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Appellate Court Says Mechanics Liens Must be Enforced Against All “Known” Necessary Parties

Check Recordings Early and Often

BY JOHN GRIFFIN

In Illinois, the Mechanics Lien Act, (Act) (770 ILCS 60/et seq.) provides remedies and protections for a variety of parties. Mechanics liens are not recognized at common law and are created by statute. Therefore, strict compliance with all of the many terms and conditions of the Act are required. This fact was recently reinforced by the Illinois First District Appellate Court in *CB Construction & Design, LLC v. Atlas Brookview, LLC* (2021 IL App (1st) 200924) where it affirmed the trial court’s dismissal of a mechanic’s lien count for failure to name a necessary party within 30 days of a Section 34 demand to commence suit.

Atlas Brookview (Atlas) owned property in Glenview, Illinois (Glenview property). TPG RE Finance 2 Ltd. (TPG) recorded its mortgage on September 21, 2017 and Wells Fargo Bank, NA recorded its security interest on February 23, 2018 against the Glenview property.

On January 4, 2018 Atlas and CB Construction & Design (CB) entered a construction contract to renovate the Glenview property.

CB claimed that it completed its work on May 16, 2019 but that Atlas owed \$1,439,531.08 under the contract. On May 20, 2019, CB filed a mechanic’s lien pursuant to the Act that named as responsible parties and owners Steven Ivanovic (CEO of Atlas), Lee Ward (loan administrator), and Ravi Malli (director of asset management at Atlas Apartment Homes).

Ordinarily, an action to foreclose on a lien must be filed within two years of the last day of work (770 ILCS 60/7). However, an owner, lienor, or any other interested party, may expedite the process by serving a written demand upon the lienholder to commence suit to enforce the lien within 30 days. If suit is not filed within the accelerated timeline, the lien shall be forfeited (770 ILCS 60/34).

On July 15, 2019, Atlas served CB with a Section 34 demand to file suit within 30 days. CB timely filed a complaint for breach of contract and mechanic’s lien on August 12, 2019. The complaint named as defendants Atlas, Ivankovich, Malli and “Other defendants yet to be determined.”

Atlas filed motions to dismiss pursuant to sections 2-615 and 2-619 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-615, 2-619) alleging that CB



John Griffin

failed to timely join TPG and Wells Fargo as necessary parties, as well as other grounds. The trial court granted the motion but gave CB an opportunity to amend its complaint. In its amended mechanic’s lien count, CB requested that:

“the sum of \$1,439,531.08 together with attorney fees and interest, be ordered as a lien against the real property, building[s], parcel[s], senior and superior to any claim of right, title or interest in or to the real property of any Defendant, or other person or entity which may be identified hereafter...”

CB’s amended complaint did not name TPG or Wells Fargo as party defendants, but again included “Other defendants yet to be determined.” Atlas moved to dismiss the complaint on numerous grounds, including CB’s failure to add TPG and Wells Fargo as neces-

sary parties. The trial court granted the motion and dismissed the mechanic’s lien count with prejudice.

CB appealed and contended that the trial court erred in (1) finding that TPG and Wells Fargo are necessary parties under the Act and (2) ruling that CB’s failure to add them as defendants within 30 days of Atlas’ demand to enforce the lien resulted in forfeiture of its lien.



Regarding necessary parties to a claimant’s suit to enforce its lien, section 11(b) of the act provides the following:

“(b) Each claimant shall make as parties to its pleading (hereinafter called ‘necessary parties’) the owner of the premises, the contractor, all persons in the chain of contracts between the claimant and the owner, all persons who have asserted or may assert liens against the premises under this Act, and any other person against whose interest in the premises the claimant asserts a claim.”

The First District Appellate Court held that by requesting sale of the property and declaring that its lien is “senior and superior” to the interests of any “person or entity which may be identified,” CB is clearly asserting a claim against TPG’s and Wells Fargo’s interests in the Glenview property. Thus, pursuant to the plain language of section 11 (b), TPG and Wells Fargo are necessary parties.

Although CB filed a complaint for breach of contract and mechanic’s lien within 30 days of Atlas’ demand, the complaint did not name TPG or Wells Fargo as a defendant. CB does not allege that it was precluded from filing suit against either party; for example, due to such party filing for bankruptcy. Therefore, CB’s failure to join Wells Fargo as a party to its complaint within 30 days of Atlas’ demand resulted in forfeiture of the lien.

Finally, the First District Appellate Court rejected CB’s arguments that either section 11(f) of the Act or section 2-616 of the Code of Civil Procedure should allow an amendment

adding TPG and Wells Fargo to be added as defendants after the expiration of the 30 day period but before the two year statute of limitations or any time prior to final judgment. Because TPG’s and Wells Fargo’s interests were recorded prior to CB’s amended complaint, meant they could not be considered unknown necessary parties.

Although not mentioned in this decision, the recent delays in recording documents in Cook County during the COVID-19 pandemic and the associated delays regarding the posting of those documents to the website of the Cook County Recorder of Deeds Office, may create additional traps for the mechanic’s lien practitioner. Section 11 (c) of the Mechanics Lien Act provides the following:

“(c) Necessary parties whose claims or interests are not disclosed by a document recorded at the time a proper *lis pendens* of the action under Section 2-1901 of the Code of Civil Procedure has been recorded (or if the action is instituted as a mortgage foreclosure at the time a proper notice of

foreclosure under Section 15-1503 of the Code of Civil Procedure has been recorded) may be named and made parties under the description of “unknown necessary parties”. Persons other than unknown necessary parties who may be interested in the premises but whose identities are unknown to the claimant may be named and made parties to the action under the description of ‘unknown owners’.”

What must a lien claimant do to preserve its rights when faced with a Section 34 demand to foreclose after a necessary party has properly recorded its interest in the property prior to the recording of the *lis pendens* and that interest does not appear on record soon enough to be joined by name? This remains to be determined.

Therefore, once again, we see the consequences of the principal that strict compliance with the provisions of the Mechanics Lien Act, which will have a drastic effect on the mechanic’s lien and all of the advantages to the lienor. The party bringing the action will still have any contract

claims and the defendant will have any counterclaims, such as construction defects or incomplete work.

Perhaps, before or after the court rules on the validity of a mechanic’s lien, it would be most economical to engage in mediation or arbitration to resolve all of the claims and issues. The time and cost of pursuing the motions and litigating the ultimate issues can be minimized through alternative dispute resolution.

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