

'Unique argument' fails in mechanics' lien case

Property owner cannot be sued after bond posts

A property owner cannot be sued after a bond has been posted on property on which there is a mechanics' lien, the Rhode Island Supreme Court has decided in a ruling that a defense attorney says will avoid "turning the statute on its head."

Plaintiff National Refrigeration, acting as a subcontractor to Providence Builders, was hired to work on a parcel that was owned by Capital Properties and leased by Capitol Cove. When a dispute arose over payment, the plaintiff sought to enforce a mechanics' lien against the owner, lessee and builder.

Under the state mechanics' lien statute, the plaintiff's claim against the defendants was dismissed after the posting of a \$400,000 bond, with Liberty Mutual Insurance Co. as surety. The plaintiff then amended its complaint under §34-28-17(b)(2)3 to add Liberty as a defendant and moved for partial summary judgment on the mechanics' lien claim.

The defendants objected and requested final judgment under Rule 54(b).

The plaintiff argued that the owner, lessee and surety were all directly liable for the relief sought under the mechanics' lien statute.

But the court disagreed, citing the holding of the hearing judge.

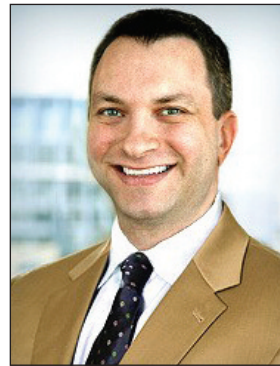
"The hearing justice held that, while the lien law 'is less than a masterpiece in clar-

ity[,] ... on some points it is clear, and that is [that] once the bond is posted, the persons whom the mechanics' lien was filed against ... go on with their business. The interests of the plaintiff, if any, had been protected," Rhode Island Supreme Court Chief Justice Paul A. Suttell wrote.

The court rejected the plaintiff's argument that the word "include" in the statute indicated a legislative intent to allow a plaintiff to supplement the original complaint by adding a party rather than substituting one party for another.

"In our opinion, the plaintiff's reliance on the word 'include' is misplaced. Were it indicative of the presence of multiple parties, as plaintiff argues, surely that is consonant with situations in which a general contractor (like builder) remains a defendant, while the surety is included as an additional defendant. "The bond stands as security for any claim made by [plaintiff]; the real property is no longer at risk or encumbered in any way," Suttell said.

The chief said the court declined the plaintiff's "invitation to construe this statute to reach such a paradoxical result. ... The only dispute that remains is between the plaintiff and builder, with



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Liberty included as surety. We have previously stated that "[a] setoff ... becomes part of a single controversy between the parties, requiring only one verdict and one judgment To allow the plaintiff to recover the full amount of its claim against the owner and lessee before the disputed issues in the case (namely the claims of faulty workmanship asserted by builder) are litigated would be both unreasonable and unjust."

Reporter Reni Gertner spoke about *National Refrigeration, Inc. v. Capital Properties, Inc. et al.* with Mitchell R. Edwards, a partner at Hinckley Allen. Edwards represents Capital Properties.

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Q. What's the history that led up to this case?

A. The case involved a construction project to build condominiums near the Amtrak station. The general contractor hired a subcontractor, and there was a dispute about payment, as there often is ... so there was a mechanics' lien put on the property. My client owned the land and had a ground lease with Capitol Cove, which was building improvements to the

condominium and hired Providence Builders as a subcontractor. [Providence Builders then hired National Refrigeration, as a subcontractor.]

There was a bond that was put up to get the lien released. The only claim was a contract dispute between [Providence Builders] and [National Refrigeration]. After the court dismissed the case, the plaintiff added [the owner and lessee] back into the case, which was very unusual.

Q. *What is so unusual about that?*

A. What's unusual is that the only claim in a mechanics' lien case is an in rem claim against the property, not against the individual parties. When you substitute the bond and a subcontractor wins against the general contractor, the subcontractor can collect against the bond to get relief. When you have liens, you're preventing owners from doing all sorts of things with their property. By allowing an owner to substitute a different security with a bond, the statute allows you to clear that title and allows owners to move on.

Here, [plaintiff] National Refrigeration added those parties back in under a mechanics' lien claim and then moved to

collect the money directly from [defendants] Capital Properties and Capitol Cove. The court said that's not how the mechanics' lien statute works.

Q. *What is important about the decision?*

A. The key thing about the case is the court essentially affirmed what the statute says. It noted that while the statute is not a model of clarity, here it is clear that when you exercise your right to post a bond, the mechanics' lien claims against you are dismissed.

That's important because it gives certainty to owners and tenants [who don't expect to] incur legal fees or litigation costs once that happens. It would be very different if that wasn't the case and would have turned the statute, in some respects, on its head. This ruling gives certainty to owners and tenants and makes clear in a construction project how this works.

Q. *Do you agree that the statute is clear on that point?*

A. Yes. To me, there really isn't any ambiguity here. They were trying to use a phrase in the statute that talked about amending the complaint to "include" the surety, saying that wouldn't be limited to just the surety because it used the

word "include." The court said that would lead to absurd results.

Q. *What might have been the implications if the court had held the other way?*

A. I think it would have changed the way owners and tenants evaluate how to handle mechanics' liens when they are placed on their property. It would have potentially impacted the incentives as to whether to post the bond. And it could have had implications on the cost of projects. Owners would have to factor in that they may have to post a bond and may have to incur litigation costs after that, or not post a bond and incur litigation costs without posting. The court realized that and applied the language of the statute. The court [understood that based on] the purpose of the statute, the opposite result would have made no sense.

Q. *Have you seen that happen in any other case?*

A. No. It was a run-of-the-mill mechanics' lien case that took a turn in a way that I don't think the defendants expected, [due to] this unique argument and position that the plaintiff was taking.

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