

## **PA Superior Court Ruling Brings Significant Changes to Mechanics' Lien Law**

Under Pennsylvania's Mechanics' Lien Law (the "Lien Law"), only a "contractor" or "subcontractor" is permitted to file a lien claim against an owner of property, 49 P.S. § 1303(a), for the payment of debts due by the owner to the contractor or by the contractor to any of his subcontractors for labor or materials furnished during a project. 49 P.S. § 1301; *see* 49 P.S. § 1201(4), (5) (defining "contractor" and "subcontractor"). The Pennsylvania Superior Court recently issued an opinion which significantly alters the interpretation of the term "subcontractor" and perhaps, the entire Lien Law in general.

### **The Bricklayers Opinion**

In *Bricklayers of Western Pennsylvania Combined Funds, Inc. v. Scott's Development Company, 2012 Pa. Super. 4 (2012)*, the Court concluded that the definition of "subcontractor" in the Lien Law is entitled to liberal interpretation. By applying this liberal interpretation, the Court held specifically that the trustees of an employee benefit fund may assert a mechanics' lien claim on behalf of a labor union. The Court ruled that the union was a "subcontractor" within the scope of the Lien Law and therefore, could assert a lien claim against a property owner for unpaid contributions owed to union members.

The Defendant, Scott's Development Company ("Scott's") is a property owner who retained J. William Pustelak, Inc. as a general contractor to perform construction work on property located in Erie County, PA. Pustelak hired members of two unions to perform work on the property. Each union maintained collective bargaining agreements with Pustelak, whereby Pustelak agreed to pay certain contributions to the trustee of each union. Each collective bargaining agreement included a trust agreement which authorized the trustee to collect the

contributions on behalf of the union's members. The members completed the work on the property but Pustelak failed to pay the required contributions.

Each union filed a Statement of Mechanics' Lien Claim against Scott's. The claims were consolidated and ultimately dismissed by the trial court. The trial court agreed with Scott's which argued that the trustees could not assert a mechanics' lien claim on behalf of the unions' members because the union's members were not "subcontractors" under the Mechanics' Lien Law. Scott's argued that the unions' members were not "subcontractors," but rather, were employees and/or laborers of Pustelak. The trial court held that the trustee itself is not a "subcontractor" under the Mechanics' Lien Law because it did not perform work on, or furnish materials to, a project. The trustee was contractually obligated under the labor agreements to receive and collect the distributions on behalf of the unions' members. The trial court concluded that the union members were not "subcontractors" under the Mechanics' Lien Law because the collective bargaining agreements were not traditional subcontractor agreements, and the union members were employees and/or laborers of a contractor.

The trustees appealed to the Superior Court, which overturned the trial's court's decision in favor of the trustees. The Superior Court concluded that under the applicable rules of statutory construction, the definition of "subcontractor" in the Lien Law is entitled to a liberal interpretation, in furtherance of the Lien Law's remedial purpose. Contrary to the trial court, the Superior Court concluded that a traditional subcontractor agreement is not a mandatory prerequisite to confer "subcontractor" status. Instead, the trustees had sufficiently pled the existence of a necessary contract between the unions and the contractor, particularly an implied-in-fact contract to furnish labor. Therefore, under the specific facts presented in this case, the unions are subcontractors pursuant to the subcontract, and given the unique legal relationship

that exists between the trustee and the union, the trustee is able to assert a mechanics' lien claim on behalf of the union.

### **What Does This Mean for the Lien Law, and How Might it Affect You?**

This opinion immediately overturns a number of prior cases which formerly held that the Lien Law must be given strict construction and, thus, any questions of interpretation were resolved in favor of strict, narrow construction. The *Bricklayers* case clearly holds now that the definition of "subcontractor" is to be liberally applied. This application expands the class of potential lien claimants, or, those who are entitled to file a lien claim against a property owner. The broader scope now includes those who may not maintain an express or traditional subcontract agreement. In addition to trustees and labor union, other classes or groups which this liberal construction may benefit include other obligees of subcontractors pursuant to an existing agreement.

More importantly, this opinion suggests, although does not specifically hold, that the entire Lien Law shall be liberally construed. This application will most certainly be tested in future court challenges. At first blush, the liberal construction would seem to favor contractors and subcontractors, who may now be afforded some leeway when filing lien claims.

Property owners and land developers will face greater exposure to lien claims as a result of the expanded class of potential claimants. Moreover, an owner must now be mindful, when possible, whether its contractors are parties to any union agreements and if so, whether the contractor is current on its contributions owed. Owners now face potential lien claims from contribution obligees of contractors. As a result, owners must now increase their diligence when engaging contractors, or require contractors or union benefit plans to certify that payments are current before engaging the contractor.

On February 6, 2012, Scott's petitioned the Pennsylvania Supreme Court to hear its appeal of this decision. As of October, 2012, this petition is still pending. The Supreme Court is not obligated to hear the case. If appeal is granted permission, Scott's will appeal with strong support from other owners and representative groups. As of now, the future remains uncertain and will not be resolved for several more months.

**Please contact David I. Davis, Esq. or Matthew I. Sack, Esq. at Davis, Bucco & Ardizzi, at 610-238-0880, with any questions, or to obtain a copy of the *Bricklayers* opinion.**