

IMPORTANT RECENT PENNSYLVANIA CASE INTERPRETS 2006 AMENDMENTS TO MECHANICS' LIEN LAW OF 1963

The The Mechanics' Lien Law of 1963 was amended in 2006 and became effective January 1, 2007. While the Amendments did not change much of the Mechanics' Lien Law, they did modify an owner's ability to secure a waiver of lien rights, available under the 1963 law. Under the Amendments, a filed waiver can still result in the waiver of a subcontractor's lien rights but only if the contractor posts a bond for the benefit of a class of claimants including subcontractors. The 1963 Act had permitted the waiver of all subcontractor lien rights if the waiver was properly filed, without regard to the posting of a bond.

However, the 2006 Amendments did not expressly address the question of whether a subcontractor lien claimant, whose subcontract was entered into after January 1, 2007, the effective date of the Amendments, would have valid lien rights if a waiver was filed of record before January 1, 2007.

This question was recently answered by the Superior Court of Pennsylvania in the case of *Floors, Inc. d/b/a Creative Touch Interiors v. William C. Altig and Julie A. Altig*. The Altigs had purchased their home from a developer. That developer had entered into a contract for construction services with a general contractor before January 1, 2007. A lien waiver agreement between developer and contractor was filed before January 1, 2007. The contractor in turn entered into a verbal subcontract with Floors, Inc. after January 1, 2007.

When the contractor failed to pay Floors, Inc., it filed a mechanics' lien claim as a subcontractor, asserting that the work for which the claim was being made was completed on June 22, 2007. The Altigs filed objections to the mechanics' lien claim and among the arguments asserted by

them was that a Stipulation of Waiver of Liens had been filed on July 19, 2006, which predated the effective date of the Amendments, thus barring Floors, Inc.'s lien claim.

Not surprisingly, Floors, Inc. argued that because its subcontract was entered into after January 1, 2007, the Amendments to the lien law precluded a waiver of lien based on the filed agreement as there was no bond posted. The Superior Court agreed with the trial court, holding that Floors, Inc. was barred from filing a mechanics' lien claim. It stated that since the Stipulation of Waiver of Liens was filed before January 1, 2007 and since Floors, Inc. did not begin to work on the property until after January 1, 2007, Floors, Inc. had constructive notice of the waiver and was bound by its terms.

Even though the ability to secure a waiver of liens has been substantially eroded by the Amendments, there is a little used provision in the 1963 law that limits the amount of damages recoverable by lien claimants.

Section 1402 of the 1963 law provides that where there is no waiver of liens, the owner can nonetheless limit the claims of unpaid subcontractors to a pro-rata share of the unpaid contract price if the subcontractor had actual notice of the contract price and the payment terms before work commenced on the contract or the contract between the owner and contractor is filed of record before subcontract work is performed. To implement this protection, the owner must seek an order of court limiting its liability.

Surprisingly, few owners and contractors avail themselves of this protection, perhaps because they want to keep the contract price secret.

Nevertheless, to limit the amount payable to lien claimants, it is recommended that a separate document be filed with the Prothonotary in the county where the work is to be performed, setting forth the names of the owner and contractor, the contract amount and terms of payment. Like a waiver of liens, it is recommended that the filing be cross-indexed, that is identifying each party as both plaintiff and defendant. This procedure requires very little effort, and protects not only the owner but the contractor (the owner, under the 1963 law, is entitled to a defense and indemnification from the contractor) from a claim in excess of the remaining funds held by the owner.

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