mechanics who actually perform the construction and that the architect personally inspects all materials used in construction.¹⁷ From this assumption, the court concluded that a superintending architect has performed labor upon a building as much as a bricklayer or mason, and therefore should be granted mechanics' lien rights in the property.¹⁸

In 1931, the Supreme Court of New Mexico in *Gastra, Gladding & Johnson v. Bishop's Lodge Co.*¹⁹ extended protection to any architect

7. *Id.* at 1038.

8. *Id.*

9. *Id.* at 1035.

10. *Id.*

11. *Id.* at 1035-36.

12. N.M. STAT. ANN. § 48-2-2 (Repl. Pamp 1987).

13. *Hobbs v. Spiegelberg*, 3 N.M. 357, 363, 5 P. 529, 531 (1885).

14. 10 N.M. 506, 62 P. 983 (1900).

15. *Id.* at 521, 62 P. at 984.

16. *Id.* at 523, 62 P. at 984.

17. *Id.* at 523-24, 62 P. at 984.

18. *Id.* at 524, 62 P. at 984.

19. 35 N.M. 396, 299 P. 347 (1931).

who furnishes plans actually used in the construction of a building, whether the architect personally provides on-site supervision or not.²⁰ In *Gaastra*, the court deduced that the theory behind the requirement of superintendence was that a superintending architect effectively works his plans into construction so that they actually become part of the improvement to the property.²¹ The *Gaastra* court pointed out, however, that this theory holds true whether the plans are worked into construction under the designing architect's supervision or under that of another person.²² Therefore, the court in *Gaastra* concluded that so long as an architect's plans are actually used in construction, the labor in preparing those plans improves the property and therefore the architect is entitled to mechanics' lien rights.²³

IV. THE CUBIT COURT

A troublesome situation develops, however, when a property owner abandons a project after an architect has provided plans and designs but before construction begins. The owner's abandonment prevents the architect's plans from being used in construction. As a result, the architect's labor never enhances the value of the owner's land as required by *Johnson* and *Gaastra*.

The sole issue addressed in *Cubit v. Hausler* was the legal question of whether a mechanics' lien can attach to property where no improvement occurred due to the owner's abandonment of the project through no fault of the claimant.²⁴ This was a question of first impression in New Mexico, and by finding for Cubit, the New Mexico Supreme Court extended New Mexico law to permit mechanics' liens under certain circumstances even when no construction took place on the property.²⁵ In doing so, however, the court in *Cubit* ignored the principles developed in *Johnson* and *Gaastra*.

The court in *Cubit* began by laying the ground work for a decision based in equity. It emphasized that the purpose of New Mexico's lien statute is to provide protection for lien claimants and that the statute is remedial in nature, equitable in its enforcement, and is to be liberally construed.²⁶ The *Cubit* court then admitted that *Gaastra* had held that an architect is not entitled to a mechanics' lien if his plans are not actually used in construction,²⁷ and that other New Mexico courts had concluded that some physical work must be performed on the property

20. *Id.* at 403-04, 299 P. at 350.

21. *Id.* at 403, 299 P. at 350.

22. *Id.*

23. *Id.* at 403-04, 299 P. at 350.

24. 114 N.M. 602, 603, 845 P.2d 125, 126 (1992).

25. *Id.*

26. *Id.* at 604, 845 P.2d at 127 (citing *Vulcraft v. Midtown Business Park, Ltd.*, 110 N.M. 761, 765, 800 P.2d 195, 199 (1990)) (quoting *Hobbs v. Spiegelberg*, 3 N.M. 357, 363, 5 P. 529, 531 (1885)).

27. *Id.*

before an architect's lien could arise.²⁸ The *Cubit* court was quick to point out, however, that several New Mexico cases had suggested that abandonment of a project by the owner, through no fault of the lien claimant, should not affect a claimant's mechanics' lien rights.²⁹

A. *New Mexico's Doctrine of Constructive Completion*

The *Cubit* court then discussed *Albuquerque Lumber Co. v. Montevista Co.*³⁰ and *Dysart v. Youngblood*³¹ to show that New Mexico has allowed mechanics' liens under certain circumstances even when the value of the owner's land had not been enhanced by the claimant. In *Albuquerque Lumber*, construction had commenced but was later abandoned by the property owner. Only a foundation and part of a wall had been constructed at the time of abandonment. In upholding a mechanics' lien, the New Mexico Supreme Court declared that abandonment of construction through no fault of the lien claimant constitutes "constructive completion" under the New Mexico lien statute.³² As for the fact that the abandoned improvement did not enhance the value of the property, the court stated:

While fundamentally and in a broad sense presumptive benefit to the land improved by another's labor or material from the beginning has afforded constitutional justification for and still supports the theory of mechanics' lien legislation, yet so to recognize does not mean that a showing of benefit in a particular case is indispensable to the right to lien.³³

Later in *Dysart*, the court upheld a mechanics' lien on a dry water well, ruling that "it makes no difference . . . that the improvement was abandoned, and therefore worthless as adding value to the land."³⁴ The court held that the lien obtains for what it is worth, as long as the abandonment was not the fault of the lien claimant.³⁵

The *Cubit* court emphasized that mechanics' liens were upheld in both *Dysart* and *Albuquerque Lumber* even though the improvements in both cases were worthless.³⁶ In discussing *Dysart* and *Albuquerque Lumber*, the court focused almost exclusively on the public policy behind these decisions. The court explained that the decision in *Dysart* was based on the evident intention of the New Mexico Legislature to protect laborers against loss,³⁷ and that *Albuquerque Lumber* stated that a strict require-

28. *Id.* (citing *In re Commercial Investments, Ltd.*, 92 B.R. 488 (Bankr. D.N.M. 1988).

29. *Id.* (citing *Dysart v. Youngblood*, 44 N.M. 351, 102 P.2d 664 (1940) and *Albuq. Lumber Co. v. Montevista Co.*, 39 N.M. 6, 38 P.2d 77 (1934)).

30. 39 N.M. 6, 38 P.2d 77 (1934).

31. 44 N.M. 351, 102 P.2d 664 (1940).

32. *Albuquerque Lumber*, 39 N.M. at 15, 38 P.2d at 82.

33. *Id.* at 12-13, 38 P.2d at 81.

34. *Dysart*, 44 N.M. at 355, 102 P.2d at 667.

35. *Id.*

36. *Cubit*, 114 N.M. at 604, 845 P.2d at 127.

37. *Dysart*, 44 N.M. at 353, 102 P.2d at 665.

ment of benefit to the land would greatly restrict the field of usefulness of New Mexico's mechanics' lien legislation.³⁸

The *Cubit* court then declared that the holding in *Albuquerque Lumber* was consistent with well-established public policy that a claimant has the right to rely on New Mexico's lien statute for protection to secure payment for his services.³⁹ Finally, the court announced that it wished to protect that reliance through its holding in *Cubit*.⁴⁰

B. Other Jurisdictions

After noting that neither *Dysart* nor *Albuquerque Lumber* was directly on point,⁴¹ the *Cubit* court turned to other jurisdictions for guidance. The court began by embracing the doctrine of "constructive improvement" developed in *Lamoreaux v. Andersch*⁴² as similar if not identical to its own doctrine of "constructive completion."⁴³ In *Lamoreaux*, the Minnesota Supreme Court upheld an architect's mechanics' lien for the cost of his design services when the owner, through no fault of the architect, abandoned the project before construction began.⁴⁴ The court in *Lamoreaux* admitted that it was difficult to see how the value of property is enhanced where neither labor nor material actually goes into an improvement on the land.⁴⁵ Nevertheless, in light of the owner's abandonment, the court concluded that the architect had "constructively" improved the property.⁴⁶ The court emphasized that the owner himself prevented the architect's work from contributing to the construction of an actual improvement on the land and that an owner should not be able to defeat a mechanics' lien simply by abandoning a project.⁴⁷

In considering other jurisdictions, the court in *Cubit* focused on those which had reached similar results.⁴⁸ Only in a brief footnote did the court acknowledge that some jurisdictions consider an architect's lien invalid if construction never begins.⁴⁹ The court noted, however, that each of those jurisdictions had statutes which explicitly required im-

38. *Albuquerque Lumber*, 39 N.M. at 12, 38 P.2d at 81.

39. *Cubit*, 114 N.M. at 605, 845 P.2d at 128 (citing *Ford v. Springer Land Ass'n*, 8 N.M. 37, 41 P. 541 (1895), *aff'd*, 168 U.S. 513 (1897)).

40. *Cubit*, 114 N.M. at 605, 845 P.2d at 128.

41. *Id.* Both cases involved abandonment after construction had commenced.

42. 150 N.W. 908 (Minn. 1915).

43. *Cubit*, 114 N.M. at 605, 845 P.2d at 128.

44. *Lamoreaux*, 150 N.W. at 912.

45. *Id.* at 911.

46. *Id.*

47. *Id.*

48. *Cubit*, 114 N.M. at 606-07, 845 P.2d at 129-30 (citing *In re Morrell*, 42 B.R. 973 (Bankr. N.D. Cal. 1984) (wherein California adopted the doctrine of *Lamoreaux*); *Seracuse Lawler & Partners, Inc. v. Copper Mountain*, 654 P.2d 1328 (Colo. Ct. App. 1982); and *O'Hara v. Architects Hartung & Assocs.*, 326 N.E.2d 283 (Ind. 1975) (recognizing an estoppel exception to the general rule that a mechanics' lien cannot arise unless materials and labor are actually used in construction)).

49. *Cubit*, 114 N.M. at 607 n.3, 845 P.2d at 130 n.3 (citing *Torkko/Korman/Eng'rs v. Penland Ventures*, 673 P.2d 769, 772 (Alaska 1983); *Mark Twain Kan. City Bank v. Kroh Bros. Dev. Co.*, 798 P.2d 511, 515 (Kan. App. 2d 1990); *Stern v. Great Plains Fed. Sav. & Loan Ass'n*, 778 P.2d 933, 936 (Okla. Ct. App. 1989)).

provement.⁵⁰ Finally, with no analysis of the facts peculiar to *Cubit v. Hausler*, the New Mexico Supreme Court affirmed the judgment for *Cubit*.⁵¹

V. ANALYSIS

The holding of *Cubit v. Hausler* is clear: when an owner wrongfully abandons a project, an architect who has provided plans and designs for the project may obtain a mechanics' lien even though construction never began. The basis for *Cubit's* holding, however, remains unclear because the *Cubit* court failed to consider some of the basic principles underlying New Mexico's mechanics' lien law.

In 1885, the New Mexico Supreme Court declared that the purpose of New Mexico's mechanics' lien statute is to protect those who *enhance the value* of another person's land.⁵² In 1931, the court developed the theory that when an architect's plans are used in construction, they enhance the value of the owner's property by actually becoming part of the physical improvement on the land.⁵³ Therefore, under normal circumstances, an architect would not be entitled to the protection of New Mexico's mechanics' lien statute unless his plans are actually used in construction.

In *Dysart* and *Albuquerque Lumber*, however, the court developed the doctrine of constructive completion to deal with cases in which an owner wrongfully abandons a project before completion. This equitable exception was based on a finding that the owner's abandonment was the sole reason the claimant's labor did not enhance the value of the land.

Therefore, to decide whether the architect in *Cubit* deserved the protection of New Mexico's mechanics' lien statute, the court needed only to apply existing doctrine to the facts of the case. In applying the reasoning developed in *Dysart* and *Albuquerque Lumber*, the court in *Cubit* should have considered whether the architect's plans were actually suitable for use in construction. If they were, then the owner's abandonment of the project would have prevented the architect's labor from enhancing the value of the land. Therefore, the architect should be allowed a mechanics' lien on the property. If, however, the plans were preliminary in nature and useful only for project feasibility purposes, then they could not have been used in construction even if the owner had not abandoned the project. Therefore, the equitable exception developed in *Dysart* and *Albuquerque Lumber* would not apply and the architect should not have been allowed a mechanics' lien on the land.

50. *Cubit*, 114 N.M. at 607 n.3, 845 P.2d at 130 n.3.

51. *Id.* at 607, 845 P.2d at 130.

52. *Hobbs v. Spiegelberg*, 3 N.M. 357, 363, 5 P. 529, 531 (1885) (emphasis added).

53. *Gaastra, Gladding & Johnson v. Bishop's Lodge Co.*, 35 N.M. 396, 403, 299 P. 347, 350 (1931).

The reasoning developed in *Dysart* and *Albuquerque Lumber*, however, was never applied by the court in *Cubit*. Instead, the court simply decided that allowing *Cubit* to obtain a mechanic's lien would be in line with the public policy behind New Mexico's lien law and the remedial purpose of the statute.⁵⁴ Thus, the court in *Cubit* effectively eliminated the requirement that a lien claimant enhance the value of an owner's property. This deviation from existing principles is further revealed by the court's restatement of the purpose of New Mexico's lien statute. Early in its opinion, the court declared that the purpose of New Mexico's lien law was "to protect those who by their labor . . . have enhanced the value of the property sought to be charged."⁵⁵ In the latter part of its decision, however, the court stated that the purpose of the statute is "to insure payment to those who render services toward a project . . ."⁵⁶

VI. CONCLUSION

Clearly, *Cubit v. Hausler* is good news for architects. The court's conviction that New Mexico's lien statute is remedial in nature, equitable in its enforcement, and is to be liberally construed led it to extend the law to provide architects with additional security. In situations where an owner wrongfully abandons a project, leaving an architect unpaid for services already completed, an architect can now obtain a mechanics' lien on the property even if construction never began.

Cubit's effect on other professionals, however, is unclear. *Cubit* may stand for the proposition that New Mexico's mechanics' lien law is now based solely on principles of equity and public policy and that the court will provide mechanics' lien protection to any group of claimants it feels is deserving. If the court is truly concerned only with principles of equity and public policy, why would it not consider providing mechanics' lien protection for other professionals whose paperwork aids in the development of property? Unless the reasoning developed in *Dysart* and *Albuquerque Lumber* is revived by the court, it will not be surprising to see attorneys, accountants and other professionals seeking mechanics' liens for their services, especially when an owner wrongfully abandons a project.

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54. *Cubit*, 114 N.M. at 606, 845 P.2d at 129.

55. *Id.* at 604, 845 P.2d at 127 (emphasis added) (quoting *Hobbs*, 3 N.M. at 363, 5 P. at 531).

56. *Id.* at 606, 845 P.2d at 129 (emphasis added).