



# the Advocate

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## Recent Case Results in Dismissal of Suit To Enforce Construction Lien Claims

A Steel product manufacturer brought an action against its distributor and various construction project owners, alleging breach of contract and seeking to enforce construction and mechanic's liens. At the trial court level the Superior Court of New Jersey, Law Division, Bergen County, dismissed the lien and common law claims against three project owners and the manufacturer appealed.

The case was titled West Virginia Steel Corp., Plaintiff-Appellant, v. Sparta Steel Corporation; Lester Senior Housing Jewish Community Center; County of Passaic, Defendants-Respondents, and Great Atlantic & Pacific Tea Company; Sports Authority, Inc.; Morris and Michael Kaplan; Meadow Park Associates; Sisters of St. Dominick; Orange County, New York; Essex County, New Jersey; Bloomfield College and Seminary; S.M.S., Inc.; Trustees of Rutgers University; JFK Medical Center Foundation, Inc.; Sutton Plaza Ltd; Wayne General Hospital; Delrick Construction Co., Inc.; Prismatic Development Corp., and ABC Corp. 1-20 and John Does 1-20, Defendants, 356 N.J.Super. 398 (App.Div. 2003).

The case was argued on December 9, 2002 and was decided on January 7, 2003 before Appellate Division Judges Petrella, Braithwaite and Parker. The opinion of the court was delivered by Judge Parker.

The appeal arose out of plaintiff's attempt to enforce construction and mechanic's liens against three defendants. Plaintiff, West Virginia Steel Corp. (WVS), fabricates and furnishes structural steel,

products for use in construction projects. Defendant, Sparta Steel Corp. (Sparta), served as an agent and distributor for WVS products and sold them to the remaining defendants for construction projects in New York and New Jersey. In its complaint, WVS alleged that Sparta owed approximately \$1.78 million to WVS for products sold to Sparta, which, in turn, distributed them to the remaining defendants.

WVS filed its complaint in July 2000 in Bergen County Superior Court, alleging breach of contract, unjust enrichment and quantum meruit claims against Sparta and nineteen project owners in nine New Jersey counties and Orange County, New York. None of the defendants were located in Bergen County. In Counts 59, 60 and 61 of the complaint, WVS asserted lien claims against Lester Housing Jewish Community Center (Lester) (Count 59), and JFK Medical Center Foundation, Inc. (JFK) (Count 60) under the New Jersey Construction Lien Law, N.J.S.A. 2A:44A-1 to 38; and against Passaic County under the Municipal Mechanic's Lien Law,

*Continued on reverse page...*

### Great Quotations

"The impersonal hand of government can never replace the helping hand of a neighbor." - Hubert Humphrey

"When I am abroad, I always make it a rule never to criticize or attack the government of my own country. I make up for lost time when I come home."

- Winston Churchill

N.J.S.A. 2A:44-125 to 142 (Count 61). It is the dismissal of those three counts that WVS appealed.

In its first point, WVS claimed that the motion judge erred in dismissing counts to enforce liens against Lester located in Morris County, JFK located in Middlesex County, and Passaic County for the Passaic County Community College project. WVS acknowledged that it improperly filed suit in Bergen County to enforce liens against properties located in other counties. Nevertheless, relying on State Dep't of Env'tl. Prot. v. Middlesex Cty. Freeholders Bd., 206 N.J.Super. 414, 502 A.2d 1188 (Ch.Div.1985) aff'd, 208 N.J.Super. 342, 506 A.2d 13 (App.Div.1986), WVS maintained that the "venue rules should have been relaxed to promote judicial economy and prevent the 'fragmentation of litigation.'" WVS further argued that the Supreme Court's decision in Thomas Group, Inc. v. Wharton Sr. Housing, Inc., 163 N.J. 507, 517-18, 750 A.2d 743 (2000), required the Court to construe the lien law liberally to avoid dismissal of its claims. Alternatively, WVS argued that if dismissal was appropriate under the lien laws, it should have been without prejudice so that WVS could file separate actions to enforce its lien claims in the counties where each of the projects was located.

The Appellate Division disagreed. The Construction Lien Law is clear and unambiguous in its requirements. N.J.S.A. 2A:44A-14a provides:

"A claimant filing a lien claim shall forfeit all rights to enforce the lien, and shall immediately discharge the lien of record, if the claimant fails to bring an action in the Superior Court, in the county in which the real property is situated, to establish the lien claim: (1) Within one year of the date of the last provision of work ...."

In addition, the Court ruled the case before it was very different from Thomas Group. Here, WVS did not have a written contract with the parties against whom they filed the liens—a fatal flaw. Moreover, the language in the applicable provision, N.J.S.A. 2A:44A-14a, is clear, unambiguous and mandatory: "[a] claimant ... shall forfeit all rights to enforce the lien ... if the claimant fails to bring an action in the Superior Court, in the county in which the real property is situated ...."

WVS argued that because this was a "complex multi-party" case, the venue provision in the statute should be relaxed in the interests of judicial economy. The Court disagreed with plaintiff's characterization of the case. In addition, there was no provision in the Construction Lien Law authorizing relaxation of venue for a plaintiff's convenience. Moreover, even if the complaint against Lester and JFK had been dismissed

without prejudice, the statutory time limit had expired and WVS would have been out of time to file complaints in the appropriate counties.

Even more significantly, WVS did not meet the statutory requirement that it have "an agreement ... in writing" with the party against whom it was filing the lien. N.J.S.A. 2A:44A-2. In order for a contractor, subcontractor or supplier to be entitled to a lien, any work or services performed, or material ... provided, must have been done "pursuant to a contract." "Contract" is expressly defined in the act as "an agreement, or amendment thereto in writing, evidencing the respective responsibilities of the contracting parties...." N.J.S.A. 2A:44-2.

With respect to the claim against Passaic County, WVS alleged it had filed a Municipal Mechanic's Lien "on the property known as Passaic County Community College." Initially, the Court noted that actions against counties must be filed in the county in which the cause of action arose. R. 4:3-2(a)(2). Not only did WVS improperly file its claim in Bergen County, it apparently failed to file the lien against the proper party, since Passaic County is not the owner of the property on which the Passaic County Community College was constructed. Liens can only be placed against the property owner. Consequently, WVS had no basis for enforcing a lien against Passaic County.

WVS next argued that even if the motion judge properly dismissed the lien claims on venue grounds, he should have transferred those claims to the appropriate counties sua sponte. This issue was not raised before the trial judge and the Appellate Court declined to consider it. The trial Court ruling was fully affirmed.



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