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Supplier can file mechanic's lien after transfer of property

Conveyance had trappings of fraud, judge says

■ ERIC T. BERKMAN

A company that provided building materials for a construction project could put a mechanic's lien on the property shortly after the owner, which allegedly failed to pay what it owed under the contract, transferred the property to another entity for nominal consideration, a Superior Court judge has ruled in a case of first impression.

Unbeknownst to plaintiff Timberline Enterprise, defendant 143 Hunting Street purchased the property from the project owner, defendant Onyx Development, in August 2024 for \$100, just weeks before Timberline recorded its notice of contract in the Registry of Deeds under the Massachusetts Lien Statute, G.L.c. 254.

143 Hunting Street argued that the lien should be discharged because it was not party to the work that led to the mechanic's lien and because, under Section 2 of the statute, a purchaser of property is bound by a mechanic's lien only if statutory notice of the lien was recorded before the purchaser recorded its deed.

Judge James H. Budreau disagreed.

"The question presented is whether the mechanic's lien is enforceable against Hunting, a subsequent purchaser of the subsequent property," Budreau said.

"While this Court can find no cases that address this question, the answer is simple as the evidence supports a conclusion at this preliminary stage that Onyx and Hunting have acted together to intentionally defraud Timberline by transferring this property to avoid Timberline's mechanic's lien," Beaudreau wrote, denying the discharge and granting Timberline leave to bring a fraudulent conveyance claim.

The four-page decision is *Timberline Enterprises, LLC v. Onyx Development & Management, Inc., et al.*, Lawyers Weekly No. 12-005-25.

IMPORTANT RULING

Plaintiff's counsel Carlo Cellai of Braintree said the ruling is important because it shows that a mechanic's lien can, under certain factual circumstances, be asserted on a parcel of real estate after it has been transferred in accordance with the statutory mandate that a party may assert a mechanic's lien within the last 90 days that it provided goods or services on the project.

"I think if this was a consumer buying a house and the property was transferred for anywhere near fair market value, the judge would have summarily discharged the mechanic's lien," Cellai said. "But given the facial inadequacy of the consideration and the fact that it was a commercial project, the judge took a long pause over what he saw in the documents."

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143 Hunting Street's attorney, Herling D. Romero Adrianza of Southborough, did not respond to requests for comment.

However, Andrea J. Goldman, a construction attorney, arbitrator and mediator in Newton, said that because the property could conceivably revert back to Onyx in an impending fraudulent conveyance action, it was equitable to keep the lien in place so that it could be enforced against Onyx.

Still, she said, a title attorney could argue that this was the wrong decision since the entity seeking to put a lien on the property is responsible for doing a title search before recording.

"In this situation, they seem to have recorded the lien without doing a last-minute check on ownership," she said. "Some might say, 'That's their problem. Getting the owner right is part of recording a proper mechanic's lien.'"

Boston attorney David H. Travers said the judge seemed to prioritize the remedial purpose of the mechanic's lien statute, which is to ensure contractors are paid for work performed, instead of applying a strict interpretation of the statutory text that would have invalidated the lien at issue.

"Prior case law suggests that such an equitable consideration by the court is improperly applied to mechanic's liens, but without legislative amendments, the statute is at risk of failing its essential purpose if it is too rigidly interpreted," Travers said.

Joseph A. Barra of Boston said

Timberline Enterprises, LLC v. Onyx Development & Management, Inc., et al.

THE ISSUE: Could a company that provided building materials for a construction project put a mechanic's lien on the property shortly after the owner, which allegedly failed to pay what it owed under the contract, transferred the property to another entity for nominal consideration?

DECISION: Yes (Norfolk Superior Court)

LAWYERS: Carlo Cellai of Cellai Law Offices, Braintree (plaintiff)

Herling D. Romero Adrianza of Kenney & Sams, Southborough (defense)

the judge properly applied what he described as the intersection of two unrelated statutes: the Massachusetts Lien Statute and the commonwealth's adoption of the Uniform Fraudulent Transfer Act.

"What is interesting is that the plaintiff did not file a claim for fraudulent conveyance, but the court nevertheless applied the statute sua sponte and concluded that the conveyance was indeed fraudulent," Barra said. "Having reached that conclusion, the court reasoned, in what apparently is a case of first impression, that the lien must be discharged, as to do otherwise would be a 'violation of public policy' and 'contrary to the legislative intent.'"

Barra added that the decision serves as a warning to owners and developers that any attempt to avoid a lien on real estate by conveying the property for less than fair market value

will backfire, and the original debtor will suffer consequences under the UFTA.

Leah A. Rochwarg of Boston found it noteworthy that Timberline had apparently filed a lien as early as May 2024 and, just days later, dissolved it in good faith upon Onyx's request.

Less than 90 days after Timberline dissolved its first lien, Onyx transferred title of the property to 143 Hunting Street. By the time Timberline filed its subsequent statutory notice, Onyx no longer owned the property.

According to Rochwarg, it is not uncommon on construction projects for lien claimants to dissolve their claim voluntarily upon request.

"However, the facts of this case make clear that doing so is not without risks," she said. "In the words of Pete Seeger, 'Education is when you read the fine print; experience is what you get when you don't.'"

NOMINAL CONSIDERATION

In October 2021, Brain-tree-based Timberline entered a written credit agreement with Onyx to provide construction materials and supplies for a project at 143 Hunting St. in Needham.

Onyx apparently was both the general contractor and titleholder of the premises.

During the time Onyx worked on the premises and Timberline supplied building material, Onyx allegedly amassed an unpaid balance of \$159,766.25.

When Onyx failed to pay in full, Timberline – which had previously sent Onyx a copy of the notice of contract it intended to record with the registry – asserted a mechanic’s lien on the premises.

Timberline did so within the statutory deadline of 90 days from the last date that it, through Onyx, performed work on the premises.

But within that same 90-day time period, apparently unbeknownst to Timberline, Onyx conveyed title to the premises to 143 Hunting Street for \$100.

The conveyance and subsequent recording of title happened before Timberline recorded its notice of contract.

In December 2024, Timberline sued Onyx and 143 Hunting Street in Norfolk Superior Court, bringing breach of contract and quantum meruit claims against Onyx while also seeking to foreclose on its mechanic’s lien.

Because the mechanic’s lien was asserted after title to the premises was conveyed, 143 Hunting Street brought a counterclaim seeking to discharge the lien.

AIR OF FRAUD

Addressing the discharge claim, Budreau noted that the lien statute must be strictly construed against the entity seeking the lien so as to ensure that a subsequent purchaser of property has adequate notice of any such encumbrances.

He also noted, however, that the core purpose of the statute is to ensure that contractors get paid for their labor and materials while improving the value of someone else’s property.

Here, Budreau conceded that Timberline and Onyx were the only parties bound contractually by the mechanic’s lien at issue.

At the same time, he said, “there is a serious question about whether Hunting is simply a proxy for Onyx and/or the sale to Hunting was a fraudulent conveyance designed solely for the purpose of defeating the mechanic’s lien debt.”

The fact that Onyx sold the property to 143 Hunting Street just before Timberline was statutorily able to record the notice “raises eyebrows and suggests that the conveyance was fraudulent,” the judge continued.

Additionally, the fact that the

property address was incorporated in the name of the new buyer, paired with the nominal consideration given, established a “strong basis” to conclude that the sale was staged strictly to invalidate the lien and hinder Timberline’s claim against Onyx for building and labor expenses, he said.

Budreau further noted that Timberline – which had not brought a fraudulent conveyance claim under the UFTA – still made out such a claim based on the allegations in its complaint and would be given leave to amend its complaint accordingly.

Meanwhile, Budreau noted that no cases have addressed whether a mechanic’s lien must be discharged despite a fraudulent conveyance in instances in which the property was sold before notice was recorded.

Notwithstanding, he said, it would constitute both a “legal and factual fiction” and a violation of public policy to allow 143 Hunting Street to claim under the circumstances that it was a legitimate buyer with no notice of the lien when it bought the property.

“Even a statute that is designed to be strictly construed cannot be read in a manner that rewards conduct designed to defeat the purpose of the statute and intentionally violate public policy,” the judge said. “Consequently, Hunting’s request for a Discharge is denied.”