

Contractual Limitation Period Shortens Time To Enforce Mechanic's Lien Rights

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One of the most effective tools available to a contractor or subcontractor seeking payment on a construction project is the ability to file a mechanic's lien. This statutory right to file and enforce a mechanic's lien cannot not be waived by contract.

Contractors and subcontractors performing improvements to private properties must file a mechanic's lien within four or eight months of the last date of performing work on the project, depending on whether the improvement is residential or commercial. Additionally, where the lien is for retainage, the lien may be filed within ninety days after the date the retainage was due to be released.

Subcontractors performing improvements to public properties must file a mechanic's lien at any time before the public improvement is completed and accepted by public owner or within thirty days after such completion and acceptance. Both public and private liens are valid for one year and an action to foreclose on the mechanic's lien must be commenced within that one year period or within the time of any properly extended lien.

In a recent case, the court was required to determine whether the subcontractor waived its right to commence an action to foreclose its lien based upon the limitation on actions provision of the subcontract.

The action arose out of a private construction project in New York City. The plaintiff was the general contractor and the defendant was the subcontractor hired by the general contractor to install a sprinkler system. A dispute arose as to whether the sprinkler subcontractor negligently performed its work causing water damage to the premises after a fire sprinkler head malfunctioned. The subcontractor did not assert a counterclaim seeking to foreclose its lien.

In the litigation, the general contractor made a motion to cancel the sprinkler subcontractor's lien. In support of its motion, the general contractor relied on the subcontract between the parties, which specifically stated that both parties agreed that any lawsuits to preserve lien claims must be initiated within one year of the date the cause of action accrued. The general contractor argued that more than one year passed since the subcontractor filed the lien and last performed work on the site. In opposition, the subcontractor claimed that it timely moved for an extension of the lien and that its lien is still valid under the Lien Law.

The court held that it was undisputed that the parties mutually agreed that any actions brought regarding liens must be commenced within one year from the time the cause of action accrued. Based upon that finding, the court held the mechanic's lien should be canceled. Citing to the provision in the subcontract regarding liens, the court held that

the purpose of this provision was to force the subcontractor to bring an action arising out of the lien within one year and it did not allow the subcontractor to be able to hold an unenforceable lien on the property.

Of note, the court disposed of the Lien Law formalities in reaching this decision. Ordinarily, the general contractor would have been required, pursuant to Lien Law § 59, to send a notice to the subcontractor requiring the subcontractor to commence an action to enforce the lien. In the interests of judicial efficiency and in preserving the parties' resources, the court canceled the lien because the subcontractor would have been unable to commence an action given that more than one year had passed since its cause of action accrued or, in the alternative, it would have commenced a frivolous action that would be dismissed as untimely.

Commentary

This case is lesson to all contractors and subcontractors to review their respective contracts to determine when an action under the contract or to enforce their mechanic's lien rights must be commenced. As the subcontractor in this action painfully learned, although it properly extended its mechanic's lien under the Line Law, its failure to timely commence an action pursuant to the subcontract resulted in an unenforceable lien on the property and its lien was canceled.

There is concern that the court may have been wrongly issued its decision. Lien Law § 34 states that it is void as against public policy for any contract or agreement to waive the right to file or enforce a lien. In this instance, the right to file or enforce the lien was technically not waived, however, by contract the parties agreed to shorten the statutory time period for enforcement of a lien. This is troubling because the subcontractor properly extended its lien pursuant to Lien Law § 17, but was left without lien rights because it failed to commence its lien foreclosure action within the shortened limitation period under the subcontract. Based upon this court decision, all contractors and subcontractors should review their respective contracts and confirm when they are required to enforce their mechanic's lien rights.

When to file and enforce a mechanic's lien are important watershed moments and cannot be done in a vacuum. Feel free to contact me to discuss mechanic's liens and the steps required to successfully enforce same.