

Improperly Served Lien Discharged

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Mechanic's Liens are an important and valuable tool for contractors, subcontractors and suppliers to utilize when payment for labor, materials and services actually furnished to a project have not been paid. For private mechanic's liens, the lien attaches to the real property and for public mechanic's liens the lien attaches to the public fund. Among other things, public and private mechanic's liens when filed create hurdles for upstream contractors to receive payment and, sometimes, in the case of private owners, may prevent the owner from receiving funding. While there are other distinctions between private mechanic's liens (commercial and residential) and public mechanic's liens, all mechanic's liens are created by statute.

There are limited instances where a mechanic's lien (public and private) can be canceled or discharged summarily in a special proceeding. Such instances are when there are defects on the face of the mechanic's lien, e.g., misdescription of the real property/project, naming the wrong owner, filing the mechanic's lien late and defects in service. Other issues, like the amount of the mechanic's lien, the items that make up the mechanic's lien and whether the amounts are actually owed must be determined in a mechanic's lien foreclosure action. The statutory service requirements was at the forefront of a recent case.

In the recent case, it was undisputed that a supplier on a private improvement project delivered all of the goods and merchandise it was required to deliver pursuant to a purchase order and that it was not paid for same. As a result, it timely filed a Notice of Mechanic's Lien (the Lien) with the proper county clerk and then commenced an action to foreclose the Lien.

After the parties answered the supplier's complaint, the upper tier contractor and its subcontractor made a motion for summary judgment seeking discharge of the Lien and dismissal of the complaint. They argued that the Lien was null and void and unenforceable because the supplier failed to serve a copy of the Lien on the upper tier contractor. In opposition to the motion, the supplier alleged substantial compliance with the Lien Law and argued that liberal construction of Lien Law warranted the denial of the motion.

In issuing the decision on the motion, the court examined New York Lien Law and, in particular, Lien Law § 11-b. Specifically, the court noted that Lien Law § 11-b requires that a lienor having a direct contractual relationship with a subcontractor or sub-subcontractor, but not with a contractor, must serve a copy of the notice of lien by certified mail to the contractor. The court further noted that the failure to file proof of such a service with the county clerk within thirty-five days after the notice of lien is filed shall terminate the notice as a lien.

The court disagreed with the supplier's argument concerning substantial compliance

because the Lien Law, which is in derogation of common law, requires strict compliance. Indeed, even where, as here, the contractor has actual notice of the filing of the Lien, the Lien Law nevertheless still requires the Lien to be served by certified mail to the contractor, and such notice requirement is a critical element of the statute. The court held that the failure to comply with such certified mailing requirement is not a *de minimis* deviation that can be overlooked or waived. Ultimately, the court held that the supplier failed to comply with the statute and, therefore, the court granted summary judgment and canceled the Lien.

Commentary

Compliance with the Lien Law is mandatory. Any failure can result in the discharge or canceling of a mechanic's lien. This means that even if, facially, all statutory mandates are met, including, the mechanic's lien names the proper parties and the proper real property/project is identified (including section, lot and block for private mechanic's liens), it must be timely filed and served on the proper individuals and entities and proof of such service must also be timely filed.

Here, the supplier, with an otherwise meritorious claim for goods and materials furnished, lost its mechanic's lien rights because of the failure to properly serve the necessary parties and timely file proof of such service. As a result, the court discharged the Lien and dismissed the supplier's complaint. While the supplier may still be able to assert a breach of contract action against the party with which it contracted, it has lost the value of having the Lien and including other parties that may have more wherewithal to pay for the goods and services provided.

Feel free to call me to discuss the New York Lien Law.