



Contractors Entitled To Jury Trial In Mechanics' Lien Foreclosure Cases

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Contractors often seek to amicably resolve disputes with property owners over payment disputes. Despite these efforts, contractors typically find the need to file a mechanic's lien against the property they worked on to secure payment for their labor and services, followed by the commencement of litigation in which they must not only foreclose on the mechanic's lien, but also assert their claim for breach of contract, or other damages they may have sustained.

Since the action to foreclose on the mechanic's lien is considered "equitable" and not "legal," the contractor often expects that the assertion of the claim for foreclosure of its mechanic's lien will waive any right to a jury on its "legal" claims for breach of contract or other damages it sustained. Also, to the extent the owner responded to the contractor's action by asserting a claim against the contractor for breach of contract or other damages it seeks arising out of the contractor's alleged delay in performance or inferior work, the contractor may also expect to waive its right to a jury on each of those claims - again because the contractor asserted a claim to foreclose on the mechanic's lien.

Contractors in New York may, however, be entitled to demand a jury trial on their legal claims despite the joinder of these claims with the claim for lien foreclosure. A New York state supreme court justice rejected a property owner's motion to strike a contractor's demand for a jury on its claims against the property owner for breach of contract and unjust enrichment, and on the Owner's counterclaims for breach of contract seeking more than twice the amount unpaid for alleged defective work.

In *Sorbara Construction Co. v. Thatch Ripley, Inc.*, Index No. 600983/2007, (N.Y. Sup. Ct., Mar. 30, 2009) (Lowe, J.), ("Decision") Plaintiff, the superstructure concrete sub-contractor commenced an action against, *inter alia*, the owner, seeking to foreclose on its mechanics lien, and asserting legal claims for breach of contract and unjust enrichment. Owner answered, asserting certain defenses as counterclaims which included claims for back charges to the subcontractor to remedy alleged deficiencies in the subcontractor's work and a claim for willful exaggeration of the lien. Contractor filed its Note of Issue demanding a jury trial on all claims and counterclaims except the lien foreclosure and willful exaggeration claim. Owner immediately moved to strike the jury demand claiming Contractor waived its right to a jury trial by joining equitable and legal claims.

Contractor countered that where the gravamen of an action involves legal claims, a party is entitled to have those claims tried before a jury regardless of the inclusion of equitable claims into the pleadings citing numerous New York appellate authority. Further, Contractor asserted its constitutionally protected right to a jury trial on the Owner's counterclaims.

The Court in *Sorbara*, agreed with Contractor and held that "the gravamen of the entire dispute [was] for breach of a construction contract." Decision, p. 4. Since an award of monetary damages to the Contractor would afford full and complete relief, the action was held to be "legal in nature," and Contractor was entitled to a jury trial on its claims for breach of contract and unjust enrichment. *Id.*, pp. 4-5.

Owner, however, also sought to preclude the subcontractor from obtaining a jury on the counterclaims for back charges, relying on § 45 of the Lien Law. The Court in *Sorbara*, rejected Owner's position finding instead that "[w]hen read in context, the second sentence of Lien Law 45 applies to matters brought against the State and not generically to all defendants who may assert a legal counterclaim in a foreclosure action." Decision p. 4.

The decision appears to be the first decision that has addressed the jury trial issue head on where plaintiff contractor seeks to foreclose on a lien combined with claims for breach of contract. Although it is often the belief that construction claims are too complex for a jury, or so highly technical, there are circumstances where a jury trial is beneficial.