ALERTS AND UPDATES

Massachusetts Appeals Court Invalidates Mechanic's Liens Against Condo Common Areas

January 11, 2012

A Massachusetts Appeals Court decision last month portends far-ranging implications for the construction industry. The court ruled that a subcontractor's mechanic's lien filed against the common areas of a condominium was barred by M.G.L. c. 186A § 13—a section of the condominium organizing statute which by its terms precludes a claimant from imposing an attachment against the common areas, even where the underlying claim relates to the common areas. The December 20, 2011, ruling in *Michael Shea Company, Inc. v. Gary Chellis, et al.*, 2011 Mass. App. Unpub. Lexis 1322 (2011), appears to invalidate the decades-long practice in which contractors and subcontractors who contract with condominium trustees assert mechanic's liens against the condo trust's common areas (the only property "owned" by the trust). The Appeals Court reasoned that c. 186A § 13 clearly states that claims and attachments may be made "only against common funds or property held by the organization of unit owners and not against the common areas or facilities themselves. . ." and that a mechanic's lien under M.G.L. c. 254 was an attachment and therefore barred.

Michael Shea was a subcontractor with Basepoint Contracting, LLC ("Basepoint"), performing landscaping work in construction of a plaza and connector link at the condominium. Basepoint failed to pay Shea for its work and sought bankruptcy protection under Chapter 7. Shea then recorded a Notice of Contract and statement of account under M.G.L. c. 254 §§ 4 and 8, respectively. Shea's Notice of Contract described the property interest to which the lien would attach as "the common areas and facilities of the condominium known as 50-60 Longwood Avenue, Brookline, MA." Shea then filed suit to enforce its lien and seek recovery in *quantum meruit* for the value of its labor and materials. The condo trustees moved to dismiss, arguing that c. 186 § 13 barred the lien and that the *quantum meruit* claim would not lie against the trust, when Shea contracted with Basepoint.

The trial court allowed the trustees' motion. Shea appealed and, as discussed, the Appeals Court upheld the dismissal. The Appeals Court's decision, which on its terms does not have binding precedential value because it is unpublished and not endorsed by the entire Appeals Court, rests mainly on Shea's characterization of the property liened as "common areas and facilities" of the condominium trust. The court reasoned that, while c. 186 § 13 seems incompatible with the mechanic's lien statute (and its remedial nature), that incompatibility has a rational basis: "namely, that there is no separate interest in common areas and facilities apart from individual condominium units, and therefore, no interest that could be conveyed to a hypothetical purchaser to satisfy the lien." Thus, the Appeals Court reasoned that the Massachusetts Legislature intended the apparent incompatibility.

On the *quantum meruit* claim, the Appeals Court restated Massachusetts law, which insulates an owner from a subcontractor's payment claim "in the absence of a lien perfected under G.L. c. 254." Recovery in *quantum meruit* presupposes that no valid contract exists, and in this case, there was a valid contract between Shea and Basepoint. Thus, the condo trustees could not be liable for the unpaid value of Shea's labor and materials.

Several instructive lessons can be learned from this decision because even though it is not binding precedent, the arguments raised by the condo trustees here are likely to be raised by other trustees in future cases. First, if at all possible, contractors, subcontractors and other lien claimants in the construction of a condominium should record a Notice of Contract

at the outset of the project, when the property is owned by the developer and prior to the transfer of the property to the condominium association. Second, if working subsequent to such a transfer under contract with the association, or under a subcontract to a contractor working under contract with the association, a lien claimant should not limit a Notice of Contract to common areas. The lien claimant should list the individual trustees' interests through any statutory liens the trustees acquire under M.G.L. c. 186 § 6, as well as other property that the trustees own, such as individual units acquired through foreclosure or otherwise and any leases of individual units that the trustees may hold. Third, consider increasing the due diligence on the payment capacity of those with whom a contract is signed, especially on projects involving condominiums. It is entirely possible under the scenario Shea experienced for subcontractors to be left holding uncollectible accounts receivable due to a legal inability to require owners to pay, or for prime contractors, designers and others who contract with a condo association to be left with no recourse to collect amounts owed. The ability to establish a lien on a condo project will now be significantly curtailed if the *Shea* decision is followed.

For Further Information

If you have any questions about this *Alert*, please contact Michael B. Donahue, Stanley A. Martin, Robert A. Prentice, any member of our Construction Group or the attorney in the firm with whom you are regularly in contact.