

Lapsed Liens Cannot Be Revived

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The filing and enforcement of mechanic's liens may often prove to be the only way to obtain payment for work, labor, services and materials performed and/or provided on a construction project because the mechanic's lien encumbers the real property (private project) or the construction fund (public project). The respective mechanic's liens must be resolved by the owner (public or private) to close out projects and, in the case of private projects, a mechanic's lien may result in a mortgage default or prevent the owner from refinancing or selling the real property.

Mechanic's liens and the foreclosure of same are creatures of statute and the courts will rigidly enforce the provisions of the New York Lien Law. Contractors and subcontractors may be familiar with the operative limitation periods for filing mechanic's liens and sometimes handle this process without legal assistance. It is after the filing of the mechanic's liens that contractors and subcontractors can get tripped up and, if an operative date is missed, they may ultimately lose their lien rights.

In a recent case, the Appellate Division was asked to determine whether a timely filed mechanic's lien lapsed by operation of law thereby releasing the real property from the encumbrance of the mechanic's lien. In this case, the contractor on a home improvement project timely commenced an action to foreclose on its mechanic's lien and filed a notice of pendency against the subject property. Litigation ensued and over three years later, the homeowner moved to dismiss the contractor's cause of action to foreclose the mechanic's lien and have the mechanic's lien and notice of pendency dismissed on the ground that the lien expired with the notice of pendency, because the notice of pendency was not timely extended. Pursuant to Lien Law §17 a mechanic's lien expires one year after filing unless an extension is filed with the County Clerk or an action is commenced to foreclose the lien within that time and a notice of pendency is filed. Pursuant to New York Civil Practice Laws and Rules 6513, a notice of pendency is effective for a period of three years from the date of filing. While a notice of pendency may be extended for additional three year periods, upon a showing of good cause, the extension must be requested prior to the expiration of the prior notice and a lapsed notice of pendency may not be revived.

The Appellate Division, in reviewing the record, found that the contractor had requested an extension of the notice of pendency after the notice of pendency expired and, therefore, the contractor could not revive the lapsed notice of pendency. The court ultimately held that the mechanic's lien expired with the notice of pendency and directed the Clerk to remove the notice of pendency and mechanic's lien from the County land records. While the contractor was able to continue to maintain its breach of contract cause of action, it no longer had the security of the real property to satisfy any potential judgment.

Commentary

Mechanic's liens must be monitored so that they do not lapse. This case shows the court's strict application of the Lien Law and missing a date is fatal to a lien. This case, however, is instructive in that it reminds contractors and subcontractors that when multiple contractors or subcontractors file mechanic's liens on a project, their respective liens are continued when one lienor timely commences an action and files a notice of pendency prior to the one year expiration of the lien. However, as this case also holds, once the notice of pendency lapses, all mechanic's liens filed against the real property that are relying on the notice of pendency also lapse.

As good practice, after an action is commenced to foreclose a mechanic's lien, all lienors should file their own notice of pendency and closely follow for the expiration date of the respective notices of pendency. This practice will ensure that all of the mechanic's liens do not lapse if, somehow, the plaintiff is the only party to file a notice of pendency and fails to extend the notice of pendency as the plaintiff/contractor did in this case. Another good practice is to obtain the Court-ordered extension of the notice of pendency prior to the expiration date of the original filed notice of pendency. This means that a contractor or subcontractor should not merely request the extension, but also obtain the Court-ordered extension prior to the expiration date.

Feel free to contact me to discuss Mechanic's Liens and the steps required to successfully enforce same.