

An Exploration of Whether the Mechanic's Lien Applies to the Work outside the Structure and the Non-vital Repair

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Abstract

The first paragraph of Article 513 of Civil Code provides, “When the contract of hire of work is for the construction of a building or other works on land or for vital repairs on such building or works . . .”. Strictly speaking, the paragraph only regulates “mechanic's liens apply to vital repairs”, but it does not regulate directly “whether mechanic's liens apply to non-vital repairs or not”. It does not exclude “the work outside the structure”, either. Although the past writings in our country touched on this dispute slightly and presented different views, there is no paper specifically devoted to this question. However, this is an important practical question. Generally speaking, court judgments in the past considered that contractors held no liens described by this provision because of “works outside the structure or non-vital repairs in dispute” very often. It is necessary to examine this opinion. Furthermore, known from the opinion of the practice, the Supreme Court, the High Courts, and the District Courts often determine “the vital repairs” and “the structure” of the building differently. This study explores said issues in detail mainly under the perspective of documentary analysis, and in addition, of law and economic analysis and comparative law. This study makes suggestions of interpretation and legislation on the provision.

This study holds that “contractors who work outside the structure and for non-vital repairs” shall have liens under the perspective of the main purpose of the provision of a mechanic’s lien. Even though we insist on the element of “the structure of the building or vital repairs” of mechanic’s liens and consider that

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this provision shall not apply by analogy because of its very clear meaning, we shall explain it broadly as possible. If we have opportunity to modify this provision in the future, we can take repealing the element of “vital repairs” into consideration.

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