



Ohio Revised Code sections 1311.25 through 1311.37 provide a statutory mechanism by which a public project subcontractor or material supplier who is not paid by the principal contractor may secure payment from the public authority. Specifically, the subcontractor records and serves the public authority with an affidavit stating the amount due, and the public authority must then “detain” the amount of the lien from the balance of the funds owed to the principal contractor. The public authority must place the detained funds in an escrow account, to be released as “ordered by a court of competent jurisdiction” or by agreement between the principal contractor and lien claimant.

In addition, the public authority must serve the principal contractor with a copy of the affidavit, and the principal contractor then has 20 days to dispute the lien claimant's affidavit, or the principal contractor is deemed to have “assented to its correctness”, and the public authority must pay the subcontractor.

Revised Code Section 1311.311 also provides that “if the public authority fails to discharge the affidavit filed pursuant to section 1311.26 of the Revised Code and make payment, the principal contractor or subcontractor may file an action in the court of common pleas of the county in which the property is located and if the court determines in the action that the **public authority improperly failed to discharge** the affidavit and make payment, the court **may award reasonable attorney fees.**”

In *Kirk Bros. Co., Inc. v. Trucraft Constr., LLC*, the Twelfth District Court of Appeals recently considered R.C. 1311.311 and specifically whether a public authority was immune from such liability for attorney's fees under the governmental immunity provisions of R.C. Chapter 2744.

In 2013, the Village of Blanchester contracted with Kirk Bros. to upgrade a water treatment plant. Kirk Bros. subcontracted with Trucraft. When Kirk Bros. failed to pay Trucraft, Trucraft recorded a mechanic's lien and served that lien upon Blanchester. Neither Blanchester nor Kirk Bros. timely contested the lien, and as a result, Trucraft demanded that Blanchester pay Trucraft the lien amount or place the lien amount in escrow. Blanchester did neither, and instead continued to pay Kirk Bros for Trucraft's ongoing work, and Kirk Bros. continued to not pay Trucraft.

Trucraft ultimately filed suit, seeking the amount of its lien as well as its attorneys' fees pursuant to R.C. 1311.311. Blanchester argued that Trucraft's claim for attorneys' fees was a tort claim and that Blanchester, as a public authority, was immune from that claim under the governmental tort immunity provisions of R.C. Chapter 2744.

The trial court agreed with Blanchester that Trucraft's claim was a tort claim but found that two statutory exemptions applied, and therefore, Blanchester was not immune from Trucraft's claim. The Twelfth District heard an immediate appeal of that decision.

On appeal, the Appellate Court disagreed with the trial court's characterization of Trucraft's claim. The Court held that “the statutes' plain language provides the subcontractor with a statutory right to sue the public authority in the common pleas court to enforce its lien rights. Therefore, Trucraft's right to sue Blanchester to enforce the lien and seek attorney fees for Blanchester's failure to pay is statutory and is not based on tort law.” The Court then noted that [b]y its very language and title, R.C. 2744 applies to tort actions for damages.” As a result, “the court erred to the extent it concluded that Trucraft's claims were based in tort and subject to the tort immunity statute.”

The Court further held that “the statutory scheme set forth in R.C. 1311.25 et seq. would be meaningless if R.C. Chapter 2744 shielded a public authority from suit to enforce the lien.” Therefore, Blanchester was not immune from liability for Trucraft's attorney's fees.

As a result of this recent holding, public owners must use caution in addressing liens asserted on their projects or risk significant liability for the claimant's attorney's fees. Conversely, lien claimants should recognize the leverage that the mechanic's lien laws provide for purposes of securing payment for their work.



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