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Construction Law - Corporate Law - Education Law - Labor Relations - Municipal Law - Real Estate Law - Real Property Taxation

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SUBCONTRACTOR'S MECHANIC'S LIEN FOUND VALID

C.C.C. Renovations, Inc. v Victoria Towers Development Corp.

Victoria Towers Development Corp. hired Blue Diamond Group as general contractor to perform repairs to a Victoria Towers' property in Queens NY. Blue Diamond hired C.C.C. Renovations as a subcontractor to provide roof repairs and scaffolding. After the work was performed, C.C.C. renovations remained unpaid. C.C.C. Renovations filed two mechanic's liens against the property, seeking $59,500 for unpaid roofing work and $698,185 for unpaid scaffolding work. Three months later, Blue Diamond, as general contractor, filed its own mechanic's lien against the property, seeking $5,325,557 for unpaid work at the property. C.C.C. Renovations sued Victoria Towers to foreclose its mechanic's liens.

The court held that a subcontractor or materialman lienor must establish the amount of the outstanding debt by submitting proof of either the price of its contract or the value of the labor and materials supplied. The lienor's right to recover is further limited by the amount owed by the owner to the general contractor at the time of the filing of the notice of lien.

Here the subcontractor established its entitlement to judgment to foreclose the mechanic's liens it filed through evidence establishing the amounts owed and that those amounts did not exceed the amount owed by the owner to the general contractor.

LEASE LANGUAGE CONSTRUED TO BE CONSENT FOR MECHANICS LIEN

Ferrara v. Peaches Café LLC

COR owned a retail shopping plaza and leased space to Peaches Café LLC in which Peaches would build and operate a full-service restaurant. The ten-year lease agreement and attached Retail Construction Exhibit imposed several requirements on Peaches regarding the electrical work involved in the construction of the restaurant including landlord's pre-approval of plans. Peaches contracted with Ferrara to perform electrical work which was satisfactorily completed. Peaches opened for business but subsequently closed, still owing Farrara more than $50,000. Ferrara filed a mechanics lien against the property noticing both Peaches and COR. COR moved the court to discharge the mechanic's lien as against COR alleging, they had not consented to the improvements.

The lien law provides that a contractor, subcontractor or materialman who performs labor or provides materials for the improvement of real property with the consent of the owner shall have a lien against the property. The consent required is not mere acquiescence by the owner to the improvements but an affirmative act by the owner.

Here, the court reasoned that the language of the lease contemplated the improvements and retained control over the project by imposing several requirements on Peaches regarding the electrical work and requiring pre-approval of the plans by the landlord. The court held that the terms of the lease agreement, taken together, were sufficient to establish consent under the lien law and declined to discharge the mechanic's lien.

FORUM SELECTION CLAUSE ENFORCED

Somerset Fine Home Building, Inc. v. Simplex Industries, Inc.

Somerset was a home builder in Suffolk County, NY who purchased a modular home from Simplex, a manufacturer of modular homes located in Scranton, PA. The modular home was delivered to a site on Long Island to be erected by Somerset for its homeowner customer. Somerset sued Simplex for breach of contract, breach of warranty, and fraud alleging that Simplex failed to deliver conforming, merchantable goods pursuant to the contract. The contract provided that any disputes arising from the contract would be determined by Pennsylvania law in the Court of Common Pleas of Lackawanna County Pennsylvania. Simplex filed a motion to dismiss the lawsuit.

The Court dismissed the lawsuit holding that parties are free to select a forum to resolve any disputes arising from a contract. Such clauses are presumed valid and enforceable unless shown by the resisting party to be unreasonable, unjust, would contravene public policy, or that it is invalid because of fraud or overreaching.

The court reasoned that the clause was not hidden or tucked away within a complex document of inordinate length and was in the same size print as the rest of agreement. Each page was initialed by Somerset and was the result of an arm's length business agreement.

DELAY DAMAGES CLAIM SURVIVES CHALLENGE

R-J Taylor General Contracting, Inc. v. Fairport Central School District

R-J Taylor entered into contracts with Fairport Central School District for work to be performed at various schools within the school district. The contracts included a clause precluding claims for delay damages. R-J Taylor sued the school district for damages related to "unforeseeably excessive number of changes and corrections to the original contract documents." The school district moved the court to dismiss those claims because of the no-damages-for-delay clauses in the contracts.

The court declined to dismiss the claims holding that it is well settled that contract clauses that preclude claims for damages resulting from delays in the performance of a contractor's work is valid and enforceable and is not contrary to public policy if the clause and the contract of which it is a part satisfy the requirements for the validity of contracts. Nevertheless, even with such a clause, damages may be recovered for: (1) delays caused by the owners bad faith or its willful, malicious, or grossly negligent conduct, (2) uncontemplated delays, (3) delays so unreasonable that they constitute an intentional abandonment of the contract by the owner, and (4) delays resulting from the owner's breach of a fundamental obligation.

The Court reasoned that R-J Taylor raised triable issues of fact as to whether the school district frustrated R-J Taylor's performance under the contracts to such an extent as to establish one of the exceptions or R-J Taylor's request for delay damages seeks relief wholly outside the scope of the contracts.

EQUIPMENT RENTAL COMPANY'S QUASI-CONTRACTUAL CLAIM DISMISSED

Palma Realty Associates LTD v. BLDG Oceanside LLC

BLDG Oceanside LLC was the owner of a construction project. BLDG entered a contract with AARK Inc. as the general contractor for the project. AARK entered a subcontract with Master Development Inc. who then entered a sub-subcontract with Palma Realty Associates LTD to provide building, construction, and excavation machinery and equipment for Master's use. Palma was not paid by Master and commenced a lawsuit against the owner and Master. The owner moved the court to dismiss the action against the owner asserting it had no contract with Palma and because Master did have a contract with Palm, owner could not be liable for a quasi-contractual claim.

The court agreed and dismissed the action against the owner reasoning that the existence of an express agreement, *whether oral or written*, governing a particular subject matter precludes recovery in quasi-contract for events arising out of the same subject matter. Palma's agreement, although oral, was definite in its terms. The complaint acknowledged that the agreement contained specific terms and conditions

obligating Palma to provide equipment and machinery to Master and that Master, in turn, had the specific obligation to pay $97,430.00 to Palma for its services. Thus, even though the agreement was not in writing, it bars a quasi-contract claim against the owner.

COURT RESOLVES COMPETING PROVISIONS IN CONTRACT

Sciame Construction LLC v. Re:Source New Jersey, Inc.

Sciame Construction LLC was the general contractor for a project in Manhattan. Sciame entered a subcontract with Re:Source New Jersey, Inc. The subcontract was a generic AIA form contract prepared with a computer program. In the provisions for Binding Dispute Resolution the parties had to check a box manually to either resolve disputes through arbitration or litigation. The box for arbitration was checked and the box for litigation was not checked. Attached to the contract were two pre-printed riders that were not negotiated, did not name or reference Re:Source, and were not signed by Re:Source. The riders provided litigation in New York Supreme Court in Manhattan as the means of dispute resolution.

Re:Source commenced arbitration proceedings for non-payment and Sciame petitioned the court to permanently stay the arbitration because the contract riders designated litigation in Supreme Court as the exclusive means of dispute resolution.

The Court declined to stay the arbitration reasoning that to the extent any printed riders or exhibits were incorporated into the subcontract by reference, the subcontract's typewritten portions regarding binding dispute resolution represented an express manifestation of the parties' actual intentions and take precedence over any inconsistent provisions in the printed form riders.

CORPORATE OFFICERS COULD BE LIABLE FOR EXAGGERATING MECHANIC'S LIENS

Power Air Conditioning Corp. v. Batirest 229 LLC

Batirest 229 LLC entered a contract with IBC Business Groups, LLC as general contractor for a construction project at premises owned by Baiterest. IBC entered a subcontract with Power Air Conditioning Corp. for the project. Batirest terminated IBC as general contractor and contracted with Lithos Construction Solutions, Inc. as the replacement general contractor. Power Air then entered a new subcontract with Lithos and a separate agreement directly with Batirest. When Batirest stopped paying, all three contractors filed mechanic's liens against the property. The liens were personally verified by officers of the contractors in their capacity as officers. The contractors commenced a suit against Batirest and Batirest counterclaimed against the contractors and the officers individually for willful exaggeration of their mechanic's liens. The three officers moved the court to dismiss the personal claims against them.

The court declined to dismiss the actions against the three officers personally, reasoning that corporate officers are generally not personally liable for performing their ordinary duties for the business but are personally liable for tortious acts. In this case, the act of willfully exaggerating the lien amounts could be proven to be tortious.

SUBCONTRACTOR'S CLAIMS OF UNJUST ENRICHMENT DISMISSED

Prime Rebar, LLC v. Foundations Group, Inc.

The owner, 204 Forsyth, LLC hired Foundations Group, Inc. as general contractor for a construction project. Foundations entered a subcontract with MR Builders Group, Inc. MR Builders entered a sub-subcontract with Prime Rebar, LLC. Prime supplied labor and materials to the project but was not paid. Prime filed a mechanic's lien against the property and later sued to foreclose the lien. In its lawsuit Prime asserted a *quantum meruit* claim against the general contractor Foundations and owner 204 Forsyth. The owner and general contractor moved the court to dismiss Prime's *quantum meruit* claim.

The court agreed and dismissed Prime's claim for *quantum meruit* reasoning that to state a cause of action for *quantum meruit*, Prime had to allege (1) the performance of services in good faith, (2) the acceptance of the services by the person to whom they are rendered, (3) an expectation of compensation therefor, and (4) the reasonable value of the services". Because Prime did not allege that it expected compensation from the owner or general contractor, the pleading did not state a cause of action for *quantum meruit*.

The court then considered whether Prime had stated a cause of action for unjust enrichment. Prime had to show that the owner and general contractor was enriched, at Prime's expense, and that it is against equity and good conscience to permit the owner and general contractor to retain the benefit without compensating Prime. Further, there must be a connection or relationship between the parties that could have caused reliance or inducement on Prime's part. The Court found that Prime failed to state a cause of action for unjust enrichment because Prime did not allege that the owner or general contractor did anything to induce Prime to provide the labor or materials.

CORPORATE OFFICERS HELD PERSONALLY LIABLE FOR CONSTRUCTION TRUST DIVERSIONS

Mid Atlantic Framing, LLC v. Ava Realty Ithaca, LLC

Ava Development, LLC entered a contract with Varish Contractors International, Inc. as general contractor to construct a hotel on property owned by its affiliate, Ava Realty Ithaca, LLC. Varish entered into a subcontract with Mid Atlantic Framing, LLC whereby Mid Atlantic agreed to provide labor and materials for the construction of the building shell and framing work. Ava made progress payments to Varish who did not pay Mid Atlantic, who sued for non-payment. The court found Varish to be liable under New York Lien Law for misallocating trust assets that should have been paid to Mid Atlantic. Specifically, the Court found Tom Varish, as officer and shareholder of Varish, individually liable for the improper diversion of trust funds, breach of fiduciary duty, and constructive fraud under Article 3-A of the New York Lien Law.

The court reasoned that the purpose of Lien Law Article 3-A and its predecessors is to ensure that those who have directly expended labor and materials to improve real property at the direction of the owner or a general contractor receive payment for the work actually performed. To ensure this, the Lien Law establishes that designated funds received by owners, contractors and subcontractors in connection with improvements of real property are trust assets and ay application of trust assets for any purpose other than the trust purposes of that trust creates civil and potentially criminal liability. Furthermore, it is well settled that an individual officer of a corporate trustee may be held personally liable for breach of a Lien Law trust to the extent that the officer is found to have participated in or known about the use of trust funds for non-trust purposes.