



ALAN WILSON
ATTORNEY GENERAL

July 10, 2017

D. Malloy McEachin, Jr., Esquire
Florence County Attorney
McEachin & McEachin, P.A.
323 S. McQueen Street
Florence, South Carolina 29501

Dear Mr. McEachin:

Attorney General Alan Wilson has referred your letter to the Opinions section regarding a request to release real property from a mechanic's lien under S.C. Code Ann. § 29-5-110 (2007). Your letter describes the issue as follows:

The Clerk of Court for Florence County has contacted me concerning a request of a real property owner for the release of a mechanic's lien upon its real property. The mechanic's lien has been timely filed. The property owner seeks to release the real property from the mechanic's lien by obtaining an irrevocable line of credit dedicated to the contractor should it prevail on its mechanic's lien.

S.C. Code Ann. § 29-5-110 is the statutory authority to discharge real property from a lien upon the filing with the Clerk of Court a written undertaking in an amount equal to one and one-third times the amount of the claimed mechanics lien. This code section provides three mechanisms to accomplish the release: cash, a bond, or securities of the United State of the State of South Carolina.

An irrevocable credit line is not one of the listed undertakings in the statute.

Law/Analysis

It is this Office's opinion that a court most likely would find S.C. Code Ann. § 29-5-110 does not permit the release of a mechanic's lien by filing an undertaking secured by an irrevocable line of credit dedicated to the contractor. This Office's opinion is informed by the text of Section 29-5-110 and the rules of statutory interpretation. Statutory interpretation of the South Carolina Code of Laws requires a determination of the General Assembly's intent. Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) ("The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible."). Where a statute's language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000); see also Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992) ("[The words of a statute] must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand its operation."). "A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers." State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), *reh'g denied* (Aug. 5, 2015).

Next, with the rules discussed above in mind, we examine the text of the statute to guide our analysis. Section 29-5-110 reads as follows:

At any time after service and filing of the statement required under § 29-5-90 the owner or any other person having an interest in or lien upon the property involved may secure the discharge of such property from such lien by filing in the office of clerk of court or register of deeds where such lien is filed his written undertaking, in an amount equal to one and one-third times the amount claimed in such statement, secured by the pledge of United States or State of South Carolina securities, by cash or by a surety bond executed by a surety company licensed to do business in this State, and upon the filing of such undertaking so secured the lien shall be discharged and the cash, securities or surety bond deposited shall take the place of the property upon which the lien existed and shall be subject to the lien. In the event of judgment for the person filing such statement in a suit brought pursuant to the provisions of this chapter, such judgment shall be paid out of the cash deposited or, in event of pledge of securities, it shall be paid from the proceeds of a sale of so much of the pledged securities as shall be necessary to satisfy such judgment or, in event of the filing of a surety bond, the surety company issuing such bond shall pay such amount found due, not to exceed the amount of the bond. Unless suit for enforcement of the lien is commenced as required by § 29-5-120, the undertaking herein required shall be null and void and the principal therein shall have the right to have it canceled and such cash or securities deposited or pledged or surety bond filed shall be released from the lien herein provided.

S.C. Code Ann. § 29-5-110 (emphasis added).

Compliance with these statutory procedures “allows a property owner to release his property from the mechanics lien.” *Cohen's Drywall Co. Inc. v. Sea Spray Homes, LLC*, 374 S.C. 195, 199, 648 S.E.2d 598, 600 (2007). After release, the owner can “convey or encumber the property free and clear of the mechanic’s lien.” *Id.* The property owner or persons with an interest in the property must be sure to strictly comply with the statute to release the property as security from the mechanic’s lien or the property could be subject to foreclosure proceedings to satisfy the lien. See *Williams v. Vanvolkenburg*, 312 S.C. 373, 376, 440 S.E.2d 408, 410 (Ct. App. 1994) (ordering foreclosure sale of property to satisfy a \$4,640 judgement where property owners’ deposit of \$14,329.33, which was exactly the lien amount, with the Horry County Clerk of Court for release did not amount to “one and one-third times the amount” of the mechanic’s lien).

While our research has not uncovered a South Carolina state court decision specifically addressing the use of an irrevocable line of credit to release a mechanic’s lien, case law applying Section 29-5-110 suggests a court is unlikely to approve releasing a mechanic’s lien secured by such a pledge. As noted in your letter, Section 29-5-110 allows for the release of a mechanic’s lien on real property by filing a “written undertaking... secured by” pledging one of three listed options: United States or State of South Carolina securities, cash, or a surety bond executed by a surety company licensed to do business in this state. Your letter also notes that an irrevocable line of credit is not one of the listed options. The Supreme Court of South Carolina stated in *Stephenson Fin. Co. v. Burgess*, 225 S.C. 347, 353, 82 S.E.2d 512, 515 (1954), that it is “quite clear that [Section 29-5-110] was not intended to release property from a statutory lien by the filing of an undertaking unless expressly permitted by statute, and in the form of an undertaking in which there is very little chance of insolvency.” See also *Shelley Const. Co. v. Sea Garden*

Homes, Inc., 287 S.C. 24, 28, 336 S.E.2d 488, 491 (Ct. App. 1985) (explaining that the court was “not at liberty, under the guise of construction, to alter the plain language of the [Section 29-5-110] by adding words which the Legislature saw fit not to include” when it declined to require filing a notice of pendency of an action). Thus, because an irrevocable line of credit is not one of the listed options in Section 29-5-110 and our state courts which have interpreted the statute required strict compliance, it is this Office’s opinion that a court would likely find Section 29-5-110 does not permit the release of a mechanic’s lien by filing an undertaking secured by an irrevocable line of credit.

Conclusion

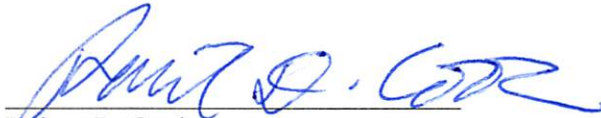
It is this Office’s opinion that a court would likely find Section 29-5-110 does not permit the release of a mechanic’s lien by filing an undertaking secured by an irrevocable line of credit. This Office is, however, only issuing a legal opinion based on the current law at this time and the information as provided to us. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. Additionally, you may petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20 (1976 Code, as amended). If it is later determined otherwise, or if you have any further questions or issues, please let us know.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General