

THE LEGAL DIMENSION — RESIDENTIAL LIENS

By Craig Othmer, Esquire

Architects will now have to be more careful than ever to collect lien waivers on homebuilding projects. A recent New Mexico Supreme Court decision essentially tells subcontractors and suppliers to file more liens.

The case concerns a home in Bernalillo County. The cabinet maker completed work for a general contractor on November 27, 1984. Two weeks later, on December 11, 1984, the homeowners made a final payment to the general contractor. At that time, the general contractor signed an affidavit that no liens were on file. The cabinet maker had not received payment as a subcontractor by December 28, 1984, and filed a lien. Unfortunately, the cabinet maker, had not paid much attention to the 1981 New Mexico lien law amendments.

In most situations (public projects are the largest exception), subcontractors and suppliers may file a lien any time within ninety days after completion. The theory is simple. When retailers sell televisions or washing machines to homeowners, they can repossess the merchandise if payment isn't received. However, repossession is not a practical remedy for the lumberyard or brick layer that has not been paid. Instead, the lumberyard and brick layer are given lien interests in the real estate which was improved by their efforts. The prudent owner makes sure that adequate lien waivers have been executed by the subcontractors and suppliers on the job before releasing payments. Careful use of good standard form contracts offer excellent protection. For example, execution of the AIA Contractor's Affidavit of Release of Liens form G706A is designed as a safeguard against liens and is used in connection with article 9 of the AIA General Conditions A201-1976 form. Without lien waivers, the owner may be forced to pay for the work twice.

In 1981, the New Mexico legislature recognized that many homeowners were blissfully unaware of liens at all and received testimony from victims of fly by night general contractors. These homeowners had work done on their homes and made final payment to the general contractor. When the general contractor

"neglected" to pay the subcontractors and suppliers, liens were filed. As the general contractor was nowhere to be found, the homeowners were forced to pay a second time for the work.

The problem is not unique to New Mexico. Many states have struggled with the issue. Most of the resulting legislation added a legal requirement that some sort of early warning notice be given to owners. Subcontractors and suppliers are generally required to let owners know through some mechanism that they are working on the project. The owner then knows which names need to appear on lien waivers before final payment is made.

New Mexico took a different approach. The 1981 amendments discharge any lien on residential structures up to four dwellings units unless the lien has already been filed before final payment. An exception is made if the general contractor takes certain precautions. For the most part contractors, subcontractors, and suppliers have ignored the 1981 amendments.

In the case of the cabinet maker, the general contractor did not take any precautions, at least on behalf of the cabinet maker. Therefore, even though the cabinet maker filed a lien on the 31st day after completing work, well within the 90 day statutory limitation, the lien was discharged since final payment had already occurred. The cabinet maker may still try to collect from the general contractor but the right to lien is gone.

As subcontractors and suppliers are not always aware when final payment will be made, they will be more inclined to file liens so that they do not lose their lien rights. In fact, the Supreme Court says that the subcontractor has a duty to file a lien prior to final payment. Subcontractors and suppliers can be expected to take the direction of the Supreme Court and file more liens. The text of the decision may be found in the N.M. Bar Bulletin, Vol. 24, No. 18, pages 383-5, May 1, 1986. The case is entitled *Aztec Wood Interiors, Inc. v. Andrade Homes, Inc. Jerry Alcone and Pat Alcone*. C.O.

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CONVOCATION ADDRESS

UNM School of Architecture and Planning — May 17, 1986

V.B. Price

It is a great pleasure and a great honor for me to be here with you today.

In keeping with these ceremonies, my talk concerns responsibility, reality, and idealism. It is "about" being guided by our highest selves, which is, in our context, about nature and architecture and the role of the arts in the health and evolution of culture.

This year, the AIA convention in San Antonio has as its major themes both the taking and the celebrating of responsibility. The lead sentence of convention fliers reads "Taking responsibility for the quality of life is something you do every time you design."

Architects, more directly perhaps than any other artists, have the pleasure and the responsibility of dealing with the real world and the symbolic world in a dynamic union, which brings quality to life.

It is a requirement of their profession, and of planners too, to abandon ivory towers, of course, to mix it up with real human beings and real problems, of course, and to be full citizens of the world.

Architects and planners are, or should be, to the arts what physicians are, or should be, to the medical sciences—the champions of action, interaction, cooperation, and public creativity.

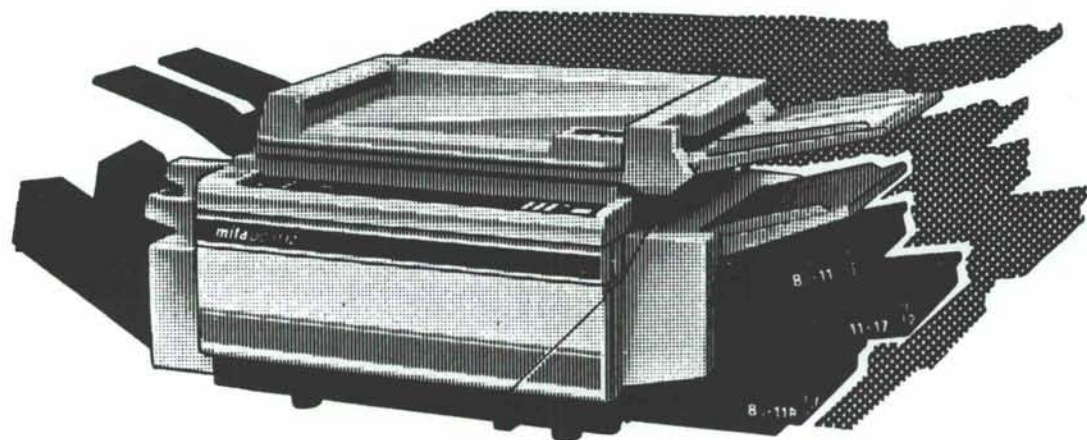
If myths are public dreams, and dreams private myths, then architecture and urban form are to the natural landscape what consciousness and imagination are to time and space—articulate extensions of mystery, of connection, and of value.

Architects and planners, along with the forces of the marketplace and the scribes of design, make the tangible human world, *mas o menos*. It is a vast responsibility, indeed, one to inspire the highest ideals and perhaps even impose the heaviest sense of burden.

The media of architecture and planning are as much economy, psychology, and the often poor design of those who make the goods from which buildings themselves are made, as it is the history of art and the richness of personality. Yes, the real world is tough (and, as we all know, when the going gets tough the tough go shopping). But as tough as it is, there are, in it, ar-

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tists who are both true to themselves and to the needs they serve, and artists who are not. So why not be the ones who are? Both have, I think, the same chance of financial success.

The real world is tough, paradoxical, sometimes nonsensical, but ideals are every bit as real and tangible as other forces and realities, if they are applied with rigor.

If as an artist, as an architect or planner, one is guided by one's highest self, and acts upon what one knows is highest and best, the responsibility of making the world, of making the human correlative of the natural environment, becomes not only bearable but energizing, for responsibility is, then, seen for what it is—a struggle for the optimum, for the best, and such a struggle can always be endured if the stakes are high enough, as they are here.

The task of all contemporary artists is to make works that are as good as nature, or so that saint of perception and modernity, Cezanne, has said. One of his followers, the poet Rainer Maria Rilke, put it clearly when he wrote that he yearned "somehow to find a way of making things; not plastic...things, but realities that arise from the craft itself..." This, of course, is the essence of architecture, and its great fortune.

Architecture is the reality, the connective art, in which other arts take place. It forms the crafted landscape of a culture; and it is added to non-human nature, added to that which is necessarily sublime. And that is part of its responsibility—to be up to the competition of nature, as well as to the latent potential of culture.

Architects and planners must be champions, and occasionally even definers, of the optimum. They owe it to nature, to their culture, and to their fellow human beings. It must be said over

and over again that what architects and planners do does matter to the general public, whether the concern is voiced or not. Their work serves undeniable practical, symbolic, and aesthetic functions. Human beings can no more healthily survive in hostile buildings than they can in hostile natural environments. This is why, really, architecture and planning are the fullest and most responsible realization of the arts.

They are an organizing, structuring product of the imagination, and give, as ritual does, form to our lives. They are an extension of the human into which and among which the human journeys, seeking to realize its nature. Their influence on the life, the spirit, and the imagination of individuals and societies is as profound, in many ways, as the influence of nature itself. And that is their products must not only be artistic and functional expressions, but conscious and ethical ones as well. The same, certainly, is true for any art form and any profession, to a greater or lesser degree.

This responsibility is passed on to all of us who participate in the creation of cities by Lewis Mumford when he concluded his book "The City in History" by writing, "The final mission of the city is to further man's conscious participation in the cosmic and historic process. Through its own complex and enduring structure, the city vastly augments man's ability to interpret these processes and take an active and formative part in them, so that every phase of the drama it stages shall have to the highest degree possible, the illumination of consciousness, the stamp of purpose, the color of love."

Congratulations on your accomplishments and thank you very much.

V.B.P.

UN-BUILT NEW MEXICO

Kenneth S. Clark, FAIA, Architect



This Motel was designed by Kenneth S. Clark, FAIA for a site on the high bluff east of I-25, south of the present Big I in Albuquerque. It was designed in 1953. At that time this was an undeveloped area. The group proposing to construct the motel was inexperienced in project development, and more significantly, in motel construction and operation. Clark participated in the project to the extent of preliminary design sufficient for a promotional delineation. His efforts were not productive, as the development group fell apart shortly thereafter. Compensation for design services consisted of one Olivetti calculator and one Paymaster check writer; these Clark captured from the abandoned office. Foster Hyatt, AIA Delineator.