



nerej

Fletcher Tilton building blocks: Contractor must be perfect when recording mechanic's lien - by Adam Ponte

September 21, 2018 - Construction Design & Engineering

Adam Ponte,
Fletcher Tilton PC

In our December 2016 article on Mass. mechanic's liens, we discussed the general requirements, process, and time constraints regarding the recording of mechanic's liens on private construction projects. Now, only weeks following a Mass. Superior Court decision that resulted in the discharge of a contractor's mechanic's lien on a residential project, the purpose of this article is to caution contractors, subcontractors, and vendors from recording liens haphazardly or, even worse, without advice of legal counsel. Indeed, contractors should assume that the lien must be perfect if they ever expect to recover unpaid monies pursuant to a recorded mechanic's lien.

In June 2018, a Superior Court judge ruled that a residential construction project owner was entitled to summary discharge of a contractor's mechanic's lien. Why? Because the contractor who recorded the notice of contract inserted the wrong amount for the contract value, and this seemingly minor defect was fatal in light of the defendants' denial that a signed contract ever existed. In *Atlas Contracting, Inc. v. Saleh et al.*, Middlesex Sup. Ct. (Jun. 11, 2018), judge Christopher K. Barry-Smith found that – because the plaintiff contractor's recorded lien documents asserted a contract value of \$240,000, when the purportedly signed contract actually was for \$227,000, and because the defendant homeowners denied having ever signed any contract – the mechanic's lien must be summarily discharged. This recent ruling from the bench serves to further the courts' interpretation and enforcement of the mechanic's lien statute, M.G.L. c. 254, §§ 1 et seq., requiring absolute strict compliance. See *Nat'l Lumber Co. v. United Cas. and Sur. Ins. Co., Inc.*, 440 Mass. 723, 726 (2004) (“A mechanic's lien is a statutory creation ... and can be enforced only by strict compliance with the statute”) (emphasis added); *Ng. Bros. Constr. v. Cranney*, 436 Mass. 638, 644 (2002) (holding the mechanic's lien statute “is strictly construed against the party claiming the lien”) (emphasis added).

When given the opportunity to grant leniency to contractors who perhaps recorded lien documents with seemingly trivial errors, Mass. courts have consistently been unforgiving and thus required a near standard of perfection relative to the contractors' recorded documents. In the above *Atlas Contracting* case, the contractor may have avoided summary discharge of their recorded notice of contract had they carefully considered the court's high standard held against plaintiffs seeking to

enforce mechanic's liens. From an initial risk management perspective, perhaps the contractor could have better organized their documentation of the project, including secure storage of the signed contract. This could have prevented the slapdash preparation and recording of the notice of contract, which ultimately contained incorrect contract values with a net difference of approximately \$13,000. With this shortcoming, combined with the defendant homeowners' assertion that they never signed any contract, the judge was compelled to discharge the lien, pursuant to the strict standards consistently announced by Mass. courts.

The above cited cases, including the June 2018 Atlas Contracting case, should serve as an obvious reminder to contractors, subcontractors and vendors that they must carefully maintain project files, require signed contracts before commencing work and seek advice of legal counsel before recording lien documents against a property. By erring on the side of caution, and recognizing that the courts will require lien documents to be perfect, contractors can avoid the demoralizing blow that the plaintiff contractor was dealt in Atlas Contracting. Of course, it is best practice to confer with an attorney before preparing or recording lien documents, as a quick consultation might be the difference between getting paid or going broke.

Adam Ponte is a litigation attorney with Fletcher Tilton PC, Boston and Worcester, Mass.

New England Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540