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Massachusetts Mechanic's Lien statutory deadlines are strictly enforced, pandemic or not - by Nathan Cole & Herling Romero

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The Massachusetts Mechanic's Lien Statute, Mass. G. L. c. 254, has firm deadlines by which notices of contract, statements of account, and certified complaints must be recorded to "perfect" and enforce a lien. Failure to comply with the requirements will likely result in the lien being discharged—and the loss of potentially significant leverage against an owner or general contractor that has not paid for services or materials provided to improve the property.

In a recent case, a subcontractor was reminded how strictly Massachusetts courts interpret Chapter 254 and how a mistake can cost a contractor its lien rights, even during a pandemic.

In 2018, Pacific Theatres Exhibition Corporation hired Graycor Construction Company Inc. to serve as the general contractor for the construction of a cinema complex on land owned by a different entity (Podium Owner, LP), and leased by yet another entity (Podium Developer LLC). The cinema land was to be part of a mixed-use project consisting of multiple parcels owned by distinct entities. Further, the contract between Pacific Theaters and Graycor misidentified the parcel where Graycor was working; it referenced an abutting parcel unrelated to the project, and owned by another entity, Office Tower Owner, LP.

Graycor ceased its work on the project on March 4, 2020, alleging Pacific owed it over \$3M. On April 27, 2020, Graycor recorded a notice of contract and statement of account pursuant to Chapter 254, §2 and §8, the sections of the Statute applicable to general contractors.

Unbeknownst to Graycor, its notice of contract named the wrong property owners (who had leased it to the developer) and instead named Office Tower Owner, LP, the owner of an abutting parcel. Graycor took steps to enforce its (unknowingly defective) lien by filing suit against Office Tower Owner, LP.

On September 9, 2020, 189 days after Graycor had last worked on the Project, it realized its error and recorded a corrected notice of contract naming the actual owners (the Podium defendants) with the registry of deeds. Graycor also amended its complaint naming the Podium defendants. By this time, however, it was outside of the statutory deadlines for recording a notice of contract.

The Podium defendants moved to dismiss the complaint and brought a complaint for summary discharge of the lien under G.L. c. 254, §15A. The now-correctly named property owners argued Graycor had recorded its corrected notice of contract too late. The Podium defendants argued that because Graycor had not filed its notice of contract identifying the true owners and property's address timely (i.e., ninety days or fewer from when work was last performed on the property), its lien should be discharged.

In a clever bit of argument, Graycor moved to dismiss the Section 15A complaint for discharge of the lien, arguing that the filing deadlines had been tolled following a string of emergency Covid-19 orders by the Massachusetts Supreme Judicial Court ("SJC"). The May 26, 2020 SJC order upon which Graycor based its argument provided:

"[u]nless otherwise ordered by the applicable appellate court, court department, or judge(s) presiding over the court case, all deadlines set forth in statutes or court rules, standing orders, tracking orders, or guidelines that expired or will expire at any time from March 17, 2020, through June 30, 2020, are tolled until July 1, 2020."

Graycor argued the SJC's order tolled the statutory period for "all deadlines set forth in statutes"—including the lien deadlines established by Mass. G. L. c. 254—and, accordingly, that the lien recording deadlines had been extended. Graycor claimed that its corrected notice of contract was timely recorded and that it was entitled to a second bite at the apple, notwithstanding the fact that it recorded the lien outside of the statutorily prescribed timelines.

The trial court agreed with Graycor that the SJC's emergency orders extended the lien deadlines. The Podium defendants appealed.

The SJC, however, reversed the trial court and held that Graycor's corrected notice of contract was defective because it had been recorded outside of the mechanic's lien statutory period. The SJC explained that its emergency orders for the pandemic were to be narrowly applied as guidance to lower courts on how to operate safely during the pandemic—and not to executive agencies (such as the registry of deeds), over which Massachusetts courts have no jurisdiction.

The SJC held that its emergency Covid-19 orders focused "on court operations" and that the

language in its orders concerning statutory deadlines applied only to court operations, i.e., deadlines in cases pending in court or to be filed in court. Although the SJC acknowledged that filing a complaint in court is required by the Statute to enforce a lien, it noted that the act of “perfecting the lien itself merely requires filing a notice of contract in the registry of deeds – an executive agency charged with the keeping of land records.”

The SJC’s decision in *Graycor* serves as a cautionary tale and reminder that even clever legal arguments will not save a lien recorded outside of the strict Massachusetts Mechanic’s Lien Statute deadlines.

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