

REAL ESTATE, TITLE INSURANCE & CONSTRUCTION LAW

The N.J. Construction Lien Law: A Powerful, Equitable Tool

By Joshua S. Bauchner

The New Jersey Construction Lien Law (CLL), N.J.S.A. 2A:44A-1-38, presents a powerful tool for contractors and suppliers to ensure payment for services, material and equipment. Through simple filings with the county clerk and court, an unpaid contractor can secure a lien on the real property where the work was performed. Thus, although the failure to make payment may rest with the general contractor or a senior subcontractor, the lien creates a security interest in the real property impacting on the owner's rights—representing a surefire way to get its attention and, ideally, compel payment.

For this reason, owners, construction managers and related parties often fiercely contest the filing of a lien arguing, among other things, that the CLL is subject to strict interpretation asserting some technical defect in the lien claim. This is misguided. In fact, the CLL's enforcement provisions are to be liberally construed to assure payment in accord with the statute's purpose. This article details the correct interpretation of the enforcement mechanisms under the



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CLL, as articulated by the Supreme Court of New Jersey, to ensure payment for services rendered.

The Statutory Scheme

The primary purpose of the CLL is “to secure payment for contractors, subcontractors, and suppliers who furnish labor or materials used to enhance the value of the property

of others.” *E. Concrete Materials*, 2011 WL 2637235, at *5.

N.J.S.A. 2A:44A-3 provides, in pertinent part:

Any contractor, subcontractor or supplier who provides work, services, material or equipment pursuant to a contract, shall be entitled

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to a lien for the value of the work or services performed, or materials or equipment furnished in accordance with the contract and based upon the contract price, subject to the provisions of [N.J.S.A. 2A:44A-9 and 2A:44A-10]. The Lien shall attach to the interest of the owner in the real property.

“In order for a contractor, subcontractor or supplier to be entitled to a Lien, any work or services performed, or material or equipment provided, must have been done ‘pursuant to a contract.’” *Gallo v. Sphere Const. Corp.*, 293 N.J. Super. 558, 563 (1996). “Contract’ is expressly defined in the act as “any agreement, or amendment thereto, in writing, evidencing the respective responsibilities of the contracting parties....” *See id.* Because the CLL equates lien claims to contract claims, “the amount of the lien [is] limited to the unpaid portion of the contract price for ‘work, services, material or equipment’ that had actually been provided.” *Id.*; *see also Orefice v. ADR*, 315 N.J. Super. 493, 498 (1998) (“The Act limits the ‘amount of a lien claim ... to the contract price.’”).

Importantly, while the statutory provisions of the CLL themselves are subject to strict construction, the provisions providing “for enforcement by qualifying Lien claimants [are] to be liberally construed to effectuate [the CLL’s] purpose.” *Id.* Indeed, contrary to common misconception, the assertion that the CLL “must be strictly construed ... is something of an overstatement.” *Craft v. Stevenson Lumber Yard*, 179 N.J. 56, 67 (2004). Rather, to further its purposes, the CLL “is to be read ‘sensibly’ and with ‘an understanding of the policies

underlying the Lien Law.” *Id.* at 68 (quoting *Thomas Group v. Wharton Senior Citizen House*, 163 N.J. 507, 515 (2000)). Indeed, as the New Jersey Supreme Court explained more than 65 years ago:

[T]he provisions of the statute giving rise to the Lien are to be strictly construed, while the provisions for the enforcement of the Lien thereby created are to be liberally construed to effectuate the remedial statutory policy of providing priority of payment of the price or value of work performed and materials furnished in the erection or reparation of a building or other structure and this wise the security of the land and buildings for the payment of that which has made for an assumed enhancement of the value of the property.

Friedman v. Stein, 4 N.J. 34, 40-41, 71 A.2d 346 (1950) (emphasis added). The Supreme Court’s holding in *Friedman* has been repeatedly and recently reaffirmed by that court. *See, e.g., Craft*, 179 N.J. at 68 (“Most recently, in *Thomas Group, supra*, we reaffirmed the approach in *Friedman v. Stein*, stating that the act is to be read “sensibly” and with “an understanding of the policies underlying the Lien Law.”); *Thomas Group*, 163 N.J. at 515 (same, rejecting overly strict and technical reading of CLL and permitting Lien claim to proceed and noting that the revisions to the CLL were simplified “with an eye toward promoting contractors’ lien rights.”).

The *Thomas* court’s importation of equitable principles exemplifies an appropriate balancing of a claimant’s interest in payment against

the requirements of the statutory scheme. There, the court held that the claimant was permitted to file its lien even though it had not fulfilled all of the contractual preconditions to payment. The court reasoned that a contractor did not have to risk sacrificing its lien rights by waiting until all of the payment conditions were satisfied as it risked the contractor not being able to file within the statutory 90 days after the last date of performance and permitted subsequent contractors to obtain seniority. As a result, the court reversed the Appellate Division and trial court’s discharge of the lien as being prematurely filed, noting the remedial nature of the CLL and its primary focus on ensuring payment.

Enforcement of a Lien Claim

With the above in mind, to establish a lien claim, a contractor need only satisfy certain straightforward statutory prerequisites, including: (i) filing a complaint “[w]ithin one year of the date of the last provision of work, services, material or equipment, payment for which the Lien claim was filed,” in accord with N.J.S.A. 2A:44A-24(a); (ii) joining as party defendants the “owner ... contractor or subcontractor alleged to have failed to make payments for which the Lien claim has been filed,” in accord with N.J.S.A. 2A:44A-24(b); and (iii) filing a *lis pendens*, in accord with N.J.S.A. 2A:44A-24(b).

Then, when confronted with a series of defenses asserting technical defects in the claim or failure to precisely comply with a statutory prerequisite, the claimant should refer the court to the above reasonable and equitable dictates ensuring that the CLL “be read ‘sensibly’ and with ‘an understanding of the policies underlying the Lien Law’”—namely, payment. ■