



CONSTRUCTION LAW E-UPDATE

MECHANICS' LIEN SALVAGED ...BY A HAIR

By Henry L. Goldberg, Managing Partner, Goldberg & Connolly

MAY 2014

As we have often discussed in this column, the Mechanics' Lien Law is designed as a remedial statute intended to benefit subcontractors in the event of non-payment. Subcontractors must recognize, however, that they must do their part to protect their interests. A New York court was recently confronted with the issue of whether a mechanics' lien for a public improvement should be summarily discharged for allegedly misidentifying information.

In this case, a subcontractor was terminated on a public project and, as a result, the subcontractor, and its second tier subcontractor, each filed mechanics' liens. Subsequently, both subcontractors jointly commenced an action to foreclose on the liens among other causes of action.

The defendant general contractor moved for summary judgment, alleging that plaintiffs' lien notices were facially defective because there was an inconsistency between the mechanics' liens and several other documents as to the final date that the subcontractor performed labor on the project. The mechanics' liens identified the final date of labor as approximately two weeks earlier than the dates identified by other project documents. Additionally, the defendant general contractor alleged that the amount claimed in the mechanics' liens was for less than the amount that was alleged in the complaint for unpaid labor, materials and services.

The court in its ruling stated that if a lienor fails to substantially comply with the requirements set forth in the Lien Law, its public improvement lien may be summarily discharged.

The court further clarified that where a lienor fails to accurately include at least two material elements of a lien notice, it cannot be deemed to have achieved substantial compliance. Pursuant to this standard, the court denied defendant's summary judgment motion. The court, in not summarily discharging the liens, held that the alleged discrepancies of information provided in the liens (i.e., the amount of the lien and the date of last work) were not held to be material.

It is incumbent upon all subcontractors to carefully prepare mechanics' liens and scrutinize that the contents of the liens are accurate before filing them. The Lien Law requires that specific information be included in a public improvement mechanics' lien, including: (1) the name and residence of the lienor; (2) the name of the contractor or subcontractor for whom the labor was performed or materials furnished; (3) the amount claimed to be due or become due, (4) the date when due; (5) a description of the public improvement; (6) the kind of labor performed and materials furnished; (7) materials actually manufacturer but not delivered; and (8) a general description of the contract. These are straightforward requirements. **GET THEM RIGHT.**



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G&C COMMENTARY

These subcontractors were fortunate to have their liens survive dismissal efforts. They dodged a bullet, but are not “off the hook.” The validity of the liens may still be disputed at trial. Getting paid the right amount can be challenging enough. Avoid having to litigate the sufficiency of your lien.

Also, importantly, remember that when filing a mechanics' lien, you may have another chance to get it right. If you discover that your mechanics' lien is defective (e.g. you named the wrong party or did not properly describe the property) or inadequate (e.g. did not include all amounts owed to you), immediately confirm when the time period to file expires. (For a public improvement lien, you must file a mechanics' lien within thirty days after completion and acceptance of the project. As for a private improvement lien, you must file a mechanics' lien within eight months from the last date of work performed.)

If you are still within the applicable period, you may withdraw the original lien (by filing a release of lien) and simultaneously

file a subsequent “corrective lien”. Rather than spend time, energy and legal fees attempting to “resurrect” a flawed lien, or, rely upon the “mercy” of a judge or jury to determine whether your lien is defective or not, promptly start over and re-file a new lien within the original filing period.

Jeffrey I. Scott, an associate with Goldberg & Connolly, assisted with the preparation of this article.

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