

DIMENSIONS

JURY DEMANDS IN CONSTRUCTION LIEN CLAIM ENFORCEMENT ACTIONS IN NEW JERSEY

By: Edgar Alden Dunham, IV, Esq.

New Jersey's Construction Lien Claim Statute, 2A:44A-1, et seq. (the Lien Law"), attempts to balance the competing interests of property owners, lenders, contractors, subcontractors, and suppliers, by providing a framework within which 1) unpaid contractors, subcontractors and suppliers are entitled to claim a lien against properties owned by parties they do not have contracts with, and 2) owners, general contractors or others above the claimant in the contractual chain are not obligated to pay twice for the same work. The New Jersey Supreme Court has permitted juries in construction lien cases for almost 100 years. However, juries are rarely requested. But when they are, it raises a number of complicated issues.

In a recent matter, we defended the general contractor and the owner on a lien claim by a subcontractor's supplier, who made a jury demand. There was nothing wrong with the supplier's work. The only dispute was the amount of the "lien fund".

The "lien fund" concept can be difficult to understand. It is the primary protection available to parties upstream in the contractual chain from the lien claimant and the party it directly contracted with. It is the source for payment of the lien claim in an enforcement action. An upstream party can only be liable for the determined amount of the "lien fund".

The "lien fund" is the smaller of the "earned amount" of the contract of any

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party in the contractual chain above the claimant, minus any payments made prior to service of the lien claim. In most cases, the "earned amount" is the "value" determined under the contract. Not an easy concept to describe or comprehend. There are no applicable standard jury instructions. Typically, the relevant testimony will be on contracts, payments made, and so forth. Pretty dry stuff and difficult for a jury to concentrate on if it doesn't yet know what is important and why.

An issue was the scope of the jury's role. A jury can only decide facts. It cannot decide the law. In our case, we argued that the jury should be limited to determining the amount of the "lien fund" as it was the only thing in dispute, and that the judge must make any resulting judgment because implementing the statute once the facts have been determined is a matter of law.

Another issue arose because a bond discharging the lien claim was filed. The surety's name, as is not uncommon, sounded like an insurance company. We argued that the surety's name had

to be kept from the jury for the same reasons that the New Jersey Rules of Evidence prohibit telling a jury that a defendant has insurance. The concern is that juries may recklessly decide to award damages in the belief that the carrier can simply cover it. Even though a bond is not the same as insurance coverage, the worry in our case was the same. We argued that the parties and the court should simply refer to the defendant as the general contractor when the jury was present.

Going into the trial, claimant's position was the opposite of ours. It maintained that everything must go before, and be decided by the jury. The case settled before any of those issues were resolved.

A jury may be advantageous for lien claimants. The natural inclination is to feel sympathy for someone who did the work, but wasn't paid, particularly if there is no dispute as to the work or the filing of the lien claim. A jury demand will likely increase the cost of prosecuting an enforcement action.

Defendants are generally better suited without a jury, particularly if they are relying upon technical defenses. Without a jury, the defendant only has to explain the defenses sufficiently clearly to persuade one judge, rather than six members of a jury. A judge is also likely to be more dispassionate and accepting of defenses that benefit owners and others above the claimant in the contractual chain.

About the Author:

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