

IN THE SUPREME COURT OF TENNESSEE

EAST TENNESSEE GRADING, INC.

Plaintiff/Appellant

v.

**BANK OF AMERICA, N.A.,
WILLIAM B. COUGHLIN,
AND JANET L. COUGHLIN**

Defendants/Appellees

Case No. E2009-02250-SC-R11-CV

On Appeal from the Tennessee
Court of Appeals, Eastern Section
Case No. E2009-02250-COA-R3-CV

Chancery Court for Hamilton County
Chancellor W. Frank Brown, III
Case No. 07-0611

**AMICUS BRIEF BY THE AMERICAN SUBCONTRACTORS ASSOCIATION
AND THE AMERICAN SUBCONTRACTORS ASSOCIATION OF TENNESSEE
IN SUPPORT OF THE APPLICATION FOR PERMISSION TO APPEAL
BY EAST TENNESSEE GRADING, INC.**

Todd E. Panther
Tune, Entekin & White, P.C.
315 Deaderick Street, Suite 1700
Nashville, Tennessee 37238
(615) 244-2770 – telephone
(615) 244-2778 – fax
tpanther@tewlawfirm.com – e-mail
*Attorney for the American Subcontractors
Association and the American Subcontractors
Association of Tennessee*

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Tune, Entrekin & White, P.C.
315 Deaderick Street, Suite 1700
Nashville, Tennessee 37238
(615) 244-2770 – telephone
(615) 244-2778 – fax
tpanther@tewlawfirm.com – e-mail
*Attorney for the American Subcontractors
Association and the American Subcontractors
Association of Tennessee*

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STATEMENT OF THE ISSUES

I. To preserve priority against subsequent purchasers and encumbrancers for value, Tenn. Code Ann. §66-11-112(a) requires a lien claimant to record a notice of lien within 90 days after the improvement is abandoned. Tenn. Code Ann. §66-11-112(b)¹ states that an improvement is deemed abandoned when there is a cessation of operations for a period of 60 days with an intent to cease operations permanently or, at least, indefinitely. Did the lower courts err in ruling that the Legislature intended the requisite cessation of operations period under section 66-11-112(b) to run concurrently with the 90-day period to record a lien under section 66-11-112(a)?

II. Tenn. Code Ann. §66-11-112(b) states that an improvement is deemed abandoned when there is a cessation of operations for 60 days with an intent to cease operations permanently or, at least, indefinitely. Did the lower courts err in ruling that the Legislature intended the cessation of operations period in Tenn. Code Ann. §66-11-112(b) to begin running as soon as work that qualifies as “visible commencement of operations” ceases, even if other operations are still underway?

¹ The Mechanics' and Materialmen's Lien statutes, Tenn. Code Ann. §§66-11-101, et seq., were substantially revised by 2007 Pub. Acts, c. 189, effective May 18, 2007. As all transaction and events pertinent to this case occurred before May 18, 2007, the lien statutes in effect prior to that date are applicable. The parties so stipulated and the lower courts agreed.

STATEMENT OF THE CASE

The American Subcontractors Association and the American Subcontractors Association of Tennessee (collectively "ASA") adopt the statement of the case by the Appellant, East Tennessee Grading, Inc. ("ETG").

STATEMENT OF THE FACTS

ASA adopts the statement of the facts by ETG.

ARGUMENT

I. GROUND FOR THE APPLICATION.

This case involves the interpretation of important aspects of Tenn. Code Ann. §66-11-101, *et seq.* ("the Tennessee Lien Law"). The ASA respectfully submits that the Court should grant ETG's application for permission to appeal because this case falls within the Court's role in securing settlement of important questions of law, securing settlement of questions of public interest, and exercising its supervisory authority. This case involves the Court's role to secure important questions of law and public interest because it gives the Court the opportunity to provide interpretive guidance regarding the newly-enacted amendments to the Tennessee Lien Law. While the parties agreed and the lower courts ruled that the issues in this case are governed by the law in effect before the 2007 amendments, this Court's ruling on the issues in this case will apply with equal force to the current Tennessee Lien Law. And, if the Court addresses these issues now, it would be able to provide guidance to lien claimants very soon after the enactment of the 2007 amendments to the Tennessee Lien Law, thereby magnifying the impact of its decision. In addition, although abandonment has been among the events triggering the 90-day period to record a lien for over 30 years, this Court has never spoken on how the deadline for recording a lien on an abandoned project is calculated; and unless the Court uses the opportunity to address that issue in this case, the Court might not have the opportunity to do so for another 30 years. Finally, the Court's ruling on the issues in this case will provide guidance to countless owners, contractors, subcontractors, and suppliers involved in an abandoned project.

This case also invokes the Court's supervisory authority. The ASA respectfully submits that the lower courts' rulings are clearly erroneous and that, if left to stand, the rulings will make it virtually impossible for a subcontractor to determine the deadline to record a lien on an abandoned project and will eliminate the priority of a subcontractor's lien over subsequent purchasers and encumbrancers on an abandoned project.

II. FOR AN ABANDONED IMPROVEMENT, THE LEGISLATURE INTENDED THE 90-DAY PERIOD TO RECORD A LIEN UNDER TENN. CODE ANN. §66-11-112(a) TO START AFTER THE REQUISITE CESSATION OF OPERATIONS PERIOD UNDER TENN. CODE ANN. §66-11-112(b).

To preserve priority against subsequent purchasers or encumbrancers for value, Tenn. Code Ann. §66-11-112(a) requires a lien claimant to record a lien within 90 days after the improvement is abandoned. The operative version of the statute states,

66-11-112. Sworn statement in lieu of registration of contract.

(a) In order to preserve the virtue of the lien, as concerns subsequent purchasers or encumbrancers for a valuable consideration without notice thereof, though not as concerns the owner, such lienor, who has not so registered such lienor's contract, is required to file for record in the office of the register of deeds of the county where the premises, or any part affected lies, a sworn statement similar to that described in §66-11-117, and pay the fees. The register shall file, note and record same, as provided in §66-11-117. Such filing for record is required to be done within ninety (90) days after the building or structure or improvement is demolished, altered and/or completed, as the case may be, or is abandoned and the work not completed, or the contract of the lienor expires or is terminated or the lienor is discharged, prior to which time the lien shall be effective as against such purchasers or encumbrances without such registration; provided, that the owner shall give thirty (30) days' notice to contractors and to all of those lienors who have filed notice in accordance with §66-11-145 prior to the owner's transfer of any interest to a subsequent purchaser or encumbrancer for a valuable consideration.

Tenn. Code Ann. §66-11-112(b) (1990 ed.).

Abandonment, however, was not added among the events that triggered the 90-day period to record a lien until 1977. Prior to the 1977 amendments, this section of the

Tennessee Lien Law stated that the lien claimant must record a lien "within ninety (90) days after the building where structure or improvement is demolished, altered and/or completed, as the case may be, or the contract of the lienor expires or is terminated." Tenn. Code Ann. §64-1112 (1972 ed.). Without abandonment as a triggering event under the statute, this Court in *Bird Brothers v. Southern Surety Co.*, 139 Tenn. 11, 200 S.W. 978, 979 (1917) and *Tindell Home Center, Inc. v. Union Peoples Bank of Anderson County*, 543 S.W.2d 843, 845 (Tenn. 1976) and the Court of Appeals in *First State Bank v. Stacey*, 37 Tenn. App. 223, 227-28, 261 S.W.2d 245, 247 (1953) and *Concrete Supply Company of Oak Ridge, Inc. v. Union Peoples Bank*, 540 S.W.2d 250, 251 (Tenn. Ct. App. 1976) held that, when an improvement is abandoned, the lien claimant must record its lien within 90 days from completion of the improvement or from termination of the lienor's contract for the lien to be effective against subsequent purchasers or encumbrancers. Because abandonment is neither completion of the improvement nor termination of the lienor's contract, the statute left the deadline for recording a lien when the improvement is abandoned open to debate. The Legislature, however, ended that debate with the 1977 amendments to the Tennessee Lien Law by adding abandonment among the events that triggered the 90-day period to record a lien and by defining abandonment.² With these changes to the Tennessee Lien Law, a lien claimant on an abandoned project would be able to use objective data to calculate the deadline for recording a lien. Much like a lien claimant on a completed project, the 1977

² Although the triggering event of abandonment and the definition of abandonment were placed in separate subsections of the statute by the compilers (i.e., §66-11-112(a) and §66-11-112(b)), 1977 Pub. Acts c. 373 reveals that the Legislature adopted the definition of abandonment as an integral part of the bill that added abandonment among the events triggering the 90-day period to record a lien.

amendments enable a lien claimant on an abandoned project to know that the 90-day period to record a lien has begun.

Or, so lien claimants thought until the decisions of the lower courts below. Upsetting the certainty that lien claimants thought was achieved with the 1977 amendments to the Tennessee Lien Law, the lower courts ruled that the 60-day cessation of operations period in section 66-11-112(b) runs concurrently with the 90-day period to record a lien in section 66-11-112(a). Not only does this ruling create confusion in what was thought to be a well-understood area of the Tennessee Lien Law, but if the ruling is left to stand, lien claimants under the former law would have only 30 days after a project is deemed abandoned within which to record a lien.

The lower courts reached this very troubling conclusion because they too narrowly focused on the facts and arguments advanced by the Appellees rather than the larger purpose of the Tennessee Lien Law. Contrary to the lower courts' ruling, giving a lien claimant 90 days to record a lien after the 60 days cessation of operations period is not tantamount to giving a lien claimant 150 days to record a lien. The lower courts reached this mistaken conclusion by focusing on the date no further work is performed instead of focusing on the date a lien claimant can *know* the 90-day period to record a lien has begun. To better understand the ASA's position, it is helpful to compare the information available to a lien claimant on a completed improvement with the information available to a lien claimant on a later-abandoned improvement. A lien claimant on a completed project can know, using its own observations, that, once work stops, no further work will be performed. Therefore, a lien claimant on a completed project can know that the 90-day period to record a lien has begun on the date work

stops. This is not so for a lien claimant on a later-abandoned project. Unlike a lien claimant on a completed project, a lien claimant on a later-abandoned project cannot know from its own observations that no further work will be performed once work stops. Because work stoppages on construction projects are a frequent occurrence, a lien claimant does not know if the work stoppage is a routine, temporary delay or the first day of what will eventually become an abandoned project. Therefore, a lien claimant on an abandoned project cannot know that the 90-day period to record a lien has begun on the date work stops. To give a lien claimant on a later-abandoned project the same ability to know that the 90-day period to record a lien has begun as a lien claimant on a completed project has, Tenn. Code Ann. 66-11-112(b) "deems" abandonment to occur after a 60-day cessation of operations. By so doing, a lien claimant on an abandoned project, using its own observations, can determine when operations have ceased for 60 days and, thereby, know that the 90-day period to record a lien has begun. In this way, a lien claimant on an abandoned project has equal time to record a lien as a lien claimant on a completed project has. Because the lower courts mistakenly calculated the 90-day period from the date work stops rather than the date a lien claimant can know the 90-day period has begun, the lower courts effectively cut the period to record a lien from 90 days after a project is deemed abandoned to 30 days.

While the lower courts' ruling significantly curtails the time period to perfect a lien after an abandonment under the former Tennessee Lien Law, it effectively eliminates a lien claimant's ability to perfect a lien after an abandonment under the current law. Unlike the pre-2007 version of the Tennessee Lien Law, which defined abandonment as a cessation of operations for a period of 60 days, the current definition of abandonment

is a cessation of operations for 90 days. Tenn. Code Ann. §66-11-112(b) (2007 ed.). So, if as the lower courts implicitly ruled, the 90-day period of cessation of operations runs concurrently with the 90-day period to record a lien, those asserting liens under the current law would have no time after abandonment within which to perfect a lien, making it impossible for a lien claimant on an abandoned project to preserve its rights against subsequent purchasers and encumbrancers. According to this Court's long-standing rules of statutory construction, courts are to presume that the Legislature does not intend to enact a useless statute and that the Legislature did not intend an absurdity. See *Medical, Inc. v. Veecher*, 312 S.W.3d 515, 527 (Tenn. 2010). The lower courts' ruling, when applied to the current Tennessee Lien Law, runs afoul of this well-recognized rule, however, because it would result in a lienor having a statutory right of priority over subsequent purchasers and encumbrancers that, in actuality, is impossible to perfect.

The error in the lower courts' ruling is particularly apparent when applied to subcontractors and suppliers. Unlike ETG, which was the prime contractor that both ceased operations and asserted a lien, most lien claimants are subcontractors and suppliers that are not responsible for ceasing operations and that often do not know why work on a project is not being performed. As far as they know, work is suspended only temporarily – to resume any day. For them, the only way to know that the 90-day period to record a lien has begun is to ascertain if operations on the project have ceased for the requisite period of time, thus amounting to an abandonment under Tenn. Code Ann. §66-11-112(b). And, because subcontractors and suppliers by the nature of their role on a project usually perform their work and leave the site, it is often difficult for them to

determine when operation first ceased. If, as the lower courts ruled, the period of cessation of operations runs concurrently with the period for recording a lien, the lien rights of even the most diligent subcontractors and suppliers under the pre-2007 version of the Tennessee Lien Law are likely to lapse by the time the project is deemed abandoned; and worse yet, the lien rights of all subcontractors and suppliers under the current Tennessee Lien Law will certainly lapse by the time the project is deemed abandoned.

When applied to the former Tennessee Lien Law, the lower courts' ruling undermines the Legislature's purpose for defining abandonment at all; but when applied to the current Tennessee Lien Law, the lower courts' ruling defeats that purpose altogether. Given that the Legislature added the abandonment provisions at issue in this case following this Court's decisions in *Bird Brothers v. Southern Surety Co.*, 139 Tenn. 11, 200 S.W. 978, 979 (1917) and *Tindell Home Center, Inc. v. Union Peoples Bank of Anderson County*, 543 S.W.2d 843, 845 (Tenn. 1976) and the Court of Appeals' decisions in *First State Bank v. Stacey*, 37 Tenn. App. 223, 227-28, 261 S.W.2d 245, 247 (1953) and *Concrete Supply Company of Oak Ridge, Inc. v. Union Peoples Bank*, 540 S.W.2d 250, 251 (Tenn. Ct. App. 1976), the Legislature's purpose in adding those provisions is revealed upon examining the statute in existence prior to the amendments. As the Court of Appeals observed in *Concrete Supply*, the 1972 version of the Tennessee Lien Law "fixed one of two alternative periods for such filing: (1) within 90 days after the building is demolished, altered, or completed; or (2) within 90 days after the claimant's contract expires or is terminated or he is discharged." *Id.* at 251. For both of these alternatives, a lien claimant can know immediately that the 90-day period

has begun: in the case of the demolition, alteration, or completion of the building, a lien claimant is able to see when the building is demolished, altered, or completed; and in the case of the expiration or termination of the lienor's contract or discharge of the lienor, the lienor knows immediately when its contract is terminated or has expired or when it is discharged. That being the case, the purpose of the abandonment amendments was to give a lien claimant on an abandoned project the same ability to know that the 90-day period to record a lien has begun. To accomplish that purpose, the Legislature "deemed" abandonment to occur after a cessation of operations for 60 days. By so doing, a lien claimant on an abandoned project has an objective means to know that the 90-day period has begun. The Legislature's use of the word "deemed" does not mean, as the appellate court ruled, that after a cessation of operations for the requisite period of time, the project is deemed to be abandoned on the date work first ceased. Rather, the Legislature used the word "deemed" to convey that, after a cessation of operations for the requisite period of time, the project is "deemed" abandoned at that time, even if the project was actually abandoned earlier. In this way, a lien claimant has an objective way to know how long it has to record a lien. And that is the thread that runs through the other triggering events in section 66-11-112(a) which start the 90-day period to record a lien. A subcontractor can objectively determine when the improvement is demolished, altered and/or completed or when its contract expires or is terminated as soon as those triggering events occur. But, if as the lower courts ruled, the date of abandonment relates back to the date work first ceased, a subcontractor does not know the 90-day period to record a lien has started until, in the case of the former Tennessee Lien Law, 60 days have already gone by, or in the case

of the current Tennessee Lien Law, all 90 days have gone by. This result would frustrate the Legislature's purpose of defining abandonment at all.

III. THE LEGISLATURE INTENDED THE REQUISITE CESSATION OF OPERATIONS PERIOD UNDER TENN. CODE ANN. §66-11-112(b) TO START UPON THE CESSATION OF ALL OPERATIONS, NOT JUST THE CESSATION OF OPERATIONS THAT QUALIFY AS "VISIBLE COMMENCEMENT OF OPERATIONS" OR THAT RESULT IN AN IMPROVEMENT TO THE PROPERTY.

According to the facts below, there is no dispute that ETG was performing work on site through February 13, 2007. The dispute was whether that work was sufficient to toll the start of the 60-day cessation of operation period under Tenn. Code Ann. §66-11-112(b). The trial court made the following ruling on this issue, which the appellate court affirmed:

The work performed by ETG at the Seven Lakes Subdivision before September 22, 2006, was pursuant to the parties' contract but such work was not within the meaning of the term "visible commencement of operations" as defined in Tenn. Code Ann. §66-11-104(a). The work done after December 26, 2006, and/or the work performed between February 6, 2007 and February 13, 2007, when ETG removed all of its equipment from the subdivision, was not the type work which would be within the definition of work necessary to qualify for the visible commencement of operations. Thus, as the court sees it, if such work does not count so as to start the lien's existence, *i.e.*, the visible commencement of operations, then such work should not extend the duration of the lien, *i.e.*, should not count as lienable work which extends the abandonment date.

(T.R. Vol. III at 328).

ASA respectfully submits that the Court should reverse this ruling for a number of reasons. First, under the Tennessee Lien Law, the concept of visible commencement of operations has only one application: to define the date when liens under the statute attach. See Tenn. Code Ann. §§66-11-101(17) and 66-11-104. No court has applied

the concept of "visible commencement of operations" in the manner it was applied by the lower courts.

Second, even a close reading of the former and current versions of the Tennessee Lien Law does not reveal any language to suggest that the term "operations" in section 66-11-112(b) is limited to those activities constituting "visible commencement of operations." Quite the contrary. "Visible commencement of operations" was already a defined term at the time the Tennessee Lien Law was amended to include a definition of abandonment. So, if the Legislature intended "operations" to mean those activities that amount to "visible commencement of operations," it would have said so. Since the term "operations" is not defined in the statute, it should be given its natural and ordinary meaning, which is simply: construction activities.

Third, the practical result of the lower courts' ruling is that a project can be deemed abandoned even if work is still underway.

Fourth, the Tennessee Lien Law clearly grants lien rights for work that does not qualify as "visible commencement of operations." On this point, the ASA adopts the following passage in the *amicus* brief by Rogers Group, Inc.:

For instance, the Legislature specifically excluded surveying from the list of work that would constitute the visible commencement of operations (see Tenn. Code Ann. §66-11-101(16)), and yet specifically provided for lien rights in favor of surveyors (see Tenn. Code Ann. §66-11-104).

Likewise, the statute specifically excludes from the activities constituting visible commencement of operations "demolition," (see Tenn. Code Ann. §66-11-101(16)), but in the same statute specifically provides that an improvement includes "demolishing" (see Tenn. Code Ann. §66-11-105) as a category of improvement for which lien rights exist (see Tenn. Code Ann. §66-11-102(a)).

The statute specifically excludes "excavating" from the list of activities triggering the visible commencement of operations (see Tenn. Code Ann. §66-11-101(16)), but specifically includes "excavation, cleanup or removal of hazardous and nonhazardous materials or waste from real property" (see Tenn. Code Ann. §66-11-101(5)) in the list of improvements entitled to lien rights (see Tenn. Code Ann. §66-11-102(a)).

The statute specifically excludes "clearing" from the list of activities triggering the visible commencement of operations (see Tenn. Code Ann. §66-11-101(16)) and yet specifically includes "removing" as a list of improvements (see Tenn. Code Ann. §66-11-101(5)) entitled to lien protection (see Tenn. Code Ann. §66-11-102(a)).

(*Amicus* Brief by Rogers Group, Inc. p. 5-6).

This means that if the lower courts' ruling is left to stand, a project could be deemed abandoned not only if work is still underway, but even if lienable work is still underway.

Fifth, the lower courts' analysis of whether ETG's work was in furtherance of the contract or in furtherance of its own interests is not relevant to the definition of "abandonment." The definition of abandonment plainly requires a "cessation of operations," not the cessation of only those activities that qualify as "visible commencement of operations" and not, as the Appellees advocate, the cessation of operations that result in a permanent improvement. If, as the lower courts ruled, the purpose of the work determines abandonment, a lien claimant would have to divine the reason why work was being performed in order to determine how long it had to record a notice of lien. Again, the error of the lower courts' analysis is particularly apparent when it is viewed in the context of subcontractors and suppliers. As stated earlier, subcontractors and suppliers usually perform their work and leave the site, and they usually do not know why work is being performed on the project. In this case, for example, a subcontractor would not know if ETG was performing erosion control work

on site pursuant to its contract with the owner or to further its own interests. A subcontractor would only know that work was being performed. Since the definition of abandonment requires a cessation of operations, a subcontractor would naturally conclude that, with work underway through February 13, 2007, operations had not ceased on the project until that date and, therefore, the requisite cessation of operations period did not begin until that date. However, if the lower courts' ruling is left to stand, the requisite cessation of operations period could lapse before a subcontractor is able to determine that it ever began.

As to Appellees' argument that the work ETG performed from December 2006 through February 2007 was not an "improvement" within the meaning of §66-11-101(7) and, therefore, does not toll the cessation of operations period, this argument is flawed for several reasons. First, there is no language in the definition of abandonment to suggest that "cessation of operations" means cessation of operations that result in an "improvement." Second, Tennessee courts long ago moved away from the notion that work is only lienable if it results in an improvement to the property. In *Hamilton National Bank v. Long*, 226 S.W.2d 293 (Tenn. 1949), this Court considered a petition to rehear on the issue: "That even if Scott [the subcontractor] had a lien at the time the garnishment was served for labor and material, he would not have a lien for that part of his claim which represents profit and supervision." Although the Court denied the petition to rehear on different grounds, the Court gave the following guidance on whether profit and supervision are lienable:

. . . . we have made some investigation of the authorities, including those cited in the brief of the appellant, and find that the rule is that: "Profits and commissions ordinarily are not lienable items unless included in the

contract price or in the reasonable worth of the labor or materials furnished, no lien may be allowed for profits or commissions not earned." 57 C.J.S., Mechanics' Liens, page 540, § 49. Among other cases cited as authority for the above statement is the case of *Bond v. W.T. Congleton Company*, 278 Ky. 829, 129 S.W.2d 570, wherein it is said: "Numerous cases are cited in support of the principles stated in the text and we are in accord with the principles laid down therein. The contractor himself necessarily performs labor in the purchasing of and paying for the necessary labor in the construction of a building and it appears reasonable to us that labor thus performed by the contractor is lienable to the same extent as any other labor that goes into the building where the contract provides for the payment of a definite percentage as compensation for this labor to be performed by the contractor." Page 572 of 129 S.W.2d.

We are in accord with this reasoning. The contract herein provided for a stipulated sum plus a percentage for doing this work. We feel that it would be a lienable item providing it was necessary to assert the lien. *Hamilton National Bank v. Long*, 226 S.W.2d at 297-8. (Emphasis added).

After *Hamilton National Bank*, the courts did not take up this issue again until 1995 when the Court of Appeals decided *Winter v. Smith*, 914 S.W.2d 527 (Tenn. App. 1995). In *Winter*, one of the issues the property owner raised on appeal was that the trial court improperly allowed a trucking company to include rock hauling charges in its lien. The property owner asserted that since rock hauling charges are not work on the site that results in an improvement to the real property, those charges are not lienable. In deciding this issue, the Court of Appeals looked at the intended purpose of the Tennessee Lien Law. In determining that the rock hauling charges were lienable, Justice Koch, then writing for the Court of Appeals, wrote,

Gary Farmer Trucking would not be a "laborer" or a "person doing any portion of the work" if it were simply delivering Anchor Rock's stone to the job site. Delivering materials is not work on the site of the improvement. However, Gary Farmer Trucking's activities relating to the spreading and compaction of the stone was work on the site of the improvement, and so these activities qualify it as a laborer and as a person doing a portion of the work. This work was not merely incidental to Gary Farmer's contract

since it warranted an increase in the final cost of the delivery of the stone. Accordingly, the trial court correctly determined that Gary Farmer Trucking was entitled to a lien against Ms. Winter's property. *Winter v. Smith*, 914 S.W.2d at 544.

Given these decisions, it would be an odd construction of the statute indeed if there could be a "cessation of operations" while lienable work is underway.

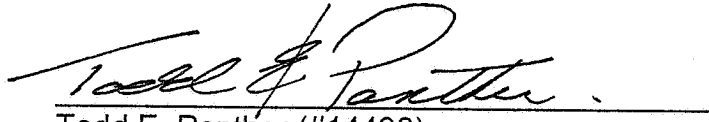
Third, subcontractors and suppliers would not know if the work being performed will result in a permanent improvement to the property or not. Unlike the courts, a lien claimant does not have the benefit of hindsight to know whether the work being performed will result in a permanent improvement to the property. That being case, "cessation of operations" under §66-11-112(b) should not be interpreted to mean a cessation of only those operations resulting in an improvement, for doing so would make it practically impossible for a subcontractor and supplier to determine when the requisite cessation of operations period begins and, therefore, when the 90-day period to record a lien ends. The ASA respectfully submits that the only workable interpretation of "cessation of operations" in §66-11-112(b) is the cessation of all operations, not just operations that qualify for "visible commencement of operations" or that result in an improvement to the property. Otherwise, the requisite cessation of operations period is likely to lapse before most lien claimants are able to determine it ever began.

CONCLUSION

For the foregoing reasons, the ASA respectfully urges the Court to grant ETG's application for permission to appeal; reverse the decisions below; and hold that (1) for an abandoned improvement, the Legislature intended the 90-day period to record a lien

under Tenn. Code Ann. §66-11-112(a) to start after the requisite cessation of operations period under Tenn. Code Ann. §66-11-112(b), and (2) the Legislature intended the requisite cessation of operations period under Tenn. Code Ann. §66-11-112(b) to start upon the cessation of all operations, not just the cessation of operations that qualify as “visible commencement of operations” or that result in an improvement to the property.

RESPECTFULLY SUBMITTED,



Todd E. Panther (#14438)

Tune, Entekin & White, P.C.

315 Deaderick Street, Suite 1700

Nashville, Tennessee 37238

(615) 244-2770 – telephone

(615) 244-2778 – fax

tpanther@tewlawfirm.com – e-mail

*Attorney for the American Subcontractors
Association and the American Subcontractors
Association of Tennessee*

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been served, via the method(s) indicated below, on the following counsel of record, this the 4th day of JANUARY, 2011.

- Hand
- Mail

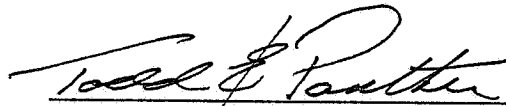
Brett A. Oeser
Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.

- Fax
- Fed. Ex.
- E-Mail
- CM/ECF

211 Commerce Street
Baker Donelson Center, Suite 800
Nashville, TN 37201

- Hand
- Mail
- Fax
- Fed. Ex.
- E-Mail
- CM/ECF

Steven M. Jacoway
McKinley S. Lundy, Jr.
Patrick, Beard, Schulman & Jacoway, P.C.
537 Market Street, Suite 202
Chattanooga, TN 37402


Todd E. Parther (#14438)