

Public Improvement Lien With Misdescription of Project Found Defective

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The New York Lien Law's creation of mechanic's lien rights on public improvement projects is an attempt to make sure that those individuals and entities that are actually improving the public projects are protected and are not left unpaid after the work and/or materials are provided and furnished. However, not every individual and entity performing work on a public improvement project has mechanic's lien rights. Lien Law §5 specifically limits such lien rights to subcontractors and materialmen to general contractors and second tier subcontractors. Liens can be properly filed for the principal plus interest upon the value or agreed price of labor, including benefits and wage supplements due and payable for the benefit of any person performing labor or materials.

The information required to be included in a notice of lien is also governed by the New York Lien Law. The notice of lien, among other things, needs to state the name and office location of the lienor, the owner of the public improvement project, the name of the general contractor (or subcontractor), the labor performed or materials furnished and the agreed price or value thereof, the amount of unpaid labor and/or materials, the property (or public improvement project) with a description sufficient for identification. A lienor's failure to state the name of the true owner or contractor or a misdescription of the true owner will not affect the validity of the lien. However, there are a limited number of instances where a court can summarily discharge a lien based upon a defect on the face of the lien. One of those such instances was discussed in a recent court decision.

A subcontractor performing work for an agency in New York City filed a mechanic's lien for labor performed on a public improvement project. The general contractor obtained a lien discharge bond and filed same with the public owner in order to discharge the subcontractor's lien. The subcontractor then filed a second lien against the project, which was identical to the first lien. The only difference between the first and second lien was the identification of the project. The first lien improperly identified the project, while the second lien correctly identified the project.

The general contractor commenced a special proceeding to have the first lien discharged and vacated because of the defects in the description of the project and based upon the fact that it was duplicative of the second lien. The subcontractor opposed the application.

In granting the discharge of the first lien, the court held that by misnaming the project the subcontractor failed to comply with the requirements of Lien Law §9. By misnaming the project, the subcontractor failed to fully and completely provide the project information as required by the Lien Law. The court further held that the first lien was defective and ordered that the lien be vacated.

Commentary

The subcontractor in this case was fortunate when it realized its mistake of misnaming the project when it properly and timely filed the second mechanic's lien (within 30 days of completion and final acceptance by the owner). Had the time to file a mechanic's lien expired when the deficiency of the first lien was discovered, the subcontractor would have been left without a valuable lien law remedy. Because the Lien Law is a remedial statute, once the lien is found to be defective and the time to file a lien has expired, the courts do not have the power to extend such filing deadlines.

This case provides a valuable lesson for general contractors and subcontractors on public projects. General Contractors should scrutinize liens when they are received and consider options of commencing a special proceeding to have the lien discharged, if key information is missing. Improperly filed liens are costly to the general contractor. Most public owners will withhold payments to general contractors of up to one and a half times the value of the lien. To avoid such withholding, a general contractor can have the lien discharged by obtaining a discharge bond, however, there are also costs associated with obtaining a lien discharge bond. For subcontractors, materialmen and sub-subcontractors more time and attention must be given to make sure that necessary and statutorily required information is included in the lien notice. For the most part, the public owner will accept any lien for filing and it will not scrutinize and/or reject a lien if information is not provided. This is unlike private liens filed with the County Clerk where the real property is located. For private liens, a clerk will scrutinize and reject a lien if the property address with section, block and lots not are included in the lien.

There are substantially more potential pitfalls with Public Improvement Mechanic's Liens than there are with private Notices of Mechanic's Liens. In addition to the timeliness component and the required content of the lien, the Public Improvement Lien must be filed with the proper representatives of the public owner and, in certain circumstances, a lien must be served and filed with a completely different public entity. While subcontractors, materialmen and sub-subcontractors can certainly properly file Public Improvement Liens, they should contact an attorney to ensure that the lien is properly and timely served and filed. Failing to properly serve and file a Public Improvement Lien is too great of a risk for such an important remedy.

Feel free to contact me to discuss liens on public or private projects.