

The Saiber Construction Law Column: February 2023

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It has been several years since a New Jersey court has issued a decision relating to the New Jersey Construction Lien Law, but a recent case decided by the Supreme Court of Nebraska, *Echo Group, Inc. v. Tradesmen International*, serves as a good reminder for contractors, subcontractors, suppliers and owners in New Jersey that the New Jersey Lien Law is a powerful tool that aids parties who have not been paid, provided that they strictly abide by the requirements of the statute.

The *Echo Group* decision, which was issued in October 2022, involved three consolidated cases by a supplier who filed construction lien claims. The Nebraska Supreme Court held that a judgment in the supplier's favor to enforce its lien claims was properly entered and pre-judgment interest was properly awarded, but an award of attorneys' fees in favor of the supplier should not have been entered. In reaching these conclusions, the Court repeatedly stressed that the supplier fully complied with the statutory requirements of Nebraska's lien law and that the supplier's liens were timely filed. The Court noted though that the Nebraska lien law did not provide for an award of attorneys' fees to a prevailing party in every lien dispute.

New Jersey's lien law also requires parties to strictly comply with its requirements. Specific requirements that parties seeking to use the New Jersey statute should bear in mind include, but are not limited to the following:

- A written contract between parties is a prerequisite to filing a construction lien claim.
- A claimant is required to file a lien claim within 90 days from the last date of work, services, material or equipment provided for which payment is claimed.
- A claimant forfeits all rights to enforce a lien if the claimant (1) fails to bring an action in in the county where the property is located to establish the lien claim within one year of the date of the last provision of work, services, material, or payment for which the lien claim was filed or (2) within 30 days following receipt of written notice from the owner requiring the claimant to establish the lien claim.
- A claimant forfeits its right to bring a lien claim if the claim is without basis, is willfully overstated, or is not filed in the form or manner required by the statute.
- If a lien claim is without basis or not in accordance with this lien statute, the claimant forfeits all claimed lien rights and rights to file subsequent lien claims to the extent of the face amount claimed in the lien claim. The claimant will also be liable for all court costs, and reasonable legal expenses, including, but not limited to, attorneys' fees, incurred by the owner.
- Waivers of construction lien rights are deemed void and against public policy unless given in consideration for payment for the work, services, materials, or equipment

provided, and are effective only upon and to the extent that such payment is actually received.

The New Jersey Construction Lien makes it easier for contractors, subcontractors and suppliers to place construction liens on property in the amount of the work, services or material they have provided, and for which they have not been paid. However, the deadlines and requirements of the New Jersey lien statute are strictly enforced. Owners, contractors, subcontractors and suppliers therefore should read the statute and familiarize themselves with all of its requirements because failing to do so could have dire consequences.

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Each issue's Legal Construction Column will discuss a recent decision by New Jersey courts or, like here, courts from other states which may be of interest to people in the construction industry.

The information in each article is not intended to be legal advice and may not be used as legal advice. Legal advice must be tailored to the specific circumstances of each case. Every effort has been made to assure this information is up-to-date. The article is not intended to be a full and exhaustive explanation of the law in any area, nor should it be used to replace the advice of your own legal counsel.

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