Despite unfairness, blanket liens are invalid - by Andrew Richards

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Mechanic's liens serve as security for those who perform work, labor and services, or furnish materials and equipment for the construction of a project. In the event of non-payment by the

property owner or the general contractor, the general contractor or subcontractor (collectively, “contractor”), as the case may be, has the right to file a mechanic’s lien against the real property upon which the work was performed. By filing the mechanic’s lien, the contractor is giving notice that it has a claim against the property for non-payment for work performed. In the event the contractor proves that it is owed money for the work performed, the contractor may start proceedings to have the property sold to satisfy the claim.

With that said, there are many requirements for the filing and service of the mechanic’s lien. If the lienor (i.e., the person filing the mechanic’s lien) does not properly list all of the information in the lien as required by the Lien Law or fails to file or serve the lien in compliance with the Lien Law, the lien will be held invalid by a court of law. For example, for a lien to be valid, the name of the owner and the tax identification (i.e., the block and lot) must be listed correctly on the lien. In many situations, the cancellation of a lien due to a filing irregularity results in the loss of the contractor’s security despite the liberal requirements of the Lien Law and the fact that the filing irregularity does not appear to prejudice the property owner.

One mistake that is commonly made by lienors is that they file what is known as a “blanket lien” against a condominium building. Before a building is converted into a condominium or is recognized as a condominium by the governmental entity that governs real estate tax designations, it is usually given one block and lot for the entire building. When a building is converted into a condominium, each unit/apartment gets its own separate tax lot. The separate tax lots are recognized by the jurisdiction’s registrar after many legal steps are taken by the property owner, one being the approval of the condominium plan by the New York State Attorney General.

Before the building becomes recognized as a condominium building, any lien for unpaid work may be filed against the whole building by filing the lien against the one block and one lot designated for the building. It does not matter if the work was performed on the outside of the building or in one or more individual apartments. However, once the building is recognized as a condominium building and each apartment gets its own tax lot, then any lien to be filed for work performed at the building must be filed against those units/apartments in which the work was performed. If the work was performed on the common elements of the building (e.g., façade or roof), the all of the units must be listed on the lien individually. Moreover, the lien must list the correct owner of the property against which the lien is to be filed.

The mistake made by many lienors is that they file the lien against the original single lot and list the sponsor of the condominium building as the only owner. However, once the building is recognized as a condominium building, the owner/sponsor then begins to sell the units/apartments. Once a unit is sold, any person who performed work on the building for the sponsor may not file a lien against that unit. Thus, the lienor must file its lien against only those units which are still owned by the sponsor at the time the lien is filed. If the lien is filed against the old block and single lot, the courts have repeatedly held that the lien is deficient for two reasons and is thus invalid. First, the lien lists the wrong owner (since any sold lot is owned by someone other than the sponsor) and, second, the lien lists the incorrect property description (since each individual tax lot was required to be listed).

Many clients have come to me for help because their attorney was unaware of these filing requirements and said to me that the lien should be valid against the units still owned by the sponsor at the time the lien was filed on the basis of fairness. As I have advised many clients, the law states that the entire lien is invalid. The courts have not permitted a blanket lien to be deemed valid against those tax lots/units which were still owned by the sponsor at the time the lien was filed.

The foregoing is yet another example of why you hire an attorney who concentrates in construction law when you have a legal issue with respect to a construction project.

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