

NO. A10-1607

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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.*

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**JOINT BRIEF, ADDENDUM AND APPENDIX OF RESPONDENTS HUNTER  
CONSTRUCTION, INC. AND VERDE GENERAL CONTRACTOR INCORPORATED**

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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 THE CASE**

Other than Appellant's derogatory comments about Mr. Kenneth Hunter<sup>1</sup>, an employee of Respondent Hunter Construction, Inc. ("Hunter Construction"), Respondents Hunter Construction and Verde General Contractor, Incorporated ("Verde") adopt Appellant's Statement of the Case.

### **STATEMENT OF FACTS**

The real property which is the subject of this action was owned by Wing-Heng, Inc., is located in Ramsey County, Minnesota and is legally described as:

Lot 1, Block 1, Chen's Addition, Ramsey County, Minnesota.

(the "Subject Property"). (R.AD. 3; ¶6)

Kevin Lam owned Wing-Heng, Inc. (R.AD. 3; ¶6) The Subject Property contains a seven-story hotel operated as a LaQuinta Inns & Suites. (R.AD. 3; ¶7) Wing-Heng financed some of the renovation project with a June 15, 2007 loan with Appellant, secured by two mortgages in the Subject Property insured by Chicago Title Insurance Company. (R.AD. 3; ¶¶8, 9)

Najib Mailagyar owned Isaiah Contracting, LLC who acted as the first general contractor on the renovation that began in 2006. (R.AD. 4; ¶12) Isaiah Contracting was replaced by two subsequent general contractors but by June 2007, the remodeling effort was in chaos. (R.AD. 4; ¶13) Progress was slow and the work was inadequate especially

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<sup>1</sup> Appellant refers to "Kevin Hunter" on page 2 of its brief apparently combining "Kevin Lam," the owner of Wing-Heng, Inc. and "Kenneth Hunter," an employee of Hunter Construction.

work being done on the hotel tower. (R.AD. 4; ¶13) Wing-Heng kept Mr. Mailagyar on as the on-site project manager but retained Hunter Construction in June 2007 to rescue the faltering project. (R.AD. 4; ¶¶13, 14)

Because the progression of general contractors had failed to complete the remodeling of the guest rooms, the LaQuinta franchise was in jeopardy. (R.AD. 4; ¶15) Hunter Construction (and Ken Hunter) brought order and progress to the guest room makeover. (R.AD. 4; ¶15) A temporary Certificate of Occupancy for the first two stories of the guest-room tower was issued; the LaQuinta franchise was preserved; and the ballroom completion allowed a wedding party commitment to be met. (R.AD. 4; ¶15)

Verde performed substantial work at the Subject Property from late 2005/early 2006 through January 14, 2008. (R.AD. 10; ¶¶37, 39) Mr. Lam and Mr. Mailagyar had no issues with Verde's lien. (R.AD. 11; ¶40)

Wing-Heng failed to pay many of the construction costs from the project including all of the contractors in this lawsuit. On February 21, 2008, Mr. Hunter registered Hunter Construction and Verde's mechanic's lien statements against the Subject Property. (R.AD. 4; ¶¶16, 18) Hunter's lien was in the amount of \$124,458.97 and Verde's lien was in the amount of \$80,500. (R.AD. 4; ¶¶16, 18) Mr. Hunter then personally served the lien statements on Mr. Kevin Lam and upon Mr. Mailagyar on February 21, 2008. (R.AD. 5; ¶21; R.AD. 12, ¶9) Although not required by section 514.08, Mr. Hunter also personally served the two mechanic's lien statements on Appellant on or about February 21, 2008. (R.AD. 5; ¶21) Since that time, Hunter Construction and Verde have been

locked in this battle attempting to recover their contributions to the LaQuinta Inn & Suites in St. Paul now owned and operated by Appellant.

Importantly, Appellant has not appealed Judge Van de North's findings of fact including the fact that Mr. Hunter hand delivered Hunter Construction and Verde's lien statements to Najib Mailagyar and Kevin Lam on February 21, 2008. (R.AD.5; ¶21) Nor has Appellant ever denied that Mr. Hunter hand delivered the lien statements directly to it during the 120 period described in section 514.08. (R.AD.5; ¶21)

## ARGUMENT

### **I. STANDARD OF REVIEW.**

“Because the parties do not dispute the relevant facts, and because this issue involves only the legal question of statutory interpretation, review is *de novo*.” *Imperial Developers, Inc. v. Calhoun Development, LLC*, 790 N.W.2d 146, 148 (Minn. 2010).

### **II. THE SUPREME COURT SHOULD AFFIRM BECAUSE KEN HUNTER PERSONALLY SERVED THE LIEN STATEMENTS PURSUANT TO THE PLAIN MEANING OF SECTION 514.08.**

“We have repeatedly held that we must give effect to the plain meaning of statutory text when it is clear and unambiguous.” *Hutchinson Technology, Inc. v. Commissioner of Revenue*, 698 N.W.2d 1, 8 (Minn. 2005). “An ambiguity exists only where a statute's language is subject to more than one reasonable interpretation.” *Beardsley v. Garcia*, 753 N.W.2d 735, 740 (Minn. 2008). “[S]ilence in a statute regarding a particular topic does not render the statute unclear or ambiguous unless the statute is susceptible of more than one reasonable interpretation.” *Premier Bank v. Becker*

*Development, LLC*, 785 N.W.2d 753, 760 (Minn. 2010). “But if the silence causes an ambiguity of expression resulting in more than one reasonable interpretation of the statute, then we may go outside the language of the statute to determine legislative intent.” *Id.*

**A. Section 514.08 Is Not Ambiguous And The Court Should Apply It’s “Plain Meaning.”**

Section 514.08 provides:

The 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 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 (2008) (emphasis added).

The plain meaning of “personal service” is the “[a]ctual delivery of process to person to whom it is directed or to someone authorized to receive it in his behalf.” BLACK’S LAW DICTIONARY, 1369 (6th ed. 1990)<sup>2</sup>. The plain meaning of “personal service” does not disqualify any class of individuals from performing the act of service. Consistent with Black’s definition, this Court has ruled that “personal service” (without reference to a “summons” or “other process”) is accomplished by “handing to and leaving with the party to be served a copy of the original.” *Damon v. Town Board of*

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<sup>2</sup> “When analyzing the plain and ordinary meaning of words or phrases, we have considered dictionary definitions.” *State v. Carufel*, 783 N.W.2d 539, 542 (Minn. 2010); *see also Imperial Developers*, 790 N.W.2d at 149 (“*Black’s Law Dictionary* defines the verb form of “record” as follows: ‘To deposit (an original or authentic official copy of a document) with an authority....’”).

*Town of Baldwin*, 101 Minn. 414, 415, 112 N.W. 536, 536 (1907) (“[n]either statute defined the meaning of ‘personal service’; but we shall assume that it has a well-defined legal meaning and has reference to two methods: First, by handing to and leaving with the party to be served a copy of the original; and, second, by reading the original to such party”). This Court made no reference to who can and who cannot serve the documents in question. Thus, Mr. Hunter’s hand delivery of Hunter Construction and Verde’s lien statements on February 21, 2008 complied with the common meaning of section 514.08.

Appellant glosses over the first step of statutory interpretation, assumes section 514.08 is ambiguous<sup>3</sup> and dives head-long into an unmoving review of “legislative history” and a contrived public policy analysis rather than focusing on the plain meaning of “served personally.” However, because section 514.08 is not ambiguous the Court should apply the plain meaning of “personal service.” *S.M. Hentges & Sons, Inc. v. Mensing*, 777 N.W.2d 228, 232 (Minn. 2010) (“[b]ecause we base our holding on the plain meaning of the statute, we do not consider other factors such as the occasion and necessity for the law, the circumstances of enactment, the object to be attained, and the mischief to be remedied”).

Appellant’s reliance on *Handle With Care, Inc. v. Department of Human Services* in an attempt to avoid the plain meaning of section 514.08 ignores this Court’s finding of ambiguity:

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<sup>3</sup> Interestingly, Appellant acknowledges that the Legislature was silent on the “issues concerning who may affect personal service of a lien statement.” (Appellant’s Brief, p. 10) Yet, Appellant ignores the rule of statutory construction forbidding the insertion of language into statutes. *See, e.g., Premier Bank*, 785 N.W.2d at 760 (“[i]f the legislature fails to address a particular topic, our rules of construction forbid adding words or meaning to a statute that are purposely omitted or inadvertently overlooked”).

From our reading of the statutes, it is unclear if the study and report requirements were intended to be preconditions to the adoption of rules by the department or not. We agree with amici that one needs to review the legislative history of subdivision 4, particularly within the context of the making of revised Rule 2, for any help in discerning the legislature's intent.

*Handle With Care, Inc. v. Department of Human Services*, 406 N.W.2d 518, 520 (Minn. 1987). Because section 514.08 is not ambiguous, the Minnesota Supreme Court should apply the common meaning of “personal service” and affirm. See *In re J.M.T.*, 759 N.W.2d 406, 407 (Minn. 2009) (“[w]ords and phrases are interpreted according to their common meaning”).

#### **B. Section 514.08 Does Not Require “Service Like A Summons.”**

Clearly missing from section 514.08 is a requirement that the lien statement be served “in the same manner as the service of summons in civil actions.” See, e.g., MINN. STAT. § 209.021, Subd. 1 (2011). This omission is critically important to determination of this case because Courts cannot add language to a statute that the legislature purposely omitted. See *Beardsley*, 753 N.W.2d at 740 (“we will not read into a statute a provision that the legislature has omitted, either purposely or inadvertently... [t]he prerogative of amending a statute [] belongs to the legislature, not to this court”).

Appellant isolates section 514.08 from the rest of Minnesota law and ignores the plethora of statutes where the Legislature has specifically required documents to be “served like a summons:”

- “a copy of such notice shall be *served in like manner as a summons in a civil action* in the district court upon the person in possession of the mortgaged premises. . .” MINN. STAT. § 580.03 (2010) (emphasis added).
- “Service of a notice of contest must be made *in the same manner as the service of summons* in civil actions.” MINN. STAT. § 209.021, Subd. 1 (2011) (emphasis added).
- “Before any such license shall be revoked, the licensee shall be furnished with a statement of the complaints made against the licensee, and a hearing shall be had before the commissioner upon at least ten days' notice to the licensee to determine whether such license shall be revoked, which notice may be served either by certified mail addressed to the address of the licensee as shown in the license application *or in the manner provided by law for the service of a summons.*” MINN. STAT. § 17A.04, Subd. 7 (2011) (emphasis added).
- “Service of orders or other papers required or permitted to be issued by the commissioner related to the duties and responsibilities entrusted to the commissioner may be by any of the following methods: (1) *personal service consistent with requirements for service of a summons or process under section 303.13 or 543.19, or under rule 4.03 of the Minnesota Rules of Civil Procedure*” MINN. STAT. § 45.016 (2011) (emphasis added).
- “Otherwise, notice may be given *in the manner provided by law for service of a summons in a civil action.*” MINN. STAT. § 84.7741 (2011) (emphasis added).
- “The notice shall be served in the *same manner as provided for the service of summons* in a civil action to determine adverse claims under chapter 559” MINN. STAT. § 93.55 Subd. 2 (2011) (emphasis added).
- “The court order must be served upon any person known or believed to have any right, title, interest, or lien *in the same manner as provided for service of a summons* in a civil action, and upon unknown persons by publication, in the same manner as provided for publication of a summons in a civil action.” MINN. STAT. § 97A.225 Subd. 5 (2011) (emphasis added).
- “The notice must be served *in the manner provided for the service of summons* in a civil action in district court.” MINN. STAT. § 103E.041 (2011) (emphasis added).
- “A copy of the order must be served upon the licensee *in the manner provided by law for the service of summons* in a civil action.” MINN. STAT. § 168.27 (2011) (emphasis added).

- “Service of the notice shall be made *in the manner provided by court rule for service of summons* in district court.” MINN. STAT. § 176.451 Subd. 2 (2011) (emphasis added).
- “The notice shall be sent by certified mail to the address of the person as shown on the application for license or it may be served *in the manner in which a summons is served* in civil cases commenced in the district court.” MINN. STAT. § 184.34 Subd. 2 (2011) (emphasis added).
- “The commission may: (1) subpoena, *in the same manner a district court summons is served*” MINN. STAT. § 216A.05 Subd. 3 (2011) (emphasis added).
- “When notice is required under this subdivision, it shall be provided to the other birth parent *according to the Rules of Civil Procedure for service of a summons and complaint.*” MINN. STAT. § 259.24 (2011) (emphasis added).
- “Such notice shall be served, within or without the state, at least 14 days before the date of the hearing, *in the manner provided by law for the service of a summons* in a civil action.” MINN. STAT. § 259.49 Subd. 2 (2011) (emphasis added).
- “These documents may be served on a putative father *in the same manner as a summons* is served in other civil proceedings. . . .” MINN. STAT. § 259.52 Subd. 9 (2011) (emphasis added).

Further, the Legislature often requires “personal service as in a district court civil action:”

- “‘Serve’ means (1) personal service as in a district court civil action. . . .” MINN. STAT. § 583.22 Subd. 8 (2010).
- “The board shall personally serve a copy of its resolution on the owner in the same manner as personal service of process in a civil action.” MINN. STAT. § 306.242 Subd.2 (2010).
- “The summons must be served at least seven days before the date of the court appearance specified in section 504B.321, in the manner provided for service of a summons in a civil action in district court. It may be served by any person not named a party to the action.” MINN. STAT. § 504B.331 (2011)

Finally, when the Legislature intends for a supposedly neutral party to serve a document, it expressly requires it:

- “The summons and complaint may be served by any person not named a party to the action.” MINN. STAT. § 281.174 Subd. 4 (2011);
- “and each process shall extend to all parts of the state and may be served by any person authorized to serve processes of courts of record.” MINN. STAT. § 216B.28 (2010);
- “The subpoenas may be served upon any person named therein anywhere in the state by any person authorized to serve subpoenas or other processes in civil actions of the district courts.” MINN. STAT. § 144.054 Subd. 1 (2010);
- “The subpoenas may be served anywhere in the state by any person authorized to serve processes of courts of record.” MINN. STAT. § 216C.29 (2010).
- “The subpoenas may be served upon any person named therein anywhere in the state by any person authorized to serve subpoenas or other processes in civil actions of the district courts.” MINN. STAT. § 144E.30 Subd. 5 (2010);

In contrast to the quoted statutes, section 514.08 simply requires the lien statement to be “served personally” on the owner, does not require “service like a summons,” pursuant to the rules of civil procedure and does not require service “by any person authorized to serve processes of courts of record.” In the face of these statutes Appellant insists that “it is reasonable to conclude that the legislature contemplated that the term ‘served personally’ would incorporate the requirements of Rule 4.02” describing how to serve a summons. (Appellant’s Brief p.20).

Hunter and Verde submit it would be *unreasonable to conclude* that the Legislature intended “service like a summons.” To do so would be to violate the

separation of powers by adding language to section 514.08 that the Legislature “omitted, either purposely or inadvertently.” *See Beardsley*, 753 N.W.2d at 740 (“we will not read into a statute a provision that the legislature has omitted, either purposely or inadvertently... [t]he prerogative of amending a statute [] belongs to the legislature, not to this court”); *Metropolitan Sports Facilities Com'n v. County of Hennepin*, 561 N.W.2d 513, 516-17 (Minn. 1997) (“[i]f the legislature intended for the Met Center's tax exempt status to hinge on the building's use as a sports facility, it could have said so. It did not and, in keeping with our limited role relative to legislative enactments, we decline to read into the statute a provision the legislature ‘purposely omits or inadvertently overlooks’”). Thus, Appellant’s battle is with the Legislature to add the phrase “like a summons” to section 514.08 and the Court of Appeals correctly ruled that “[i]f the legislature intended the rules of civil procedure to govern service of a mechanic's lien statement, it would have clearly stated such intention.” *Eclipse Architectural Group, Inc. v. Lam*, 799 N.W.2d 632, 637 (Minn. App. 2011). Accordingly, the Minnesota Supreme Court should affirm.

**III. EVEN IF SECTION 514.08 WERE AMBIGUOUS, THE RULES OF CIVIL PROCEDURE DO NOT APPLY BECAUSE A LIEN STATEMENT DOES NOT INITIATE A CIVIL LAWSUIT.**

“These rules govern the procedure in the district courts of the State of Minnesota in all suits of a civil nature, with the exceptions stated in Rule 81.” MINN. R. CIV. P. 1 (2010). A construction project is not a “suit of a civil nature” and is not performed “in

the district courts” as that phrase is used. Accordingly, Appellant’s position is foreclosed by the scope of the very rules it argues should be applied.

Even if Appellant could circumvent the scope provisions of Rule 1, Rule 81.01(a) provides that the rules of civil procedure *do not govern* the procedures in sections 514.01-514.17 of the mechanic’s lien statute to the extent that “they are inconsistent or in conflict with” the general rules of civil procedure. Here, Rule 4.02 conflicts with section 514.08:

Unless 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 a **summons or other process**.

MINN. R. CIV. P. 4.02 (2008) (emphasis added.)

First, a mechanic’s lien statement is not a “summons” or “other process.” Second, a contractor seeking to serve a mechanic’s lien statement is not “a party,” and “no suit[] of a civil nature” is commenced by serving a lien statement (or before, generally). Third, section 514.08 does not describe who can and who cannot serve the lien statement. Fourth, Rule 4.02 allows Courts to authorize other methods of service but section 514.08 provides no procedure for a Court to approve alternative to serve the lien statement. Fifth, section 514.08 provides two ways to serve a mechanic’s lien statement: (1) personal service; or (2) certified mail. Because Rule 4.02 does not authorize service by certified mail, Rule 4.02 and section 514.08 are in conflict. Thus, even if section 514.08 were ambiguous and the rules of civil procedure applied generally, Rule 4.02 would not define how to serve a lien statement because it is clearly inconsistent with section 514.08. Indeed, this Court has noted that pursuant to Rule 81.01(a), **the rules of civil procedure “are not binding” when determining service of a mechanic’s lien statement.** *Eischen*

*Cabinet Co. v. Hildebrandt*, 683 N.W.2d 813, 818 n. 6 (Minn. 2004) (“[t]he civil rules are not binding in this case”).

Procedural rules are not binding on statutory interpretation issues because although the Supreme Court has the inherent judicial power to adopt rules to “regulate the pleadings, practice, procedure, and the forms thereof in civil actions in all courts of this state . . . [s]uch rules shall not abridge, enlarge, or modify the substantive rights of any litigant.” MINN. STAT. § 480.051 (2008). Here, Appellant argues that “[t]he requirements of Rule 4.02” “will not *unduly* burden or prejudice lien claimants.” (Appellant’s Brief, p. 23) (emphasis added). Appellant’s own argument concedes that Rule 4.02 contains additional burdens on the lien remedy not included in section 514.08. Accordingly, Rule 4.02 cannot apply because it would abridge lien claimants’ substantive rights by limiting how mechanic’s lien are perfected even before a civil action has started or any pleadings are drafted. *See Guillaume & Associates, Inc. v. Don-John Co.*, 336 N.W.2d 262, 264 (Minn. 1983) (holding mechanic’s liens are substantive rights and that Minnesota is “reluctant to allow substantive rights to be decided on technical grounds, particularly where no harm has been shown to result”); *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985) (“[t]he categories of substance and procedure are distinct. Were the rule otherwise, the [Due Process] Clause would be reduced to a mere tautology. ‘Property’ cannot be defined by the procedures provided for its deprivation any more than can life or liberty”) (emphasis added).

This Court has long recognized the clear distinction between substantive and procedural law and the constitutional proscription against interpreting substantive rights

through the lens of procedural rules. *Anderson v. Twin City Rapid Transit Co.*, 250 Minn. 167, 184, 84 N.W.2d 593, 604 (1957) (“[b]oth doctrines have found their place in our substantive law, which the rules of civil procedure neither have nor could legally attempt to change, these rules being limited to governing the procedure in the district courts of this state and not in any respect to legislate where substantive law is involved”). Accordingly, the Court should not apply (or even consult) Rule 4.02 in determining the meaning of “served personally” in section 514.08.

Furthermore, Appellant’s argument that procedural rules define how to create mechanic’s liens is contrary to the familiar standard that “mechanics liens are purely creatures of statute and the *rights of the parties are governed entirely by the language of the statutes.*” *Anderson v. Breezy Point Estates*, 283 Minn. 490, 493, 168 N.W.2d 693, 696 (1969) (emphasis added); *M. E. Kraft Excavating & Grading Co. v. Barac Const. Co.*, 279 Minn. 278, 283, 156 N.W.2d 748, 751 (1968) (“Mechanics liens are purely creatures of statutes and the rights of the parties are governed by the language of the statutes”). Appellant has found no authority stating that prior to a lawsuit “mechanics’ liens are governed by court rules.” Accordingly, the Court should apply the common meaning of “served personally” and affirm.

**A. Service of a Lien Statement Does not Confer Jurisdiction Over a Defendant, but Rather, Merely Preserves an Existing Lien.**

The substantive purposes underlying a summons and a mechanic’s lien statement explain why Minnesota law requires different methods of service. A summons (or other process) is designed to confer a court with personal jurisdiction over a person. *See* David

F. Herr & Roger S. Haydock, 1 *Minnesota Practice* § 4:5 (5th ed.) at 44. *Landgren v. Pipestone County Bd. of Comm'* underscored that proper service of process by a non-party pursuant to Rule 4.02 is a jurisdictional requirement. 633 N.W.2d 875, 878-79 (Minn. App. 2001) (service by non-party is designed to eliminate bias and acrimony inherent in litigation); *see also Ryan Contracting, Inc. v. JAG Investments, Inc.*, 634 N.W.2d 176, 186-87 (Minn. 2001), *overruled on other grounds by Mavco v. Eggink*, 739 N.W.2d 148 (Minn. 2007). **In contrast, lien statements have nothing to do with conferring personal jurisdiction or invoking the powers and procedures of Courts. Instead, section 514.08 merely identifies the steps for private citizens to “preserve[] an existing lien” before initiating a lawsuit.** *Dolder*, 323 N.W.2d at 780.

An important distinction between lien statements and legal process is that no response, answer or objection is required following service of a lien statement. The recipient's rights will not be taken away by a failure to respond or voice its objection to the lien statement and no court appearance is required until a summons or other legal process is served. Thus, considerations of “due process” are not relevant to service of lien statements. Moreover, mechanic's lien statements contain no court caption and are not required to be filed with any court prior to a civil suit. Accordingly, the rules of civil procedure should not define how to serve a lien statement.

*Ryan* confirms that Rule 4 only comes into play once a mechanic's lien foreclosure action is commenced. 634 N.W.2d at 186-87 (relying upon service requirements of Rule 4 for **acquiring jurisdiction** over defendant when commencing mechanic's lien foreclosure action pursuant to sections 514.11-.12). In other words, the

only time Rule 4 must be followed is when a lien claimant attempts to add a party to a foreclosure lawsuit. Again, service of the lien statement does not initiate the foreclosure lawsuit and confers no jurisdiction over an owner. Moreover, the plain language of section 514.11 indicates that a mechanic's lien foreclosure action may be commenced by a lienholder who has filed the mechanic's lien statement and served a copy of the statement upon the owner "pursuant to section 514.08" -- not pursuant to Rule 4.02 of the rules of civil procedure. Accordingly, this Court should affirm.

#### **B. "Personal Service" Means "Delivery."**

Appellant fails to appreciate the difference between serving a lien statement and commencing a lien foreclosure action relying instead on inane lexical observations. Specifically, Appellant argues that the mechanic's lien statute uses the words "serve," "served," or "service" when describing how to provide a copy of a mechanic's lien statement to the owner, but that the terms "delivered" or "delivery" are used in section 514.011 governing the provision of a pre-lien notice to the owner. (Appellant's Brief, pp. 14-15) This distinction is irrelevant when one considers that pursuant to Rule 4.03, **personal service** upon a corporation takes place "by **delivering** a copy to an officer." MINN. R. CIV. P. 4.03 (2008) (emphasis added); *J.M.T.*, 759 N.W.2d at 408 ("[p]ersonal service requires delivery to the party or to an appropriate representative"); *Damon*, 101 Minn. at 415, 112 N.W. at 536 ("[n]either statute defined the meaning of 'personal service'; but we shall assume that it has a well-defined legal meaning and has reference to two methods: First, by handing to and leaving with the party to be served a copy of the

original; and, second, by reading the original to such party”); *Pella Products, Inc. v. Arvig Telephone Co.*, 488 N.W.2d 316, 318 (Minn. App. 1992) (“[p]erson service generally has been defined as actual delivery of process to person to whom it is directed”). Moreover, in the portion of the Minnesota Attorney General’s website addressing consumer housing issues, the attorney general explains “When and Where Liens are Filed” as follows:

If a lien is filed against your property (in the form of a lien statement), it must be filed with the county recorder and a copy **delivered** to you, the property owner, either personally or by certified mail . . . .

(R.AP.7) (emphasis added). Given that (1) this Court (2) the rules of civil procedure (3) the attorney general’s website and (4) Black’s Law Dictionary all equate “service” with “delivery,” the Minnesota Supreme Court should affirm.

**IV. PUBLIC POLICY CLEARLY FAVORS ALLOWING A MECHANIC’S LIEN CLAIMANT TO HAND DELIVER A MECHANIC’S LIEN STATEMENT BECAUSE MECHANIC’S LIENS ARE REMEDIAL IN NATURE.**

“When the language of a mechanic’s lien statute is unclear or ambiguous, we have liberally construed the statute in favor of the mechanic’s lien claimant.” *Premier Bank*, 785 N.W.2d at 759; *see also Dolder v. Griffin*, 323 N.W.2d 773, 780 (Minn. 1982) (“*Mattson* involves the question of who must be served with a lien statement and liberally construes the mechanic’s lien statute so as to protect the lien claimant. This is proper, because service of the lien statement preserves an existing lien, and interpretation of the requirement should favor the mechanic”). “[A] construction which will sustain the lien is preferable to one which will invalidate it.” *Minnesota Wood Specialties, Inc. v. Mattson*,

274 N.W.2d 116, 119 (Minn. 1978). “It is well established by our decisions that mechanics lien laws are remedial in nature and have been given a liberal construction in favor of workmen and material men for the labor and material actually supplied in the improvement of real property.” *O. B. Thompson Elec. Co. v. Milliman & Larson, Inc.*, 268 Minn. 299, 302, 128 N.W.2d 751, 754 (1964).

It is sufficient for us to say that, whatever may be the conflicting decisions of other tribunals, we are of the opinion that no narrow or limited construction of our mechanic's lien law should be indulged in by the courts, and that the labor and industry of the country should not be hampered by technicalities or harsh interpretations of what was evidently intended to be a just law for the benefit of our industrial pursuits, which tends so materially to the building of cities and towns, and is the embodiment of so much natural justice. He whose property is enhanced in value by the labor and toil of others should be made to respond in some way by payment and full satisfaction for what he has secured. To accomplish this result is the intent of the lien law.’

*Id.*

Consistent with the Minnesota’s long history of liberally construing the mechanic’s lien statute, the Court should avoid a narrow and strained interpretation of “personal service” in favor of the common sense meaning intended by the Legislature: “[a]ctual delivery [] to person to whom it is directed or to someone authorized to receive it in his behalf.” BLACK’S LAW DICTIONARY, 1369 (6th ed. 1990). Applying the common meaning of “personal service” to section 514.08 is in harmony with Minnesota’s policy of liberally construing the mechanic’s lien remedy in favor of lien claimants.

Appellant argues that the Court should re-write mechanic’s lien claimants’ substantive rights because allowing contractors to hand deliver mechanic’s lien

statements will lead to “increased litigation and burdens on courts in resolving mechanic’s lien claims.” (Appellant’s Brief, p. 24). However, as much as Appellant wants to color its argument with notions of “judicial economy,” the mechanic’s lien statute has always required lien claimants to initiate lawsuits to enforce liens, and determining whether delivery of a lien statement occurred in the face of conflicting evidence is the type of task trial courts are constitutionally required and equipped to make. *See State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312, 321 (Minn. App. 2007) (“constitutional function of Minnesota courts is to resolve disputes and to adjudicate private rights”). Appellant’s argument that fact-finding is a “burden” on Minnesota’s Courts distorts reality. In the trial of this case, service testimony consumed parts of 13 transcript pages, or 1.8% of the 709 total pages and 1 exhibit. Judge Van de North swiftly dealt with the evidence and consistently ruled against Appellant on this fact issue.

Even if “service like a summons” were required, the same issues would have to be decided by the trial court, but with different, additional witnesses. No longer will lien claimants be competent witnesses on this issue. Instead, additional witnesses will be required to testify to the details of personal service of the lien statement. More witnesses equals *more of a strain* on the court system. Additionally, Appellant’s interpretation will also burden Sheriff’s departments who will have to send deputies to testify to the details of service of lien statements.

The argument that “service like a summons” will “eliminate[] the opportunity for either party to commit fraud with respect to date of service of the mechanic’s lien service issue” or “reduce[] or eliminate[] the burdens on courts in resolving mechanic’s lien

claims” is likewise incorrect. (Appellant’s Brief, p. 25) Owners will still have the incentive to deny receipt of lien statements (just like Appellant’s witnesses did here) no matter who personally serves the lien statements and trial courts will still have to perform their constitutional fact-finding function.

At the end of the day, lien claimants should not have to have a law degree before they are entitled to a mechanic’s lien in Minnesota and interpreting section 514.08 to require “service like a summons” presumes the reader is familiar with Rule 4.02 of the rules of procedure. Accordingly, the Minnesota Supreme Court should apply the “common sense” meaning of “personal service” that any lien claimant reading the statute his/herself would understand: “handing to and leaving with the party to be served a copy of the original.” *Damon*, 101 Minn. at 415, 112 N.W. at 536.

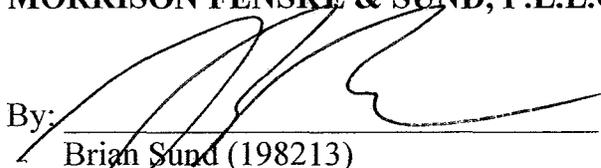
**CONCLUSION**

Respondents Hunter Construction, Inc. and Verde General Contractor, Incorporated respectfully request that the Minnesota Supreme Court affirm both the Court of Appeals and Judge Van de North's ruling that Mr. Hunter's hand delivery of the lien statements satisfied section 514.08's requirement that the lien statements be "served personally."

October 18, 2011

Respectfully submitted,

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No. A10-1607

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**State of Minnesota  
In Supreme Court**

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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*

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**RESPONDENTS HUNTER CONSTRUCTION, INC. AND VERDE GENERAL  
CONTRACTOR INCORPORATED'S CERTIFICATE OF COMPLIANCE**

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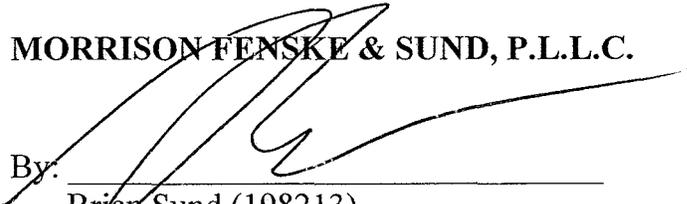
I, Ryan R. Dreyer, certify that Respondent Hunter Construction, Inc. and Verde General Contractor, Incorporated's Joint Brief complies with MINN. R. CIV. APP. P. 132.01, Subd. 3.

I further certify that I used Microsoft Office Word, Version 2010, Times New Roman 13-point font to prepare this Brief and that this word processing program has been applied specifically to all text, including headings, footnotes and quotations in the following word count.

I further certify that the above referenced memorandum contains 5,445 words.

Respectfully submitted this 18th day of October, 2011.

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