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Recent Decision Favors Subcontractors' Rights Against Owners Under Lien Law

In a recent case titled AEG Holdings, L.L.C. v. Tri Gem's Builders, Inc., 2002 WL 185556 (N.J. Super. A.D. 2002) Appellate Case No. A-1282-00T1, a Subcontractor brought an action on a construction lien against a property owner and general contractor. The Superior Court, Law Division, Atlantic County, granted summary judgment for subcontractor. The property owner appealed. The case was heard on appeal before Judges Wefing, Ciancia and Lesemann. In an opinion of the court delivered by Judge Ciancia, the Superior Court of New Jersey, Appellate Division, held that a property owner owed a subcontractor the difference between the original contract price and the amount it paid to the general contractor before the subcontractor filed its lien. The case was submitted on January 15, 2002 and was decided on February 7, 2002.

More specifically, this appeal arose out of a dispute concerning the proper interpretation of the Construction Lien Law, N.J.S.A. 2A:44A-1 to -38 (the Act). Appellant L & N Enterprises (L & N) was the owner of a commercial property. It contracted with defendant Tri-Gem's Builders, Inc. (Tri-Gem's) to construct an addition to the property. The contract price was \$198,200. Tri-Gem's, in turn, hired plaintiff AEG Holdings, L.L.C. (AEG) as a subcontractor for certain work.

L & N made a series of payments to Tri-Gem's totaling \$129,604. Tri-Gem's went into bankruptcy without finishing the job. Tri-Gem's also failed to pay anything to its subcontractor, AEG. A construction lien was filed by AEG against L & N in the amount of \$126,717, which was undisputedly owed to AEG for the work it had performed.

On cross-motions for summary judgment, the trial court awarded AEG the difference between the \$198,200 contract price agreed upon between L & N and Tri-Gem's, and the amount paid by L & N to Tri-Gem's prior to the filing of AEG's lien—i.e., \$198,200 minus \$129,604, which equals \$68,596.

The Statute In Question

The statute in question, N.J.S.A. 2A:44A-3 provides in relevant part: "Any contractor, subcontractor or supplier who provides work, services, material or equipment pursuant to a contract, shall be entitled 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 sections 9 and 10 of this act."

Section 9, N.J.S.A. 2A:44A-9, limits the amount of the lien claim to "the contract price, or any unpaid portion thereof, whichever is less, of the claimant's

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Law Firm Briefs

Great Quotations ...

"Let me tell you the secret that has led to my goal. My strength lies solely in my tenacity."

- Louis Pasteur

"Enthusiasm... Nothing great was ever achieved without it."

- Ralph Waldo Emerson

contract for the work, services, material or equipment provided.”

Section 10, N.J.S.A. 2A:44A-10, provides in part that the lien claim “shall attach to the interest of the owner from and after the time of filing of the lien claim.” Subsections a and b, when read together, limit the property owner’s liability vis-à-vis a subcontractor to the lesser of what remains unpaid on the prime contract or on the subcontract, prior to receipt of the lien claim.

Appellant’s position was essentially that Tri-Gem’s left the job without significant work being completed and, therefore, L & N would have to pay additional sums to others to have the job finished. Accordingly, if it were obligated to pay AEG \$68,596, L & N would end up paying in excess of the total original contract price. This, according to L & N’s argument to the Court, would violate the proscription which courts have read into the Act limiting a property owner’s lien liability to the contract price. Appellant argued the rule should be that as long as the property owner has paid the contractor more than the lien claim of the subcontractor, the property owner has no obligation to the subcontractor.

The Appellate Division rejected this view holding “appellant’s interpretation of the Act runs counter to the legislative policy reflected therein and would produce consequences never intended by the Legislature.”

The decision of the Court further explained that Appellant’s interpretation of the law would protect property owners, but not lien holding subcontractors. The Court observed that “Even with the trial court’s decision, AEG is only receiving a little more than half of what it is legitimately owed. If there are multiple subcontractors on a job and, by way of example, each claims an amount equal to ten percent of the total contract price, a property owner would owe nothing to any of them under appellant’s interpretation of the Act so long as the property owner had paid the contractor more than ten percent of the total price. We are confident that the Legislature never intended such a draconian application of the Act.”

The Appellate Division did state in its opinion that although it is true that there is language in our case law that a property owner should not be made to pay twice, citing Thomas Group v. Wharton Sr. Housing, 163 N.J. 507, 521, 750 A.2d 743 (2000), what is meant by that is that the property owner is never subject to liens in an amount greater than the amount unpaid by the owner to its prime contractor at the time the lien claim is filed by one claiming a lien through that prime contractor.

Appellant argued that a property owner under this interpretation may very well end up paying more for the finished job than the original contract price. Nonetheless, the Court pointed out that the property owner has the means to guard against that result, stating: “What appears to have happened here is that appellant’s payments to Tri-Gem’s got ahead of the work actually performed and when Tri-Gem’s abandoned the job, L & N had to pay someone else to do the work Tri-Gem’s should have done in the first place. That may not be fair to L & N, but leaving an innocent subcontractor without any payment is too high a price for correcting the inequity placed upon the property owner when choosing between two innocent persons in these circumstances, it is the lien holder who prevails.”

Relying upon a prior decision titled Legge Industries v. Joseph Kushner Hebrew Academy, 333 N.J. Super. 537, 756 A.2d 608 (App.Div.2000) that held a property owner’s maximum liability is not reduced by payments made to the contractor that were not earned and due before the subcontractor’s lien was filed, Id. at 547, 756 A.2d 608, the Court in AEG Holdings, L.L.C. warned “that a property owner who overpays a contractor runs the risk of never getting the work that was paid for from that contractor. However, under the Act the subcontractor does not bear the risk of that possibility.”

Accordingly, the trial court’s summary judgment in favor of AEG Holdings was affirmed by the Appellate Division. The Appellate decision also noted that the owner’s liability to the subcontractor under the lien law may also be reduced by the property owner’s prior payments to other lien claimants, but such a reduction was not an issue presented in this case.



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