

Bonding Off Mechanic's Liens: Not Just for Property Owners

September 27, 2021

by Thomas S. Lambert

Property owners are often confronted with a contractor threatening a mechanic's lien on their property. These liens may stem from a dispute between them and their contractor, or even between a subcontractor and a general contractor that was not compensated for their work. Many in the real estate and construction industry believe they are fully familiar with Conn. Gen. Stat. §49-37, the statute permitting the substitution of a bond in lieu of a lien.

But what happens when the lien is placed upon the property by a subcontractor whose performance is believed by the general contractor to be substandard or overpriced? Simultaneously, the owner may also demand the general contractor to "just get rid of it, and don't involve me." Often a general contractor will simply give in and pay the excessive claim to keep their customer – the owner – happy.

However, there is another way the statute can be used by contractors to deal with a lien that does not directly involve a dispute with the property owner itself. In fact, the statute need not *only* be used only by property owners. Specifically, the statute states that "[w]hensoever any mechanic's lien has been placed upon any real estate ... the owner of that real estate, or any person interested in it, may make an application to any judge of the Superior Court that the lien be dissolved upon the substitution of a bond with surety." (Emphasis added). The "any person interested in it" portion of the statute should not be overlooked.

The Connecticut Supreme Court took up the issue of who may avail themselves of Conn. Gen. Stat. §49-37 in Henry F. Raab Connecticut, Inc. v. J.W. Fisher Company, 183 Conn. 108 (1981). In that case, a subcontractor placed a lien on a property for services rendered and materials furnished to the plaintiff contractor. The property owner withheld monies from the plaintiff contractor until the lien was dissolved, prompting the plaintiff contractor's application to dissolve the lien. The trial court granted the application to dissolve the lien and the subcontractor appealed. In its decision, the Supreme Court found that the plaintiff contractor was a "person interested" in the property because monies were being withheld from the plaintiff due to the subcontractor's lien. It went on to state that, because of its subcontractor's lien, the plaintiff had a "direct and present interest in the land, i.e., to endeavor to obtain the dissolution of the [subcontractor] lien and substitute a sufficient surety bond."

More recently, in the Superior Court decision of Marco Contractors, Inc. v. LC General Contractor, LLC, Superior Court, Judicial District of Hartford, Docket No. CV18-6092859 (Aug. 17, 2018) (Noble, J.), the plaintiff contractor similarly applied to dissolve a mechanic's lien from a subcontractor, attaching a bond to its

pullcom.com  @pullmancomley

BRIDGEPORT
203.330.2000

HARTFORD
860.424.4300

SPRINGFIELD
413.314.6160

WAKEFIELD
401-360-1533

WATERBURY
203.573.9700

WESTPORT
203.254.5000

WHITE PLAINS
914.705.5355

Bonding Off Mechanic's Liens: Not Just for Property Owners

application with the court. As a consequence of the subcontractor filing the lien, the property owner had withheld payment until the contractor removed the lien. Pursuant to its contract, the plaintiff contractor was obligated to remove any liens that encumbered the property. Like in [Henry F. Raab](#), the court in [Marco Contractors](#) found the plaintiff contractor to have a “direct and present interest in the property,” this time by virtue of its contractual obligation to obtain dissolution of a mechanic’s lien that encumbered it.

Projects need to move forward and cannot be held up by a wayward subcontractor. Contractors thus may be able to use the “*any person interested in it*” provision of the statute to bond off their subcontractors mechanic’s lien, oftentimes since the contractors have the direct contractual relationship with the subcontractors and the financial incentive to dissolve the lien to make sure the contractors themselves get paid. Property owners should consider having their contractors dissolve the lien pursuant to Conn. Gen. Stat. §49-37 and keep any disputes between contractors from becoming their own problem.

Pullman & Comley's Construction Law attorneys assist clients with contract negotiation and partner with lawyers from other practices of the firm to provide the full range of legal services needed by clients in the construction industry, including labor relations, bankruptcy advice and representation and insurance coverage claims prosecution. If you have questions regarding this alert, please reach out to any of our Construction Law attorneys.

This publication is intended for educational and informational purposes only. Readers are advised to seek appropriate professional consultation before acting on any matters in this update. This report may be considered attorney advertising. To be removed from our mailing list, please email unsubscribe@pullcom.com with "Unsubscribe" in the subject line. Prior results do not guarantee a similar outcome.