

INDUSTRY ALERT - Making it Easier to Serve 20-day Preliminary Notices

By Edward Alberola and Andrew C. Carlton

Before serving a preliminary 20-day notice, should contractors research public records to verify that the owner or general contractor correctly identified the project's lender? For now, thanks in part to SCCA, contractors don't need to always inspect public records, as was recently held by the Court of Appeal in *Force Framing, Inc. v. Chinatrust Bank*. In September 2006, Force Framing relied on a preliminary information sheet provided by a project's owner to serve its preliminary 20-day notice. It turned out the owner's preliminary information sheet identified the wrong lender, which of course, resulted in Force Framing serving its preliminary 20-day notice on the wrong lender.

It was not until Force Framing had completed its work that it learned the identity of the actual lender - Chinatrust Bank. Because California Code requires that a contractor need merely serve the "reputed construction lender," and because Force Framing served the bank "reputed" to be the project's lender, Force believed its preliminary 20-day notice was proper. Thus, when the owner failed to pay Force Framing for its work on the project, Force sued China trust Bank under a bonded stop notice claim.

In an attempt to capitalize on Force Framing's failure to serve the actual lender with a preliminary 20-day notice, Chinatrust filed a motion claiming Force Framing should have inspected the county recorder's public records, which would have revealed that China trust was the actual lender. China trust further argued that Force Framing could not rely on the information from the project's owner, which erroneously identified another bank. China trust argued that in light of this, Force Framing should not be allowed to pursue its stop notice claim against the lender, because it had not received the preliminary 20-day notice.

The trial court agreed with China trust, holding that Force Framing could not rely on information from the project's owner, as to the identity of the project's lender. The trial court held that a contractor is required to verify the identity of a project's lender by searching the county records before serving a preliminary 20-day notice. The trial court dismissed Force Framing's stop notice claims against China trust - apparently more concerned with protecting banks than protecting a contractor's right to payment.

Believing that the trial court's ruling in favor of China trust was wrong, SCCA member Andrew Carlton of Carno & Carlton, LLP, appealed the decision. In support of Force Framing's appeal, attorney Edward Alberola, on behalf of SCCA, filed an *amicus curiae* brief. (In California, a person or entity, like SCCA, that is not a party to a case but will be affected by the outcome of the case may intervene as *amicus curiae* and advise the court as to how it should decide a case.) Alberola's *amicus* brief advised the appellate court that it is more reasonable simply to allow contractors to rely on a lender's identity as presented in a preliminary information sheet than to require contractors to search public records, a search not every contractor has sufficient experience, expertise or familiarity to do successfully or in a timely, cost-effective manner.

In addition, Alberola argued, contractors often perform work in distant counties where they are unfamiliar with the location of the recorder's office and the type of filing system that recorder's office may have. Accordingly, the trial court's ruling, if allowed to stand, would result in an unreasonable and illogical burden for contractors throughout California.

The Court of Appeal, agreeing with Andrew Carlton and amicus curiae, Edward Alberola, stated: *"If a .. , [contractor] has reasonably relied on an owner's andlor general contractor's statements identifying a lender, then the ... [contractor does not need to check county records to prove that he or she had a good faith belief that the lender was the actual lender. Force Framing Inc. v. Chinatrust Bank, 187 (al.App.4th 1368, 1376 (2010).*

However, the appellate court noted that in order to show its good faith, a contractor should research public records "if a stop notice claimant has (1) no lender information, or (2) untrustworthy lender information.... " Id at 1378. The Court of Appeal's opinion became law September 30, 2010. Thus, for the time being, so long as your pre-lien information is from a sufficiently reliable source - like the owner or general contractor - you can rely on that information when your company serves its preliminary 20-day notices.

Chinatrust Bank has petitioned the California Supreme Court to review the matter. As of the date of this publication, the Supreme Court has not yet made a decision as to whether it will do so.