



## Examining the Timing of a Subcontractor's Lien Notices

In [Espinoza Valle v. Hertz Electric, LLC](#), the Texas Court of Appeals in Austin examined whether a subcontractor had properly perfected a lien under Chapter 53 of the Texas Property Code. The subcontractor provided written notice to the general contractor on March 13, 2018, for "Electrical Wire labor and material" furnished and stated, "All of the Claim Amount [\$26,400] has accrued and is past due" and that "[e]nclosed are copies of the statements or billings that constitute this claim." The subcontractor attached two invoices to the notice, dated October 2, 2017, and November 13, 2017, respectively which totaled \$26,400.

The subcontractor argued in its affidavit testimony that it "provided labor and materials to the Project until January 2018" and that this was evidence that the subcontractor "was working" on the project in January, and, therefore, its March 13 notice was timely because it was filed by the fifteenth day of the second month after January.

However, the appellate court noted that the subcontractor allegedly working on the project in January was not relevant to whether the subcontractor had timely noticed the work invoiced on October 2, 2017, and November 13, 2017.

Instead, the appellate court found that the subcontractor was required to provide Hertz notice by December 15, 2017, for work and materials provided in October 2017 and by January 15, 2018, for work and materials provided in November 2017. Without any such evidence—the appellate court found that the subcontractor's March 13, 2018 notice was untimely and insufficient to perfect their lien on the project.

This opinion provides a reminder to all potential lien claimants that compliance with Chapter 53 of the Texas Property Code's notice and filing requirements are prerequisites to an action to foreclose on a mechanic's and materialman's lien.

For more information, please contact [Kenton Andrews](#).