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Residential Contractors Face Lien Law Pitfalls

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Careful drafting of mechanics' liens can prevent contractors from facing court battles over legal language.

One of the most valuable tools that contractors and material suppliers have to protect their right to payment is the mechanics' lien.

Mechanics' liens provide an inexpensive but effective way for unpaid contractors to get the owner's attention and to apply pressure on a non-paying party.

Even better, filing a mechanics' lien does not require a lawsuit. Instead, for private jobs, the contractor need only pay a small fee to the county clerk of the county where the property is located. For public jobs, the equivalent of a lien is filed with a city or state agency depending on the public entity that owns the project.

However, while mechanics' liens are a boon to contractors, the New York Lien Law, which provides the rules for filing and enforcing them, is full of pitfalls. If a contractor is not careful, these pitfalls can result in a court battle, or worse, an invalidation of a lien.

A recent case decided in Brooklyn in May, *SGS Associates, LLC v. R. A. German Construction Corp.*, highlighted one such pitfall peculiar to condominium developments. In the case, a contractor and architect, R. A. German, entered into contracts with the developer, SGS, for design and construction management services for a condominium project.

After German performed services under the contracts, SGS failed to pay it. German

filed two mechanics' liens for over \$2 million.

Generally, on private projects, it is sufficient for a mechanics' lien to identify the "block and lot" description of the property against which it is filed. The "block and lot" description is the tax map identification for the property in the county clerk's office.

In this case, German used the "block and lot" description of the entire property as it existed prior to conversion of the property into condominium units. However, after the condominium conversion, the "block and lot" description of the property changed because, as separately owned units of a condominium, each individual unit had its own separate "lot" number. This conversion took place before German formally filed its liens.

SGS asked the court to cancel German's liens arguing, among other things, that they were "blanket liens." A "blanket lien" improperly applies to an entire condominium complex when the claim should be limited to a unit within the condominium building controlled by the developer.

SGS argued that by using the prior "block and lot" description of the entire property instead of taking into account the various new condominium unit owners, German's lien was an invalid "blanket lien."

While the court agreed that German had improperly used the prior "block and lot" designation for the entire property, fortunately for German, it found that this mistake did not automatically invalidate the liens. Indeed, German prevailed in the case, but it won only because its liens included language limiting the claim to the property "in which SGS had an interest."

The court concluded that, although German could have drafted the liens more carefully, the reasonable interpretation was that the liens only applied to those portions



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of the property that SGS still owned.

This case highlights the importance of carefully drafting mechanics' liens because the last thing a contractor wants to be doing is fighting in court over how to "interpret" its lien. In this case German could have avoided a court challenge – and the expense and risk that go with it – had its lien accurately described the "block and lot" identity of the property.

Therefore, prior to filing a lien, a contractor on a condominium development should determine whether the conversion has taken place and, if so, whether the developer sold any of the units. If the conversion took place, the contractor should find out the "block and lot" designation and the owner of each unit, and make sure that the lien is limited to those "lots" that the developer still owns. This way, there is no room for "interpretation" of the property subject to the lien.

Finally, this case reinforces a general precaution concerning work on condominiums. When a contractor performs work on a condominium unit only, it is not working on the entire property as far as the Lien Law is concerned. Therefore, the contractor should make sure that it knows the "block and lot" description for the particular unit it worked on, and limit its lien to that unit. If it does not do so, the lien may be invalidated, and the contractor may lose its right to file a lien. <<