

New York Court Rules That Sureties Have No Mechanic's Lien Rights

Ruling Has Significant Impact for Construction Industry

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In a case of first impression in New York, a New York Supreme Court judge ruled that sureties have no mechanic's lien rights.

The ruling arose in connection with a summary judgment order granted to Sheppard Mullin clients Thorobird Grand LLC and Grand Apartments Housing Development Fund Corporation ("Client"), affordable housing developers that developed three residential buildings in the South Bronx.

After the default and termination of the general contractor, the client and the performance bond surety, Federal Insurance Company, executed a takeover agreement pursuant to which Federal assumed the obligation to complete the project. At the completion of the project, the Client sent a notice of withholding and stopped making any further payments as provided under the takeover agreement due to the contract damages it incurred. The Client also commenced a breach of contract action in Bronx County Supreme Court. In response to the withholding, Federal filed three mechanic's liens – one on each property – that had a total value of over \$3.4 million and counterclaimed to foreclose on the liens in the Bronx County Supreme Court action.

In an issue of first impression in New York, the Court found that a surety has no statutory right to file mechanic's liens under the New York Lien Law and discharged the liens in full.

"Liens have serious consequences," said Sheppard Mullin partner Ira Schulman. "Our client is grateful that it will be able to get back the millions of dollars it was forced to post as collateral to obtain bonds to discharge these unlawful liens."

Read the summary judgment order [here](#).

In addition to Ira Schulman, the Sheppard Mullin team included Cesar Pereira, Sophia Cahill, and Sylvia Waghorne.

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Practice Areas

Construction