

general contractors, except that they need not even provide notice of intent to claim a lien. In short, the Maryland mechanic's lien law permits an owner to be deprived of a significant property interest without notice or a prior hearing, and thus is unconstitutional unless it provides protections such as those discussed in Mitchell [v. W. T. Grant, 416 U.S. 600 (1974)] and North Georgia Finishing [Inc. v. Di-Chem, Inc., 419 U.S. 601 (1975)] ... " Id.

The safeguards demanded by Mitchell and North Georgia included the provision of a sworn affidavit setting forth the basis for the lien, the filing of a bond by the lienholder to protect the debtor, preliminary scrutiny of the affidavit by a judicial officer, and the opportunity for a prompt postseizure hearing. As the Court pointed out in Barry, although the property owner might seek a declaratory judgment to invalidate the mechanic's lien, according to statute he was not entitled to an immediate hearing as contemplated by the Supreme Court, but only to a "hearing in the ordinary course of administering the court's trial assignment calendar." Barry Properties, supra, at 31-32.

Senate Bill 473 contains none of the safeguards which would overcome the absence of notice or a prior hearing. Moreover, Senate Bill 473 would not satisfy the procedures contained in the Arizona mechanic's lien law upheld in Spielman-Ford, Inc. v. Hanson's, Inc., 379 F. Supp. 997 (D. Ariz. 1973) (per curiam), aff'd, 417 U.S. 901 (1974) and discussed in Barry Properties, supra, at 33-34.

In summary, under Senate Bill 473 there is a lien which arises immediately upon the filing of a "statement of homeowner's association lien" in the land records and in a nonjudicially determined amount, thereby leaving the property owner wholly unable to dispose of his property pending the ultimate determination of the amount of the lien in a foreclosure proceeding. If state action existed, clearly, such a scheme would constitute a taking of property without due process of law under the teaching of Barry Properties. See also Residential Industrial Loan Co. v. Weinberg, supra. However, because there is considerable doubt as to whether the remedy of Senate Bill 473 involves State action, we cannot conclude that the bill is unconstitutional.

Secondly, the title of Senate Bill 473 provides that certain assessments by homeowners' associations are liens on the homes of their members. The body of the bill, however, provides that the lien attaches to not only the "house," but also to the "land under the house" and "any and all rights or property to which the member may be entitled by virtue