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Interplay of PA's Mechanics' Lien Law and Condominium Act



Marian A. Kornilowicz



Wendy R. Bennett

Philadelphia has seen a huge increase in the construction of condominium projects in the past few years and, with the economic downturn, many issues have surfaced for the contractors and subcontractors involved in these projects. Projects have been cancelled or delayed and, for those that were completed, sales have often been slow.

In addition, lenders have not been paid, cash is at a premium, and in many cases contractors or subcontractors are still waiting for payment. It comes as no surprise that there was a surge in the filing of mechanics' liens against condominiums, which then highlighted for the first time for many, the relationship between the mechanics' lien and condominium statutes and all its complexities.

The Statutes and Case Law

The Pennsylvania Mechanics' Lien Law of 1963, 49 P.S. §§1201, et seq. provides that "[e]very improvement and the estate or title of the owner in the property shall be subject to a lien ... , for the payment of all debts due by the owner to the contractor or by the contractor to any of his subcontractors for labor or materials furnished in the erection or construction, or the alteration or repair of the improvement"

The Mechanics' Lien Law defines an 'improvement' as the building or structure; the 'property' upon which a lien is filed is the improvements, the land, and the lot that form "a part of a single business or residential plant." If work is performed on "several different" improvements that are not a part of a "single business or residential plant" (e.g., several single-family houses in a development), a contractor must apportion a lien claim among the several improvements and file a separate lien claim for each. This apportionment is based on allocating labor and materials furnished in the erection, construction, alteration or repair of each improvement.

Although the term "condominium" does not appear in the Mechanics' Lien Law, the Pennsylvania Supreme Court has ruled that a condominium is a "single residential plant." Specifically, in 1992's *Metco*

Inc. v. Moss Creek Inc., the court concluded that a lien claimant may file a single unapportioned lien claim against the ownership interest of a condominium developer (the declarant) in five remaining units for work performed on those units, three other sold (and released) units, and the common areas of the condominium.

In the first part of its analysis, the *Metco* court relied upon the predecessor to Section 3419(c) of the Uniform Condominium Act, 68 Pa.C.S.A. §§3101, et seq. This section of the Condominium Act (previously, Section 3409(b)) provides that if liens (other than mortgage liens), including those attributable to work performed or materials supplied before the creation of the condominium (i.e., mechanics' liens), become effective against two or more units, an affected unit owner may cause the lien to be released against his or her unit by paying the lien holder the amount of the "lien attributable" to that unit. The amount attributable to the unit must be proportionate to the ratio of the unit owner's common expense liability to the common expense liabilities of all unit owners whose units are subject to the lien.

In other words, the claim is statutorily apportioned based on a unit owner's percentage share of the common elements of the condominium, which determines the percentage of the lien amount that the unit owner must pay to release his or her unit from the lien. It is not apportioned based on the labor or materials actually furnished to particular units.

Relying on this section, the court concluded that the Condominium Act "clearly permits one lien to be filed against multiple units without apportionment among the units" at the time of filing, since apportionment will occur at the time of release of the lien.

In the second part of its analysis, the court expressly determined that a condominium is a "single residential plant" under the Mechanics' Lien Law. In reaching this conclusion, it focused on the definition of the term "condominium" contained within the Condominium Act (Section 3103) and elsewhere, and determined that the "distinctive characteristics of condominium ownership," including the individual ownership of a unit coupled with the "common ownership of the land and other shared areas," justified the designation of a condominium as a "single residential plant" for purposes of the Mechanics' Lien Law.

Continuing its discussion, the court noted that "common ownership of shared areas makes apportionment impossible at the time of filing some mechanics' liens against condominiums." In describing the process by which a condominium is formed, the court stated that the recording of a "declaration of condominium" is "the mechanism whereby a condominium is created and the proportional share of each unit is designated" and that it "may not take place unless the condominium is substantially completed" Further, the court found that "it would be impossible to apportion a mechanics' lien claim among the various units" until the declaration of condominium was filed.

Some Open Issues

Interestingly, by mentioning the recording of the declaration of condominium as the time at which apportionment would be possible, the Metco court may have muddied the issue of whether a single lien claim may — or must always — be filed against multiple units (whether or not owned by the developer declarant), or whether apportionment among individual units and the filing of separate claims may be necessary — or permitted — once the declaration of condominium is recorded.

Specifically, a number of questions have arisen among practitioners, including:

- Whether one single lien can — or must — be filed for new condominium construction work after the declaration of condominium has been recorded;
- Whether, after some units have been conveyed to third parties, the interest of these non-declarant unit owners (including their undivided interest in the common elements) can be charged for work performed by declarant's contractor on the condominium including common elements and the sold units; and
- Whether all of declarant's units can be charged when work is performed for the declarant on only some of declarant's units.

Moreover, the court's potential distinction between pre- and post-declaration filing of lien claims raises the question of how apportionment of lien claims is to be made, i.e., by owners' percentage shares of the common elements (under Section 3419(c) of the Condominium Act) or an allocation of labor and materials (under Section 1306(b) of the Mechanics' Lien Law).

Single Residential Plants

The bright-line rule that condominiums are "single residential plants" has not been disturbed in the 18 years since the Pennsylvania Supreme Court's decision, probably for good reason. This determination protects the interests of contractors who construct condominiums by allowing for a practical, less costly procedure for the filing of one claim against a "single residential plant" under the Mechanics' Lien Law (instead of separate claims against each unit). By providing for an apportionment of amounts owed the claimant pursuant to the Condominium Act (an arithmetic calculation), it avoids the problems inherent to an allocation of labor and materials among units under the Mechanics' Lien Law.

Also, the inevitable litigation concerning allocation is eliminated or reduced as are the multiple litigations resulting from the filing of separate claims. This procedure also protects the declarant and third-party buyers of units by providing for an orderly and mandatory release of units based on owners' percentage

shares of the common elements (not the full amount of the claim), thereby permitting the ongoing sale of condominium units.

Any alternative result is simply not supported by the statutes or the *Metco* case. First, any suggestion in the *Metco* opinion that separate apportioned claims must be filed once a declaration is recorded would be dicta, and more importantly, it would be contrary to the facts of *Metco*, which involved the filing of claims after the declaration was recorded, at a time when an apportionment of a mechanics' lien claim among the various units was possible.

Second, Section 1306(b) of the Mechanics' Lien Law expressly states that in no case (other than for "improvements which do not form all or part of a single business or residential plant ...") "shall an apportioned claim be allowed."

In other words, apportionment of claims in the case of a condominium (provided a condominium is a single residential plant) is not permitted under the Mechanics' Lien Law. Therefore, an apportionment among units based on the labor and materials furnished to each unit appears to be expressly prohibited under the Mechanics' Lien Law. In contrast, in the case of "improvements which do not form all or part of a single business or residential plant," separate claims with apportioned amounts must be filed with respect to each such improvement.

However, this result under the Mechanics' Lien Law should be distinguished from an apportionment under the Condominium Act among only those units in which work was performed, when the work was performed in some but not all units. In such a case, a claim against less than all the units would be allowed because Section 3319(c) of the Condominium Act recognizes that a mechanics' lien may attach to less than all the units in a condominium. For example, this section provides for an apportionment based not on the total percentage ownership interests established in the declaration (which includes all units), but on the ownership interests of "all unit owners whose units are subject to the lien" (which may include less than all the units).

Liens on Units owned by Third Parties

Section 1303(c) of the Mechanics' Lien Law only prohibits claims for alterations and repairs (not for erection and construction) on property conveyed "in good faith and for valuable consideration" prior to the filing of the lien. Therefore, a contractor could file a claim for new construction against units conveyed by the declarant to 'innocent' third parties. However, pursuant to Section 1301, such a claim could be filed only if the claimant furnished labor and materials to the improvement (the building) containing the unit.

It remains to be seen whether or not a court will permit a lien against a unit owner when no labor or materials were furnished to the unit itself but the unit is located within an improvement (building) where labor or materials were furnished. The answer might hinge on whether or not the unit owner is the declarant or the condominium is under declarant's control.

A contractor could also file a claim against all units (regardless of ownership) for work performed on common elements since each unit owner is the owner of an undivided interest in the common elements and the Mechanics' Lien Law states that the property of an owner (i.e., the unit with an undivided interest in the common elements) shall be subject to a lien for work performed on the property.

Therefore, in summary, a contractor performing work for a declarant must file one unapportioned lien claim on all units in the declarant's name at the time work is performed and materials furnished even if the declaration has been recorded and some of the units have been transferred to third parties before the claim is filed. Indeed, it appears that a contractor might be barred from separate claims on each unit apportioned under the Mechanics' Lien Law, although the contractor could file, in appropriate cases, a lien on less than all the units with an apportionment under the Condominium Act. •

Marian A. Kornilowicz is a partner and chair of the business transactions group at Cohen Seglias Pallas Greenhall & Furman. He can be reached at mak@cohenseglias.com. Wendy R. Bennett is an associate with the firm's construction group. She can be reached at wbennett@cohenseglias.com.