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IN THE

Supreme Court of Virginia

RECORD NO. 160814

ULKA DESAI, EXECUTRIX of the
ESTATE of LAKSHMI DESAI, and as the
SUCCESSOR TRUSTEE of THE REVOCABLE TRUST
AGREEMENT OF LAKSHMI DESAI as Amended,

Appellants

v.

A. R. DESIGN GROUP, INC.,

Appellee.

BRIEF OF APPELLEE

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STATEMENT OF THE CASE

A.R. Design Group, Inc., ("A.R. Design Group") has nothing to add to the statement of the case provided by the Appellants, Ulka D. Desai, Successor Trustee of the Revocable Trust Agreement of Lakshmi Desai and Ulka D. Desai, Executrix of the Estate of Lakshmi Desai (collectively "Desai").

STATEMENT OF FACTS

A.R. Design Group offers the following statement of facts to correct and/or amplify the statement provided in the Appellants' Opening Brief.

The Woodside mechanic's lien ("Woodside Lien") names as the property's owners Ulka D. Desai and Ulka D. Desai, Executor of the Estate of Lakshmi Desai. (J.A. 63-65) Ulka D. Desai was appointed as the successor trustee of the Revocable Trust Agreement of Lakshmi Desai on August 25, 2015, approximately three weeks prior to the recording of the Woodside Lien on September 16, 2015. (Plaintiffs' Exhibit 3) Title to the Woodside property vested in Ulka D. Desai on August 25, 2015 when she was appointed successor trustee.

The Woodside Lien includes language in the affidavit stating that "owner, is justly indebted to claimant in the sum of $ 39,332.00 dollars, for

consideration stated in the foregoing memorandum, and that the same is payable as therein stated." (emphasis added)(J.A. 63-65)

Similarly, the Towlston mechanic's lien ("Towlston Lien") also includes language in the affidavit stating that "owner, is justly indebted to claimant in the sum of $ 183,609.05 dollars, for consideration stated in the foregoing memorandum, and that the same is payable as therein stated." (emphasis added)(J.A. 42-44).

Both the Woodside and Towlston Liens, therefore, do state the time at which the claims are due and payable.

AUTHORITIES AND ARGUMENT

I. The Trial Court Correctly Determined That the Woodside Mechanic's Lien Identified the Owner of the Property.

Desai contends that the Woodside Lien incorrectly names the owner of the property to which it attaches and, therefore, the lien is invalid. Desai's argument is that the trial court erred because by naming "Ulka D. Desai and Ulka D. Desai, as Executor of the Estate of Lakshmi Desai" as the owners of the property, instead of "Ulka D. Desai, Trustee," the Woodside Lien failed to substantially comply with the requirements of Va. Code Ann. § 43-4. This position, however, disregards three critical pieces of evidence based on which the trial court correctly concluded that the

Woodside Lien properly named the owners of the Woodside property; specifically:

1. Legal and equitable title was vested in Ulka D. Desai at the time the lien was recorded;
2. The Woodside Lien was indexed under the name "Ulka D. Desai" as was proper and put subsequent purchasers on notice, which is intended by the Mechanic's Lien Act; and
3. Ulka Desai testified that the Estate of Lakshmi Desai owned the Woodside property at the time the Lien was recorded.

For these reasons, which will be discussed further below, the Woodside Lien named the owners of the Woodside property as required by Va. Code Ann. § 43-4.

a. Standard of Review

In her Opening Brief, Desai incorrectly identifies the standard of review applicable to the first assignment of error. Desai's first assignment of error asserts that the trial court erred by failing to invalidate the Woodside mechanic's lien on the basis that it failed to name the owner. The trial court made a factual determination, based on evidence presented at trial, that the Woodside mechanic's lien did name the property owner. A factual determination by the trier of fact will only be reversed if plainly

wrong or without evidence to support it. *Glasser & Glasser, PLC v. Jack Bays, Inc.*, 285 Va. 358, 369, 741 S.E.2d 599, 604-05 (2013); *Hudson v. Lanier*, 255 Va. 330, 333-34, 497 S.E.2d 471, 473 (1998).

b. Law and Argument

In Virginia, a mechanic's lien filed by a general contractor is properly perfected if it complies with Code § 43-4. *Am. Stan. Homes Corp. v. Reinecke*, 245 Va. 113, 119, 425 S.E.2d 515, 518 (*quoting Francis, v. Hotel Rueger*, 125 Va. 106, 121, 99 S.E.690, 694 (1919)). "[S]tatutes dealing with the existence and perfection of a mechanic's lien must . . . be strictly construed." *Smith Mountain Bldg. Supply, LLC v. Windstar Properties, LLC*, 277 Va. 387, 391, 672 S.E.2d 845, 846 (2009) (*quoting Carolina Builders Corp. v. Cenit Equity Co.*, 257 Va. 405, 410-11, 512 S.E.2d 550, 552-53 (1999)).

At the same time, this Court acknowledges that the purpose of the mechanic's lien act is "to insure to this useful class of laborers the certain and speedy rewards of their labor, and to prevent the fruits of their daily toil, when matured, from being reaped by others." *Merchants' & Mechanics' Sav. Bank v. Dashiell*, 66 Va. (25 Gratt.) 616, 621 (1874). To construe these statutes too "narrow[ly] and technical[ly] . . . would, in a great majority of cases, defeat the object of the statute." *Id*.

Va. Code Ann. § 43-4 provides that a general contractors' mechanic's lien is properly perfected if it "shall show the name of the owner of the property to be charged." For the purpose of this statutory section,

> "Owner" is a word of general purport, but its primary meaning, as applied to land, is "one who owns the fee and who has the right to dispose of the property" and includes "one having a possessory right to land."

Loyola Fed. Sav. & Loan Ass'n v. Hernon Lumber & Millwork, Inc., et al., 218 Va. 803, 805, 241 S.E.2d 752, 753 (1978)(*citing* Black's Law Dictionary 1259 (rev. 4th ed. 1968). Moreover, "it is well settled in [Virginia] and elsewhere that a mechanic's lien may be perfected on an equitable as well as on a legal estate." *Wallace v. Brumback*, 177 Va. 36, 44, 12 S.E.2d 801, 804 (1941) (*citing* Feuchtenberger v. Williamson, 137 Va. 578, 583, 120 S.E. 257 (1823); *Phillips on Mechanics' Liens*, 3d Ed., § 81, p. 152; 40 C.J., Mechanics' Liens, § 27, p. 62.)).

The Woodside Lien named the owners of the property as Ulka D. Desai and Ulka D. Desai, Executor of the Estate of Lakshmi Desai. Desai contends that the Woodside Lien fails to identify her as a trustee and, therefore, the owner is not properly named as required by Va. Code Ann. § 43-4.

A trustee is any person in whom a legal estate has been vested, to be held for some other person's benefit, but this Court has never mandated

that the words “trust” or “trustee” be used in order for such vested interest to arise. *Broaddus v. Gresham*, 181 Va. 725, 731, 26 S.E.2d 33, 35 (1943)(*citing Hammond v. Ridley's Ex'r,* 116 Va. 393, 398, 82 S.E. 102 (1914)). Desai would have this Court overrule the trial court’s finding that the Woodside Lien properly named Ulka D. Desai as an owner of the property at the time the mechanic’s lien was filed because she is not specifically identified as “Trustee” or “Successor Trustee,” but cites nothing in support of that position. A trustee is not a separate legal entity that must be specifically identified, but instead is merely an individual in whom legal title is vested for the benefit of another. Desai meets this definition even without the word “Trustee” tacked onto her name on the Woodside Lien.

By the terms of the 1990 Woodside Deed (JA. 60-62), the Trustee and her successors have and hold the property in fee simple and have full power to sell and encumber the property. The 1990 Woodside Deed further provides that no party dealing with the Trustee and her successors or to whom any interest in such property is conveyed is obligated to inquire into the Trustee’s authority or to see that the Trust is complied with. (JA. 61). This is consistent with Va. Code Ann. § 64.2-778, which provides that trustees have the power to acquire and sell property of the trust.

Desai acknowledged that, at the time the Woodside Lien was filed, she was the successor trustee of the Revocable Trust Agreement of Lakshmi Desai. (Plaintiffs' Trial Exhibit 3) Under the terms of the 1990 Woodside Deed, therefore, she was the owner of the Woodside property in fee simple with full power to sell and encumber the property. Pursuant to the holding in *Hernon Lumber, supra,* Desai was the owner of the Woodside property when the mechanic's lien was recorded and she is properly named on the face of the lien.

This conclusion is also supported by the purpose behind the requirement for naming the property owner on mechanic's liens. In Virginia, all mechanics' liens are recorded in the general index of deeds, which serves the purpose of putting subsequent purchasers on notice of the mechanic's lien. *Wallace v. Brumback*, 177 Va. 36, 44, 125 S.E.2d 801, 803 (1941). The Woodside mechanic's lien was indexed under the name "Ulka D. Desai," and any individual purchasing property from her, as trustee, would have searched her name in the index and discovered the lien. Similarly, anyone conducting a search on the property would have discovered the mechanic's lien in the name of the individual holding herself out to be the trustee. Again, the absence of the word "Trustee" after her

name would not have negatively impacted an index search. Her name and the lien would still be revealed by an index search.

The trial court's factual determination that the proper owner was named in the Woodside mechanic's lien was further supported by Desai's testimony at trial. Desai held herself out as the owner of the property as Executor of the Estate of Lakshmi Desai, just as Lakshmi Desai executed a contract and represented herself as sole owner of the property in her negotiations with A.R. Design Group. In essence, Desai's position is that even though she represented herself to A.R. Design Group to be the owner of the Woodside Property as Executor of the Estate of Lakshmi Desai, the mechanic's lien that lists her as owner of the property in that capacity is invalid.

In *Massie v. Firmstone*, 134 Va. 450, 114 S.E. 652, 656, this Court ruled,

> No litigant can successfully ask a court or jury to believe that he has not told the truth. His statements of fact and the necessary inferences therefrom are binding upon him. He cannot be heard to ask that his case be made stronger than he makes it, where, as here, it depends upon facts within his own knowledge and as to which he has testified.

This Court has applied the *Massie* doctrine in the mechanic's lien context. *See Erlich. v. Hendrick Const. Co., Inc.*, 217 Va. 108, 225 S.E.2d 665, 669 (1976).

Ulka D. Desai testified that the Estate of Lakshmi Desai owned the Woodside Property: "[w]hat we are litigating here now are two of the properties which were still in the name of the estate when the lien was placed." Tr. 101:16-18 (Mar. 2, 2016). Desai also stated that it was the Estate that submitted payment to A.R. Design Group: "So as soon as the estate had any funds into it, we paid Mr. Rouhani for the actual detailed invoices he had given us[.]" Tr. 104:7-9 (Mar. 2, 2016); *see also* Tr. 67:3-5 (Feb. 29, 2016) (" . . . I'm the executor of the estate, and I wanted to make sure that any disbursements that I do out of estate fund, I have good backing for it.").

It is unclear whether the Estate's interest in the property is legal or equitable, but it is clear from Ulka D. Desai's testimony that the Estate, and she as Executrix, had a vested interest in the Woodside property as of September 16, 2015.[1] The trial court did not err, therefore, in relying upon the testimony of Ulka D. Desai, as the Executor for the Estate of Lakshmi Desai, for its conclusion that Desai was properly named in that capacity as an owner of the Woodside property on the Woodside Lien.[2]

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[1] This Court has recognized that an executor of a decedent's estate possesses legal title to the assets of the decedent. *Brockenbrough v. Turner & Als. Harding's Ex'or. V. Turner & Als.*, 78 Va. 438, 444 (1884).

[2] Even if Desai testified incorrectly and the Estate did not have a legal or equitable interest in the Woodside property, it still does not invalidate the

II. Interest Is Not A Requirement of Va. Code Ann. § 43-4 and Therefore A Lien Without An Interest Calculation Is Not Invalid.

Both the Woodside and the Towlston Liens recorded against these respective properties were submitted on the official Court forms, and were filled out completely. Desai now complains that, notwithstanding the use of an official form, the Memoranda did not state the date from which interest is claimed under Va. Code Ann. § 43-5, nor the "time or times when the [amount claimed] is or will be due and payable" under § 43-4. This position, however, fundamentally misreads these two statutes and attempts to create requirements not contained in the plain language of the statutory provisions.

a. Standard of Review

When an issue presents a mixed question of law and fact, the Court "give[s] deference to the trial court's findings of fact and view the facts in the light most favorable to the prevailing party[.]" *Collins v. First Union Nat. Bank*, 272 Va. 744, 749, 636 S.E.2d 442, 446 (2006) (citing *Caplan v. Bogard*, 264 Va. 219, 225, 563 S.E.2d 719, 722 (2002)). The Court reviews the trial court's application of the law to facts de novo. *Id*.

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lien. So long as the Woodside Lien named one correct owner, other names mentioned on the lien are immaterial. *See, e.g., Blanton v. Owen*, 203 Va. 73, 78, 122 S.E.2d 650, 653 (1961).

b. Law and Argument

Under the basic rules of statutory construct, the intent of the General Assembly is determined from the plain and natural meaning of the words used in the statute. *Britt Const. Inc., v. Magazzine Clean, LLC,* 271 Va. 58, 62, 623 S.E.2d 886, 888 (2006). When the meaning of the statutory language is unambiguous, the Court is not at liberty to give such language a construction that is other than what the plain language actually expresses. *Id.* Desai asks this Court to add an interest requirement to Va. Code Ann. § 43-4 and, further, to interpret the "time or times when the same is or will be due and payable" language of § 43-4 to mean that all mechanic's liens must identify all relevant dates so it can be determined from the face of the lien whether it is timely filed. To do so, the Court would have to ignore the rules of statutory construction.

The only information that must be in any notice of mechanics lien is enumerated in § 43-4. Section 43-5 does not create any new filing requirements, but merely creates a standard form by which the obligations of § 43-4 might be met. Thus, § 43-5 states that "[t]he memorandum and affidavit required by § 43-4 shall be sufficient if substantially in form and effect as follows." By its plain language, as long as the template in § 43-5 is completed in substantial part, the claimant will be deemed to have

satisfied the requirements of § 43-4. It is, in effect, a "safe harbor." *See*, *e.g.*, *Boehl v. BMW Restoration Company of Virginia, Inc.*, 31 VA. Cir. 256 (Loudoun County Circuit, July 1993); *Ashco Int'l, Inc. v. Westmore Shopping Ctr. Assocs.,* 42 Va. Cir. 427 (Fairfax County Circuit, June 1997). The "date from which interest is claimed" is not required by § 43-4, and the fact, therefore, that A.R. Design Group did not include that information in the Memoranda is irrelevant for compliance with § 43-4.

As A.R. Design Group noted in the trial court, it is not claiming any interest in either the Woodside or Towlston Lien. Given this fact, A.R. Design Group could not have included the "date from which interest on the above amount is claimed" under § 43-5, because no such interest was claimed. As the trial court noted, the failure to include that information in the Memoranda for Mechanic's Lien acted solely to waive any claim for interest – it did not invalidate the lien.[3] Further, the failure to include a line regarding interest on the official Form does not render that form in conflict with the statutes. *See*, *e.g.*, *Virginia Home for Incurables and Sheltering Arms Hosp. v. Coleman*, 164 Va. 230, 243, 178 S.E. 908, 912-13 (1935) (holding that a rule which did not provide that notice of the time and place

[3] Thus, it is immaterial whether interest would, normally, begin to accrue when the debt is due and payable. Since interest was not sought in the Memoranda, and waived explicitly at trial, no such presumption would attach here.

of presentation of record testimony be given to the other party did not render the rule in conflict with the statute); *see also, Graham v. Peoples Life Ins. Co.,* 7 Va. App. 61, 72-3, 372 S.E.2d 161, 168 (1988) (holding that the function of the court is to reconcile apparent conflicts between rules and statutes)(*citing* Michie's Jurisprudence, Statutes Vol 1A § 10).

Va. Code Ann. § 43-5 merely provides a template for claimants to follow. By contrast, § 43-4 states specifically what information must be in the memorandum of lien. This includes "the amount and consideration of his claim, and the time or times when the same is or will be due and payable." Both Memoranda include language that complies with the requirements of § 43-4 because they both state that the amount sought are "is payable as therein stated." (J.A. 29, 43). There is, therefore, a statement that the amount sought is due and payable as of the date of the Memorandum, and each Memorandum thus satisfies § 43-4.

Desai attempts to add an additional requirement to § 43-4 by arguing that it should be entitled to "the necessary preliminary information to quickly determine if a filed lien is valid." (Opening Brief at 17). Desai contends that any memorandum of lien should denote specifically when each element of labor and material was supplied, so as to clearly state which charges might fall outside the 150-day deadline. Va. Code Ann. § 43-4

does not require any such statement, and there is no language in the statute to suggest that any delineation as to when labor and materials was supplied should be or must be included in the memorandum. It is well-established that in interpreting a statute, the courts may not add or subtract language from the statutory provisions. Moreover, § 43-4 is "clear and unambiguous", and thus the Court will not look past the plain meaning of the statute's words. *See Dominion Trust Co. v. Kenbridge Constr. Co., Inc.*, 248 Va. 393, 396, 448 S.E.2d 659, 660 (1994); *City of Winchester v. American Woodmark Corp.,* 250 Va. 451, 457, 464 S.E.2d 148, 152 (1995).

The distinction between the statutory requirements and what Desai seems to want is easily demonstrated. Construction projects usually do not produce invoices as soon as labor or material is produced; they rely either on bills submitted at regular intervals or after completion of specific portions of the project. Moreover, it is not uncommon in business transactions for an invoice to be paid "net 30" (i.e., 30 days after the invoice is transmitted). Thus, a charge for labor and materials supplied at the beginning of one month might not be "due and payable" until two or more months thereafter. Nonetheless, only the latter date would by necessity be included in the memorandum of lien; the date that the labor and material was supplied is not required, although it might ultimately be relevant information at trial to

determine whether the lien is valid. *Cf. Smith Mountain Building Supply, LLC v. Windstar Properties, LLC*, 277 Va. 387, 672 S.E.2d 845 (2009) (asserting a claim for charges outside the 150-day limitation period invalidated the mechanic's lien).

Even had A.R. Design Group gone beyond the parameters of the official Memorandum form, and listed both the dates on which each relevant invoice had been submitted and on which such invoice should have been paid, that submission still would not have contained any information as to when the underlying labor and materials had actually been provided. This hypothetical submission – which would probably run to multiple pages to be recorded in Land Records – would still not convey whether the mechanic's lien might include charges of labor and material provided more than 150 days before the recordation.

Moreover, it "is well established that a statute should be read and considered as a whole, and the language of a statute should be examined in its entirety." *Department of Med. Assistance Servs. v. Beverly Healthcare*, 268 Va. 278, 285, 601 S.E.2d 604, 607–08 (2004). Section 43-4 also states that, while a memorandum of lien should include only sums due for labor and material furnished no more than 150 days prior to the filing of the memorandum, such lien may also "include (i) sums withheld as

retainages with respect to labor performed or materials furnished at any time before it is filed, but not to exceed 10 percent of the total contract price and (ii) sums *which are not yet due* because the party with whom the lien claimant contracted has not yet received such funds from the owner or another third party." (Emphasis added). Reading the statute as a whole, therefore, it is clear that should a mechanic seek to impose a lien for sums which are not yet due, it would have the obligation to state affirmatively which part of the total amount sought would be for sums that were not yet due (*i.e.*, the date when the amount claimed "will be due and payable"). No such future payments were sought in this case, so no obligation arose to so affirmatively state.

Desai's argument, therefore, is not supported by the plain language of the statute. The public policy argument fares little better. Desai argues that use of the official Form prevents interested parties from "quickly determin[ing] if a filed lien is valid." (Opening Brief at 17 – 18). As argued above, however, even were A.R. Design Group to have added more information to the official Form that is not required by Va. Code Ann. § 43-4, Desai still would not have had any information as to whether the claims included amounts for time-barred labor or materials. A separate hearing

would still have been necessary to contest the specific amounts in the liens.

Desai was in fact afforded the opportunity for a speedy resolution of the validity of the lien. As demonstrated by the record, the Memoranda were filed in mid-September, 2015; by March 2016, the matter had been brought to a full trial. After three days of testimony, Desai was unable to prove that any of the amounts sought in the mechanic's liens fell outside the 150-day "window." Desai was afforded a speedy challenge to the mechanic's liens, but lost that challenge.

It is worth adding that, even if §43-4 required the inclusion of interest, Va. Code Ann. § 43-15 states that

> No inaccuracy in the memorandum filed, or in the description of the property to be covered by the lien, shall invalidate the lien, if the property can be reasonably identified by the description given and the memorandum conforms substantially to the requirements of §§ 43-5, 43-8 and 43-10, respectively, and is not willfully false.

As the trial court found after three days of testimony, the Woodside and Towlston Liens were neither inaccurate nor contained any claims beyond what was permitted by law. There was nothing false in the Memoranda recorded (and thus, clearly, nothing "willfully false"). A.R. Design Group respectfully submits that reliance on the official Court Form cannot be deemed either to deviate "substantially [from] the requirements of § 43-5

…" nor to be "willfully false" if the claimant is not seeking interest. The trial court, therefore, properly denied the petition to invalidate the liens.

III. The Trial Court Correctly Determined that Both the Woodside and Towlston Liens Were Properly Verified By A.R. Design Group's Vice President

Desai contends that the trial court erred in determining that the Woodside and Towlston Liens were properly "verified under oath by the claimant or his agent" as required by Va. Code Ann. § 43-4 because the notary certificate identifies "Abbas Rouhani, VP" as the claimant instead of the agent for the claimant. Desai relies upon *Clement v. Adams Bros.-Paynes, Co.*, 113 Va. 547, 553, 75 S.E. 294, 296 (1912) for this position.

Since the *Clement* decision, however, the Virginia General Assembly has amended the substantial compliance requirements of Va. Code Ann. § 43-15 to broaden its effect and has enacted Va. Code Ann. § 49-7, which authorizes a vice-president to file affidavits on behalf of corporation without any special authorization therefor. Under these new and updated statutory provisions, the trial court correctly determined that the notation in the notary certificate did not invalidate either lien.

a. Standard of Review

When an issue presents a mixed question of law and fact, the Court "give[s] deference to the trial court's findings of fact and view the facts in

the light most favorable to the prevailing party[.]" *Collins v. First Union Nat. Bank*, 272 Va. 744, 749, 636 S.E.2d 442, 446 (2006)(citing *Caplan v. Bogard*, 264 Va. 219, 225, 563 S.E.2d 719, 722 (2002)). The Court reviews the trial court's application of the law to facts de novo. *Id*.

b. Law and Argument

Va. Code Ann. § 43-4 requires that the memorandum of lien include the "verified oath of the claimant or its agent." Va. Code Ann. § 49-7 provides that

> An affidavit filed for a corporation or other entity may be made by its president, vice-president, general manager, cashier, treasurer, a director or attorney without any special authorization therefor, or by any person authorized by a majority of its stockholders, directors, partners or members to make the same.

An affidavit or verified oath of a claimant or its agent does not need, therefore, to reflect any special authorization in order to be valid. In the case of both the Woodside and Towlston Liens, the claimant is clearly identified as A.R. Design Group, Inc., and signed by "Abbas Rouhani, VP." The notary certificate also indicates that both mechanic's liens are sworn to by "Abbas Rouhani, VP."

While both notary certificates have lines drawn through the blank for "agent of claimant," this technical error does not invalidate either Lien as the Liens are still substantially compliant pursuant to Va. Code Ann. § 43-

15. This Court has announced as a policy of the Commonwealth "to look with great leniency on certificates of acknowledgment and to uphold them if possible." *Blair v. Rorer's Adm'r*, 135 Va. 1, 24, 116 S.E. 767, 775 (1923)(*cited with approval in Cumbee v. Myers,* 232 Va. 371, 350 S.E.2d 633, 634-35 (1986)). The justification for such policy is that the mechanic's lien statute only requires substantial and not literal compliance. *Diebold & Sons Stone Co. v. Tatterson,* 115 Va. 766, 80 S.E. 585, 586-87 (1914). In *Tatterson*, the Court reviewed its decision in *Clement*, in which it was not clear from the face of the lien that the president had the authority to sign the mechanic's lien on behalf of the corporation. The Court in *Tatterson* found that, unlike the lien in *Clement*, it could be determined from the face of the *Tatterson* lien that the president signed the lien in his capacity as president and agent of the corporation and, therefore, the notary acknowledgment was sufficient even though the lien failed to reflect that the president had the right to act on behalf of the corporation. *Id.*

Here, Abbas Rouhani clearly did not execute the lien in his individual capacity, as his name is followed with the initials "VP" for vice-president. Moreover, the General Assembly has, since the 1912 decision in *Clement*, enacted Va. Code Ann. § 49-7, which provides that an affidavit for a corporation does not need to reflect any special authorization for a

corporate officer to execute an affidavit. The harm that the *Clement* Court intended to prevent, by requiring language on the face of the lien indicating that the agent was authorized to act on behalf of the corporation, is no longer an issue since the adoption of § 49-7. *See, In re Terry,* 262 B.R. 657, 660-61 (2001). The technical error found in the notary acknowledgment does not invalidate the Woodside and Towlston Liens.

The General Assembly has also broadened the saving provisions found in Va. Code Ann. § 43-15 since the *Clement* decision. *In re Kiser*, 344 B.R. 423, 425-26 (2003)(discussing the amendment made after the *Clement* decision to provide that <u>any</u> inaccuracy in the memorandum will not invalidate such memorandum if it is substantially in compliance with the requirements of § 43-5)(emphasis added). This Court has stated that substantial compliance

> means that although the conditions of the contract have been deviated from in trifling particulars not materially detracting from the benefit the other party would derive from a literal performance, he has received substantially the benefit he expected.

Akers v. James T. Barns of Washington, D.C., Inc., 227 Va. 367, 371, 315 S.E.2d 199, 201 (1984). The "materiality of the difference . . . is pertinent to the question of substantial compliance." *Id.* at 370, 315 S.E.2d at 201.

In the case of the Woodside and Towlston Liens, the claimant is clearly identified as A.R. Design Group, Inc., and the lien is signed by Abbas Rouhani, VP. That the notary drew a line through the "agent of claimant" line of the acknowledgment does not detract from fact that the notary did indicate in the acknowledgment that Abbas Rouhani signed both liens as "VP." Abbas Rouhani is, without question, signing the lien in his corporate capacity for the claimant. The technical error in the notary block does not materially detract from the benefits that Desai would have derived from a literal performance. The claimant is clearly identified and the notary acknowledgment does not change Desai's obligations under the terms of either Lien. Therefore, the lien is in substantial compliance with the requirements of the mechanic's lien statutes as the trial court correctly decided.

CONCLUSION

For the foregoing reasons, Appellee A.R. Design Group, Inc., respectfully requests that the Virginia Supreme Court uphold the trial court's decision to dismiss the Appellants' Ulka D. Desai and Ulka D. Desai, as Executor for the Estate of Lakshmi Desai, petition to invalidate the Woodside and Towlston Liens and for such other relief as the Court deems appropriate.

Respectfully submitted

A.R. DESIGN GROUP, INC.

By counsel

/s/ Marla J. Diaz

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CERTIFICATE OF SERVICE

I hereby certify that rule 5:26 has been complied with and, pursuant to this Rule, a PDF version of this brief has been filed through VACES and ten paper copies delivered to the Clerk's Office. An electronic version has also been delivered to opposing counsel via electronic mail on this 27th day of December, 2016, to:

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