

NO. A10-1607

State of Minnesota
In Supreme Court

Brickwell Community Bank,

Appellant,

vs.

Hunter Construction, Inc., and
Verde General Contractor, Incorporated,

Respondents,

Kevin Lam, Lee-Tzong Chen, Ming-Mei Chen, Karl L. Kruse,
Starbound St. Paul Hotel, LLC, a Minnesota limited liability
company, Wing-Heng, Inc., a Minnesota corporation,
Brickwell Community Bank, a Minnesota corporation,
Integrity Works Construction, Inc., a Wisconsin Corporation,
City of Saint Paul, John Doe, Mary Roe, ABC Corporation
and XYZ Partnership,

Defendants,

JZ Electric, Inc., a Minnesota Corporation,
Hamline Construction, Inc., a Minnesota Corporation,
Hunter Construction, Inc., a Minnesota Corporation,
Verde General Contractor Incorporated, a Minnesota
Corporation, Midwest Building Maintenance, L.L.C., a Minnesota
limited liability company, Winrock Corporation, a Nevada
Corporation, Sheik A.N. Azizudin, All Floors Plus, Inc.,
a Minnesota Corporation,

Additional Defendants.

**APPELLANT BRICKWELL COMMUNITY BANK'S
BRIEF AND ADDENDUM**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF LEGAL ISSUES

- I. **Under Minn. Stat. § 514.08, subd. 1(2), a mechanic’s lien ceases to exist unless “a copy of the lien statement is served personally” on the property owner, authorized agent, or contracting party within 120 days of the lien claimant’s last item of work or material. Is the requirement that the lien statement be “served personally” satisfied where the lien claimant hand delivers the lien statement to the property owner?**

In its motion for a directed verdict (T. 505; App. 59) and its post-trial motions (App. 69, 123), Brickwell Community Bank argued that neither Minn. Stat. § 514.08 nor Rule 4.02 of the Minnesota Rules of Civil Procedure permit a mechanic’s lien claimant to effect personal service of the mechanic’s lien statement on the property owner pursuant to Minn. Stat. § 514.08. The district court rejected the arguments of Brickwell and ruled that the lien claimants had properly served their respective mechanic’s lien statements personally on the property owner within the meaning of Minn. Stat. § 514.08.

In a published decision, the court of appeals held that “served personally” under Minn. Stat. § 514.08, subd. 1(2) is met by the simple hand delivery of the mechanic’s lien statement by the lien claimant, and the requirement of service by a nonparty contained in Minn. R. Civ. P. 4.02 does not apply because a mechanic’s lien statement is not a “summons or other process.”

Apposite Authority:

Minn. Stat. § 514.08

Minn. Stat. § 514.11

Minn. R. Civ. P. 4.02

Eischen Cabinet Co. v. Hildebrandt, 683 N.W.2d 813 (Minn. 2004)

STATEMENT OF THE CASE

This mechanic's lien action arises out of the uncompleted renovation of a hotel in St. Paul, Minnesota. Eclipse Architectural Group, Inc. brought an action in Ramsey County District Court seeking to foreclose the mechanic's lien that it had filed against the subject property, which is legally described as: Lots 1, Block 1, Chen's Addition, Ramsey County, Minnesota ("Property"). (App. 1) Defendants Hunter Construction, Inc. ("Hunter Construction"), Midwest Building Maintenance, L.L.C ("Midwest"), and Verde General Contractor Incorporated ("Verde") answered and brought crossclaims seeking to foreclose the mechanic's liens they also had filed against the Property. (App. 27-47) Appellant Brickwell Community Bank ("Brickwell"), which financed the hotel renovation and recorded two mortgages against the Property, challenged the validity of defendants' mechanic's liens, arguing, in part, that the mechanic's lien statements had not been properly served under Minn. Stat. § 514.08 (2008). (App. 48)

The matter came on for a four-day court trial beginning on September 14, 2009. The issues at trial were limited to the validity and amounts of defendants' mechanic's liens. (Add. 15) During trial, the owner of Hunter Construction and Midwest, Kevin Hunter, testified that contrary to what was affirmatively stated in their crossclaims, defendants did not serve copies of their mechanic's lien statements on the property owner by certified mail. (T. 322)¹ Instead, he claimed to have personally handed copies of the lien statements to the property owner. (T. 146-147) The property owner disputed

¹ "T." refers to the transcript of the trial held on September 14 -17, 2009.

this claim and denied that Hunter ever handed him copies of the lien statements. (T. 557; 655) Brickwell moved for a directed verdict seeking to dismiss defendants' mechanic's liens actions, arguing that Minn. Stat. § 514.08 and Minn. R. Civ. P. 4.02 required personal service of the mechanic's lien statements by a nonparty, which rendered Hunter's hand delivery of the lien statements ineffective. (Add. 18; T. 505) The district court denied the motion. (Add. 18; T. 536)

On April 22, 2010, the district court issued its Findings of Fact, Conclusions of Law, and Order for Judgment. (Add. 14) The court ruled Midwest was not entitled to a mechanic's lien because it had failed to prove that it made any contributions to the Property for which it was not paid.² (Add. 25-26) It, however, awarded mechanic's liens to Hunter Construction and Verde³ after rejecting Brickwell's argument that Hunter's hand delivery of the mechanic's lien statements was ineffective under Minn. Stat. § 514.08, subd. 2 and Rule 4.02. (*Id.*) The court determined that Minn. Stat. § 514.08 and Rule 4.02, which requires personal service of a "summons or other process" by a nonparty who is at least 18 years of age, were inconsistent with each other because a mechanic's lien statement is not a "summons" or "other process" within the meaning of Rule 4.02. (Add. 25) The court also ruled that Rule 4.02 did not apply because service of a mechanic's lien statement does not commence an action nor confer jurisdiction on the court. (*Id.*) The court further concluded that even if Rule 4.02

² Midwest did not appeal the district court's decision and is not a party to this appeal.

³ For ease of reference, Hunter Construction and Verde shall be referred to collectively as "respondents," unless otherwise noted.

applied, respondents accomplished personal service because Hunter, as a natural person, was legally distinct from respondent corporations and therefore not a party to the mechanic's lien actions. (*Id.*) Thus, in the court's opinion, Hunter's hand delivery of the mechanic's lien statements to the property owner was proper within the meaning of Minn. Stat. § 514.08, subd. 2. The district court denied Brickwell's post-trial motions, and entered judgment in favor of respondents on August 2, 2010. (Add. 8-10)

In a published decision, the court of appeals affirmed the district court's decision and held that "served personally" under Minn. Stat. § 514.08, subd. 1(2) is satisfied where a lien claimant simply hands a copy of the lien statement to the property owner. (Add. 7) The court reasoned that Rule 4.02 governs the service of a "summons or other process," which denotes some type of civil action. (Add. 6) Because service of a lien statement does not require any court appearance or answer, and is not an extraordinary writ, the court concluded that a mechanic's lien statement does not qualify as a "summons or other process" and the requirements of Rule 4.02 are not triggered. (*Id.*) It also ruled that Rule 4.02 does not apply because the mechanic's lien statutes are excepted from the Rules of Civil Procedure by virtue of Minn. R. Civ. P. 81.01(a) and appendix A. (*Id.*) The court of appeals declined to address Brickwell's argument that the legislature intended to distinguish between those documents that must be "delivered personally" and those that must be "served personally," and that the service of the mechanic's lien statement fell within the latter category. (Add. 7)

This court granted further review by Order dated August 16, 2011.

STATEMENT OF FACTS

In 2007, Wing-Heng, Inc. (“Wing-Heng”) began renovations to the seven-story hotel that it owned and operated as a La Quinta Inns & Suites. The owner of Wing-Heng was Kevin Lam. (T. 541) The renovation project involved remodeling the hotel’s kitchen, dining room, and bar area, along with the construction of a swimming pool. (Add. 16) Wing-Heng retained Hunter Construction to serve as the general contractor after it had terminated three previous general contractors. (Add. 17; T. 541-542). Verde was a subcontractor for Hunter Construction. The on-site project manager for Wing-Heng was Najib Mailagyar. (Add. 17; T. 629-630)

To finance the project, Wing-Heng obtained a loan from Brickwell that it secured with two mortgages totaling \$5,520,000.00. (Add. 16) Brickwell recorded the mortgages with the Office of the Ramsey County Registrar of Titles on June 25, 2007. (*Id.*) Despite receiving \$418,204.74, Hunter Construction never completed the renovation project. (Add. 17, 19)

On February 21, 2008, Hunter Construction, Midwest, and Verde each filed mechanic’s lien statements with the Ramsey County Registrar of Titles in the amounts of \$124,458.57.00; \$100,000.00; and \$80,500.00, respectively. (App. 10) Hunter claimed that Midwest, which he owned, had performed building maintenance, cleaning, painting, and construction clean-up on the project. (T. 106). He testified that Midwest’s lien amount was for his personal labor on the project as an employee of Midwest, and was in addition to his labor that was accounted for in Hunter Construction’s mechanic’s lien. (T. 313). The only documentation supporting Midwest’s lien claim was an undated two-page

invoice with no work dates that Hunter admitted he created only after Midwest had filed its mechanic's lien statement. (T. 309-310; Tr. Ex. 301).

During trial, Mailagyar and Lam testified that they had never heard of Midwest. (T. 557; 637) Mailagyar also testified that he did not understand why many of the items claimed as part of Hunter Construction's mechanic's lien were included because the work was never done or had been furnished by others, and that Hunter Construction had been overpaid on the project. (T. 639-640; 648-649)

In their crossclaims, respondents alleged they served their mechanic's lien statements by certified mail "[o]n or about February 21." (App. 29, 43). Hunter contradicted these statements during trial when he testified that he did not serve the mechanic's lien statements by certified mail, but handed them to Lam in person. (T. 146-149). At first, he stated that he delivered the lien statements "immediately" or "right after" recording the lien statements on February 21, 2008. (T. 146-147). But then later, when asked if he delivered them on February 22, 2008, Hunter could not recall the exact date, stating: "[p]ossibly, because I think - - you know, between the two times that we served them - - I can't even remember exactly which one was which." (T. 318)

Lam, who no longer owned the hotel and had filed for bankruptcy, testified repeatedly that Hunter never delivered the mechanic's lien statements to him. (T. 543-544; 556-559; 575; 589) According to Lam, Hunter and Jose Verdeja, the owner of Verde, visited him at his place of work about three weeks before trial, and "[w]ell, basically he asking me want me to come to the court to say that he give me the paper, and I keep - - I told him, saying I can't because I don't know what kind of paper you [Hunter]

are talking about, and I don't remember that you [Hunter] give me any paper." (T. 556)

Lam was "shocked" by the visit, and described the encounter as follows:

A: Okay. I tell you what, in this case, happened, Ken Hunter, two or three weeks ago, came to my restaurant, what I told you. He asking me, saying that if I come to testify, say I got the lien, he can convince his mom to give me the loan ... But Ken tell me, come here, say I come to the court to testify that I received the lien, he would convince his mom to extend the loan * * *

(T. T. 556; 575)

Lam also denied Hunter's unsupported claim that during a meeting of bankruptcy creditors he acknowledged receiving a copy of the mechanic's lien statements from Hunter. (T. 558-560) Lam also confirmed that he was never served with the mechanic's lien statements by certified mail. (T. 559)

Similarly, Mailagyar disputed Hunter's claims and testified that Hunter never delivered the mechanic's lien statements to him. (T. 660-661) Mailagyar stated that Hunter came to his house just before trial and asked him to testify that Hunter had delivered the mechanic's lien statements to him. (T. 660-661) When Mailagyar responded that Hunter's' attorney should handle this situation, Hunter replied, "my attorney think that they are not having a good case, you know, proof of serving the lien." (T. 662)

In its decision, the district court acknowledged the disputed testimony, but found that Hunter had personally served Lam and Mailatyar with respondents' mechanic's lien statements. (Add. 18) It also ruled that Brickwell was not prejudiced by any "technical deficiency" in the service of the mechanic's lien statements. (*Id.*)

SUMMARY OF THE ARGUMENT

The central issue presented in this appeal concerns the requirements governing the proper personal service of a mechanic's lien statement under Minn. Stat. § 514.08, subd. 1(2) (2010). Under this section, a mechanic's lien ceases at the end of 120 days after the last item of work or material is furnished, unless within this time "a copy of the [mechanic's lien] statement is *served personally* or by certified mail on the owner or the owner's authorized agent or the person who entered into the contract with the contractor." Minn. Stat. § 514.08, subd. 1(2) (emphasis added).

The service of the lien statement under Minn. Stat. § 514.08, subd. 1(2) is a prerequisite to commencing a lien foreclosure action in district court, which if not timely done, divests the district court of jurisdiction. *See* Minn. Stat. § 514.11 (2010); *Pella Prod., Inc. v. Arvig Tele. Co.*, 448 N.W.2d 316, 317-319 (Minn. App. 1992), *review denied* (Minn. Sept. 30, 1992). It is the first formal step in the process of foreclosing a mechanic's lien, and provides a property owner with notice of the lien and the opportunity to protect himself. *Albert & Harlow, Inc. v. Great Northern Oil Co.*, 283 Minn. 246, 250, 167 N.W.2d 500, 504 (1969). In its published decision, the court of appeals effectively ruled that no standards govern the proper method and manner for personal service of a lien statement, including who may affect personal service of the lien statement.

The mechanic's lien statutes distinguish between those documents that must be "served personally," and those that may be "delivered personally." *Compare* Minn. Stat. § 514.08 (requiring mechanic's lien statement be "served personally") and § 514.11

(requiring service of lien statement and summons to commence lien foreclosure action) *with* Minn. Stat. § 514.011 (providing prelien notices must be “delivered personally”). The legislature’s intent to distinguish between “service” and “delivery” is evident from the legislative history. The 1973 legislation amending the notice requirements of Minn. Stat. § 514.08, and adding the prelien notice requirements found in Minn. Stat. § 514.011, originally required each to be “served personally.” (App. 147) But the final bill enacted into law was changed to require that prelien notice simply be “delivered personally,” while still requiring the lien statement to be “served personally.” (App. 139) The court of appeals’ decision improperly renders the legislature’s distinctions meaningless and superfluous, and treats informal delivery and personal service the same.

The use of certified mail and personal service are recognized formal methods of legal delivery that “fill[] the function of insuring receipt by a person of suitable age or discretion at the person’s last known address and [are] thus reasonably calculated to provide notice to the affected person.” *Har-Ned Lumber Co. v. Amagineers, Inc.*, 436 N.W.2d 811, 815 (Minn. App. 1989) (quotation and citation omitted). By requiring the lien statement to be “served personally” or “by certified mail,” the legislature intended and required something more than informal delivery of the lien statement. Although the mechanic’s lien statutes do not set forth the requirements for personal service, those requirements are readily found in Rule 4.02 of the Minnesota Rules of Civil Procedure. Rule 4.02 simply requires that personal service must be made by person who is at least 18 years of age and not a party to the action. In construing the phrase “served personally”

under Minn. Stat. § 514.08, subd. 1(2), it is appropriate to look to and apply the requirements for personal service set forth in Rule 4.02.

In the one decision by this court addressing the service requirements set forth in Minn. Stat. § 514.08, subd. 1(2), this court looked to the rules of civil procedure relating to service for guidance. In *Eischen Cabinet Co. v. Hildebrandt*, 683 N.W.2d. 813, 818 (Minn. 2004), this court addressed whether service of a lien statement by certified mail was effective on mailing or receipt because the statute was silent on the issue. In holding service is effective on mailing, this court noted its decision was consistent with the rules of civil procedure. *Id.* Contrary to the court of appeals' decision in this case, there is no conflict or inconsistency between Rule 4.02 and Minn. Stat. § 514.08, subd. 1(2) because they differ only in what must be served, not the manner of personal service. Rule 4.02 compliments and supplements Minn. Stat. § 514.08, subd. 1(2). As this court did in *Eischen*, it is logical and appropriate to draw on the rules of civil procedure for guidance in resolving issues concerning who may affect personal service of a lien statement where the statute is silent on the issue.

Public policy also favors an interpretation of Minn. Stat. § 514.08, subd. 1(2) that is consistent with Rule 4.02. The rule established by the court of appeals will invite abuse, manipulation, and potential fraud by lien claimants and property owners alike, and likely increase the burdens and costs of litigation on parties and the courts. A property owner seeking to avoid a lien on his property may fraudulently claim he was never served with the lien statement within statutory time period, while an unscrupulous contractor seeking to preserve his lien may fraudulently claim that he personally served the lien

statement within that time. A rule requiring personal service of a lien statement by a nonparty will protect lien claimants and property owners equally from fraud or abuse; provide certainty and clarity as to who may administer personal service; and reduce the burdens on parties and courts in resolving mechanic's lien claims.

ARGUMENT

I. STANDARD OF REVIEW

This court is not bound by the district court's decision on a purely legal issue. *Frost-Benco Elec. Ass'n v. Minnesota Pub. Utils. Comm'n*, 358 N.W.2d 639, 642 (Minn. 1984). The construction of Minnesota's mechanic's lien statute is a question of law that this court reviews de novo. *Imperial Developers, Inc. v. Calhoun Dev., LLC.*, 790 N.W. 2d 146, 149, (Minn. 2010)

II. THE COURT OF APPEALS ERRED IN ITS INTERPRETATION AND APPLICATION OF THE PERSONAL SERVICE REQUIREMENT UNDER MINN. STAT. § 514.08, SUBD. 1(2).

In affirming the district court, the court of appeals erred in ruling that personal service of a mechanic's lien statement on a property owner or other appropriate person under Minn. Stat. §514.08, subd. 1(2) may be accomplished by a lien claimant with an interest in the claimed mechanic's lien. Minn. Stat. §514.08, subd. 1(2) requires that to perfect a mechanic's lien, a copy of the lien statement be "served personally or by certified mail" on the owner of the property or other statutorily designated person. These recognized formal methods of legal delivery require something more than the informal delivery of the lien statement. This intent is reflected in the language used throughout the mechanic's lien statute and the legislative history of the mechanic's lien statute. The court of appeals' decision ignores the legislature's intent and renders the statutory distinction between personal service and personal delivery meaningless.

A. MINNESOTA’S MECHANIC’S LIEN STATUTE DISTINGUISHES BETWEEN PERSONAL SERVICE AND DELIVERY.

Before a mechanic’s lien claimant may commence an action to foreclose its mechanic’s lien, it must perfect its lien pursuant to Minn. Stat. § 514.08. This section provides, in part, that “[a] lien ceases at the end of 120 days after doing the last of the work, or furnishing the last item of skill, material, or machinery, unless within this period * * * a copy of the lien statement is *served personally* or by certified mail on the owner of the property, or the owner’s authorized agent.” Minn. Stat. § 514.08, subd. 1 (2) (2008) (emphasis added). If the lien claimant does not serve and file the mechanic’s lien statement within the 120-day period, the mechanic’s lien ceases to exist and becomes null and void. *Id.*; *Pella Prod., Inc. v. Arvig Tele. Co.*, 488 N.W.2d 316, 317-319 (Minn. App. 1992) (holding failure to properly serve mechanic’s lien statement within 120-day period rendered mechanic’s lien null and void), *review denied* (Minn. Sept. 30, 1992). “After the lien has ceased to exist, courts have no power to revive or create one.” *H.S. Johnson Co. v. Ludwigson*, 148 Minn. 468, 470, 182 N.W. 619, 619 (1921).

The mechanic’s lien statute does not specifically define the phrase “served personally,” nor does it explicitly address who may administer personal service of the mechanic’s lien statement pursuant to Minn. Stat. § 514.08. It does, however, distinguish between documents that must be served formally from those where informal “delivery” is sufficient. By requiring that the mechanic’s lien statement be “served personally” on the property owner or other appropriate person, the legislature contemplated and required the

formal legal delivery of the lien statement, as opposed to informal delivery, as part of the process necessary to perfect a mechanic's lien.

The goal of statutory interpretation is to “ascertain and effectuate” the legislature’s intent. Minn. Stat. § 645.16 (2010). When interpreting a statute, courts must first determine whether the statutory language, on its face, is clear or ambiguous. *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). A statute is ambiguous when its language is subject to more than one reasonable interpretation. *Id.* Whenever possible, courts must interpret a statute to give effect to all of its provisions and “no word, phrase, or sentence should be deemed superfluous, void, or insignificant.” *Id.* In doing so, courts “are to read and construe a statute as a whole and must interpret each section in light of the surrounding sections to avoid conflicting interpretations.” *Id.* It is for this reason that when the same word or phrase is used in the same section of an act more than once, and the meaning is clear in one place, a court will construe it to have the same meaning in the next place. *See Twin Ports Oil Co. v. Pure Oil Co.*, 26 F. Supp. 366 (D. Minn. 1939).

In describing the manner in which a lien claimant must provide the property owner with copies of its mechanic's lien statement and the summons commencing the mechanic's lien foreclosure action, the mechanic's lien statute uses the terms “serve,” “served,” or “service.” The statute requires that the mechanic's lien statement be “*served personally*” on the property owner within 120 days of the last item of work, otherwise the lien ceases to exist. Minn. Stat. §514.08, subd. 1(2). In the mechanic's lien statement itself, the lien claimant must verify under oath that “a copy of the [mechanic's lien]

statement has been *served personally* or by certified mail within the 120-day period provided in this section on the owner, the owner's authorized agent or the person who entered into the contract with the contractor as provided herein." Minn. Stat. § 514.08, subd. 2(8) (emphasis added).

Similarly, the mechanic's lien statute requires that the lien claimant must have the summons commencing the lien foreclosure action served on the property owner, stating: "[t]he action may be commenced by any lienholder who has filed his lien statement for record and *served* a copy thereof on the owner pursuant to section 514.08." Minn. Stat. § 514.11 (emphasis added). This section further requires that all other lienholders "shall be made defendants therein" and that the summons "shall require each defendant to file answer to the complaint with the court administrator within 20 days after *service* on the defendant." *Id.* (emphasis added).

In contrast, the mechanic's lien statute uses the words "delivered" or "delivery" to describe the manner by which a lien claimant must provide the property owner with prelien notice when such notice is required. The prelien notice statute provides, in part, that "[t]he notice shall be *delivered personally* or by certified mail to the owner or the owner's authorized agent within 10 days after the contract for the work of improvement is agreed upon." Minn. Stat. § 514.011, subd. 1 (emphasis added). Likewise, a subcontractor must provide prelien notice to the property or the owner's authorize agent "either by *personal delivery* or certified mail, not later than 45 days after the lien claimant has first furnished labor, skill or materials to the improvement." Minn. Stat. § 514.011, subd. 2 (emphasis added).

The legislature's use of the terms "delivery" and "service" throughout the mechanic's lien statutes reflects the legislature's intent to require the formal service in certain situations, while permitting the use of less formal delivery in others.

B. The legislative history establishes the legislature's intent to distinguish between service and delivery under the mechanic's lien statute.

The distinction between "service" and "delivery" also is evident from the legislative history of the mechanic's lien statute. Where statutory wording is not explicit, courts may consider the statute's contemporaneous legislative history, which includes "events leading up to [the legislation], the history of its passage, and any modifications made during its course." *Handle With Care, Inc. v. Dept. of Human Serv.*, 406 N.W.2d 518, 522 (Minn. 1987) (citation omitted). In doing so, courts "often refer to legislative changes in a bill to interpret the statute into which it was finally enacted." *County of Washington v. AFSCME*, 262 N.W.2d 163, 167-168 (Minn. 1978); *see also Annandale Advocate v. City of Annandale*, 435 N.W.2d 24, 30 (Minn. 1989); *General Drivers, Local No. 6 v. Aitkin County Bd.*, 320 N.W.2d 695, 699-701 (Minn. 1982); *State v. Schauer*, 501 N.W.2d 673, 676 (Minn. App. 1993). Minnesota courts also presume that in changing the language of a statute, the legislature intended to effect a change in the meaning of the statute. *See Int'l Union of Elec. & Mach. Workers of America v. Portec, Inc.*, 303 Minn. 341, 228 N.W.2d 239 (1975) (holding legislature intended change in meaning where it changed statutory language from "or" to "and").

In 1973, the legislature considered Chapter 247 – Senate File No. 6, which amended the notice requirements under Minn. Stat. § 514.08, and introduced the prelien

notice requirements now codified in Minn. Stat. § 514.011. The legislature described the purpose of Senate File No. 6 as an “an act relating to real estate; liens for improvements thereto; extent and amount thereof; *requiring notice to owners.*” (App. 146) (Emphasis added.)

In the original draft, the bill required that prelien notice and the mechanic’s lien statement must each be “served personally.” The new prelien notice provision provided that:

the notices shall be prepared separately and *served personally* or by certified mail on the owner or his authorized agent within ten days after the contract for the work of improvement is agreed upon.

* * * *

either by *personal service* or certified mail, not later than 20 days after the lien claimant has first furnished labor, skill or materials to the improvement.

(App. 147) (Emphasis added.)

The draft language requiring service of the mechanic’s liens statement on the property owner or other designated person was substantially the same as the language now codified in Minn. Stat. § 514.08, subd. 1(2). (App. 152) It provided that a mechanic’s lien “ceases to exist at the end of 90 days after the doing of the last of such work, or furnishing the last item of such skill, material, or machinery, unless within such period * * * (2) A copy of such statement be *served personally* or by certified mail on the owner or his authorized agent or the person who entered into the contract with the contractor.” (*Id.*) (Emphasis added).

In the final bill enacted into law, the legislature changed the language governing service of prelien notice and no longer required that it be “served personally.” It simply had to be “delivered personally” within the applicable time period. (App. 139) The legislature, however, did not change the language of Minn. Stat. § 514.08, subd. 1(2), and still required the lien statement to be “served personally” on the property owner or other appropriate person. (App. 143)

Although it is unclear from the legislative history why the change was made, it is reasonable to conclude that it was made based on the different time limits for providing prelien notice and serving the mechanic’s lien statement. The time limit for providing prelien notice is significantly shorter than the time limit for serving and filing a copy of the lien statement. A contractor must give prelien notice within 10 days after the work of improvement is agreed upon, while a subcontractor or material supplier must give prelien notice within 45 days of its first contribution of labor, skill, or materials to the improvement of real property. Minn. Stat. § 514.011, subs. 1 and 2. The time limit to perfect the mechanic’s lien is much longer. Once a lien attaches, the lien claimant has 120 days in which to serve and file a copy of the lien statement and perfect his mechanic’s lien. Given the shorter length of time to serve the prelien notice, the legislature likely concluded that informal personal delivery was appropriate, while four months was a sufficient period of time to accomplish formal personal service of the lien statement required by Minn. Stat. § 514.08, subd. 1(2).

But regardless of the reason for the change, the legislative history makes clear that the legislature chose to change the language of the original bill to remove the requirement

that prelien notice be “served personally,” while leaving intact the requirement that the mechanic’s lien statement be “served personally.” This change was purposeful and cannot be presumed to have been a mistake or oversight on the part of the legislature. *See County of Washington*, 262 N.W.2d at 167 (recognizing respect due legislature as coequal and independent branch of government does not permit court to “brand the legislative deletion of a word from a bill as a ‘mistake’ and to reinstate the word without further ado”) (citation omitted).

The decision of the court of appeals renders the legislature’s distinction between the phrases “served personally” and “delivered personally” within the mechanic’s lien statute meaningless and superfluous. This is an interpretation that is not permitted and should be reversed by this court. *See Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (holding statute should be interpreted, whenever possible, to give effect to all its provisions and “no word, phrase, or sentence should be deemed superfluous, void, or insignificant”); *see also* Minn. Stat. § 645.17 (2008) (providing courts may presume legislature intended “entire statute to be effective and certain”).

C. The requirements of Rule 4.02 should apply to the personal service of a mechanic’s lien statement under Minn. Stat. § 514.08, subd. 1(2).

Although the mechanic’s lien statutes do not define or otherwise address the requirements for personal service under Chapter 514, including who may make personal service, those requirements are readily found in Rule 4.02 of the Minnesota Rules of Civil Procedure. Rule 4.02 provides simply that, “[u]nless otherwise ordered by the court, the sheriff or any other person not less than 18 years of age and not a party to the

action, may make service of the summons or other process.” Given the legislature’s decision to distinguish between personal service and personal delivery throughout the mechanic’s lien statute, along with its legislative history, it is reasonable to conclude that the legislature contemplated that the term “served personally” would incorporate the requirements of Rule 4.02.

This interpretation is consistent with the one decision by this court addressing the service requirements set forth in Minn. Stat. § 514.08, subd. 1(2). In *Eischen Cabinet Co. v. Hildebrandt*, 683 N.W.2d. 813, 818 (Minn. 2004), this court addressed whether service of a lien statement by certified mail under Minn. Stat. § 514.08, subd. 1(2) was effective on mailing or receipt. In that case, the contractor served the property owners with a copy of its mechanic’s lien statement by certified mail, which it mailed one day before the expiration of the 120-day time period under Minn. Stat. § 514.08, subd. 1(2). *Id.* at 815. The property owners, however, did not receive the certified letter with the mechanic’s lien statement until two days after the 120-day time period had expired. *Id.* Both the district court and court of appeals ruled that the service was untimely after concluding service by certified mail is effective upon receipt and not mailing. *Id.*

This court reversed, holding that service by certified mail pursuant to Minn. Stat. § 514.08, subd. 1(2) is effective on mailing. *Id.* at 818. In reaching its decision, the court recognized that the language of Minn. Stat. § 514.08, subd. 1(2) is silent as to when service by certified mail is effective. *Id.* at 816. The court considered the language of other Minnesota statutes, but noted when service by certified mail is effective differs with each statutory provision. *Id.* And, unable to reconcile the conflicting decisions of the

court of appeals interpreting Minn. Stat. § 514.08, subd. 1(2), this court turned to its decision in a case that involved the question of when statutorily required notice cancelling township insurance served by certified mail was effective. *Id.* at 817-818. In concluding that service by certified mail of the mechanic's lien statement is effective on mailing, the court observed that its interpretation of Minn. Stat. § 514.08, subd. 1(2) was consistent with the rules of civil procedure even though it did not consider those rules binding on the court. *Id.* at 818.

As this court did in *Eischen*, it is logical and appropriate to draw on the rules of civil procedure for guidance in resolving issues concerning who may affect personal service of a lien statement where the statute is silent on the issue.

D. There is no conflict or inconsistency between Rule 4.02 and Minn. Stat. § 514.08, subd. 1(2).

The court of appeals refused to apply Rule 4.02 based on the mistaken belief that it is limited to the service of a “summons or other process,” and therefore, inconsistent with the service requirements of Minn. Stat. § 514.08, subd. 1(2), which pertains to mechanic's lien statements. But contrary to the court of appeals' decision in this case, there is no actual conflict or inconsistency between Rule 4.02 and Minn. Stat. § 514.08, subd. 1(2).

While Rule 4.02 and Minn. Stat. § 514.08, subd. 1(2) differ in what must be served, there is no conflict or inconsistency as to the manner by which service must be accomplished. The language of Minn. Stat. § 514.08, subd. 1(2) is silent as to the manner by which personal service of the mechanic's lien statement must administered, including

who may affect personal service. It therefore cannot, and does not, conflict with the requirements of who may administer personal service under Rule 4.02, nor is it inconsistent with those requirements. Rather than creating any conflict or inconsistency, Rule 4.02 compliments and supplements Minn. Stat. § 514.08, subd. 1(2), in part, by identifying who may administer personal service. The application of Rule 4.02 to the personal service requirement of Minn. Stat. § 514.08, subd. 1(2) furthers the purpose of the notice requirement and is reasonably calculated to ensure the actual receipt of the lien statement by the one required to receive it.

Because there is no actual inconsistency or conflict between Minn. Stat. § 514.08 and Rule 4.02 concerning the issue of who may administer service, the requirements of Rule 4.02 should apply and govern who may accomplish personal service under Minn. Stat. § 514.08.

The language of the mechanic's lien statute when read in its entirety and considered in light of its legislative history establishes that the legislature intended to distinguish between personal service and delivery. And as this court's decision in *Eischen* demonstrates, it is appropriate to look to the rules of civil procedure to resolve issues concerning the proper means and methods of service required under the mechanic's lien statutes where the statutes are silent on the issue. Therefore, applying the Rule 4.02 to the personal service requirement set forth in Minn. Stat. § 514.08, subd. 1, personal service of the mechanic's lien statement on the property owner under Minn. Stat. § 514.08 is effective only if it is made by someone who is at least 18 years of age and not a party to the mechanic's lien proceeding.

III. PUBLIC POLICY FAVORS PERSONAL SERVICE BY A NONPARTY IN ACCORDANCE WITH RULE 4.02 RATHER THAN SIMPLE DELIVERY OF THE MECHANIC'S LIEN STATEMENT BY THE LIEN CLAIMANT.

Public policy favors an interpretation of Minn. Stat. § 514.08, subd. 1(2) that is consistent with Rule 4.02. Such an interpretation will provide clarity, certainty, and protection to both lien claimants and property owners. The decision of the court of appeals, if left to stand, establishes the rule that the method and manner by which a mechanic's lien statement must be personally served under Minn. Stat. § 514.08, subd. 1(2) is not subject to any standards or requirements.

The purpose of Minn. R. Civ. P. 4.02 is "to eliminate bias, acrimony and possible oppression which is inherent in litigation." *Year 2001 Budget Appeal of Landgren v. Pipestone County Bd. of Com'rs*, 633 N.W.2d 875, 878 (Minn. App. 2001) citing *Lewis v. Contracting Northwest, Inc.*, 413 N.W.2d 154, 155 (Minn. App. 1987) (affirming dismissal when pro se party personally served opposing party); *see also Stransky v. Indep. Sch. Dist. No. 761*, 439 N.W.2d 408 (Minn. App. 1989). As two distinguished legal commentators have observed, the purpose Rule 4.02 "is to eliminate bias and acrimony and to reduce the chance a defendant can legitimately claim a defendant was not served. An impartial person is more likely to achieve and less likely to fail at obtaining service." 1 David F. Herr & Roger S. Haydock, *Minnesota Practice* § 4:5 (4th Ed. 2010).

The requirements of Rule 4.02 are not onerous and will not unduly burden or prejudice lien claimants seeking to perfect and foreclose on their mechanic's liens. The lien claimant has four months from the date he last furnishes labor to serve his lien

statement on the property owner or other appropriate person and Rule 4.02 simply requires that the person administering personal service be at least 18 years old and not a party to the action. The rule provides clarity and certainty, and succinctly resolves the issue of who may administer personal service of the mechanic's liens statement under Minn. Stat. § 514.08, subd. 1(2).

The reason for the rule disqualifying parties to the suit from making service of process is to eliminate or reduce the chance of parties in an action who stand to gain or lose from the suit from creating an issue involving process that needlessly and substantially increases the burdens of the courts. *Morrissey v. Murphy*, 137 F. Supp 377, 379 (E.D. Wis. 1956). The rule also discourages fraudulent service by persons with an adversarial interest. *Caldwell v. Coppola*, 219 Cal. App. 3d 859, 864 (4th Dist. 1990). As one court has recognized, it is difficult to conceive of a greater opportunity for mischief than to allow interested litigants to aver that they have made service in their own behalf. *Morrissey*, 137 F. Supp at 379.

Allowing lien claimants to deliver mechanic's lien statements to property owners will encourage and result in increased litigation and burdens on courts in resolving mechanic's lien claims. Lien claimants naturally will have an incentive to claim service of the mechanic's lien statements within the 120-day period, while property owners will have an incentive to claim otherwise. The rule protects lien claimants by reducing or eliminating the chance that a property owner will claim that he was never served with a copy of the mechanic's lien statement within the 120-day period required under Minn. Stat. § 514.08, subd. 1(2), thus preserving the lien claimant's right to foreclose on the lien

and receive payment for the contributions it furnished to the property. Conversely, it will protect property owners from unscrupulous contractors who, in an effort to avoid the extinguishment of their lien, may fraudulently claim that they personally served the lien statement within the 120-day time period.

This case illustrates why allowing mechanic's lien claimants to personally serve their own mechanic's lien statements is poor public policy. Initially, in its Complaint, Hunter Construction alleged that it served its mechanic's lien statements by certified mail. Later, however, Hunter testified that contrary to the allegations in the Complaint, he did not serve the mechanic's lien statement by certified mail, but instead, he simply handed a copy to the property owner. There was no other testimony or other independent evidence to support Hunter's claim, which the property owner and his on-site manager repeatedly denied. This conflict unnecessarily increased the number of issues for trial and needlessly extended the length of trial.

Public policy strongly favors personal service of a mechanic's lien statement under Minn. Stat. § 514.08, subd. 1(2) by an objective nonparty because it: (1) protects lien claimants and property owners equally by eliminating the opportunity for either party to commit fraud with respect to date of service of the mechanic's lien service issue; (2) provides certainty and clarity as to who may administer personal service; and (3) reduces or eliminates the burdens on courts in resolving mechanic's lien claims. These benefits outweigh any burden the rule may place on a lien claimant.

CONCLUSION

Because respondents failed to properly serve their respective mechanic's lien statements either by certified mail or personally within 120 days of their last contribution as required by Minn. Stat. § 514.08, subd. 1(2), their liens ceased to exist and the district court did not have jurisdiction to consider their lien claims. Appellant Brickwell Community Bank, therefore, respectfully requests that this court reverse the decision of the district court and court of appeals, and rule that respondents' mechanic's liens are invalid and unenforceable.

Respectfully submitted,

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CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs.1 and 3, for a brief produced with a proportional 13 point font. The length of this brief is 6,867 words. This brief was prepared using Microsoft Word 2007.

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