

PROPOSED AMENDMENT OF LIEN ENFORCEMENT STATUTE: § 85-7-141

The Mississippi statute for enforcement of construction liens (including by extension, the lien on project funds of a stop notice), § 85-7-141, provides that a suit to enforce a lien is to be filed in the circuit court of the county in which the property is located. The statute does not mention county courts, although the county courts have concurrent jurisdiction “in all matters of law and equity” up to \$200,000 (§ 9-9-21). The absence in § 85-7-141 of any mention of county courts has left Mississippi construction lawyers hesitant to file to enforce a lien in any other court but a circuit court, even if the controversy involves a claim for just a few thousand dollars. The proposal therefore is to amend the lien enforcement statute to explicitly include the county courts to remove the doubt that now exists among lawyers about authority to enforce a construction lien in the county courts.

Further, the statute of limitations applicable to enforcement of liens of § 85-7-141 requires the filing of suit, “within twelve months next after the time when the money due and claimed by the suit became due and payable, and not after.” The current statute leaves open the question of whether a lawyer must file suit to enforce a lien within one (1) year of the date when the first invoice in a series of invoices for deliveries to a job site of men and material became, “due and payable, and not after”. There is some old case law authority that, “where there has been a continuous delivery of material, and the time of payment is not fixed by contract, the statute begins to run against the lien from the delivery of the last lot of material.”¹ But the old case law leaves plenty of room for argument among lawyers as to its application. The proposal is to make the lien enforcement statute clearer to remove any doubt and any argument that the one (1) year limitations provision does not begin to run until one (1) year after the claimant’s bill for last delivery of labor or materials or rental equipment to a job site, rather than a year following the first invoice for the first delivery.

The proposal therefore is to amend the lien enforcement statute, § 85-7-141, also to provide the same limitation language one finds applicable to actions to enforce Mississippi Mississippi payment bonds, that is obligating the filing of an action within one (1) year after the invoice became due and payable “following the day on which the last of the labor was performed or material or rental or lease equipment was supplied by the person bringing the action, and not after.”² The amendment would allow suit to enforce a lien for unpaid invoices measured explicitly from the date of the claimant’s last presence on the job, and would end the confusion and inconsistency created by having different start points for the running of the limitations that are in the current Mississippi lien and payment bond statutes.

¹ *Billups v. Becker’s Welding & Machine Co.*, 186 Miss. 41, 189 So. 526, 528-529 (1939). *See also* *Inerarity v. A.S. Wade & Co.*, 106 So. 828, 829 (Miss. 1926) (barring lien where suit not brought until more than a year after default in monthly installments for materials).

² *See* the one (1) year limitations provision for enforcement of payment bonds on public jobs under the Mississippi Little Miller Act, MISS. CODE ANN. § 31-5-53(b)) and the one (1) year limitations provision for enforcement of payment bonds on Mississippi private jobs, MISS. CODE ANN. § 85-7-189(2). E.g., § 85-7-189(2) provides for enforcement, “**within one (1) year after the day on which the last of the labor was performed or material or rental or lease equipment was supplied by the person bringing the action and not later.**”