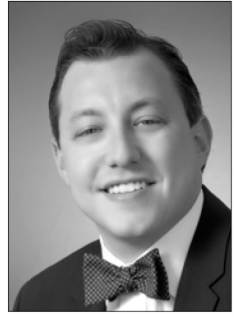


Striking a Jury Demand in a Mechanic's Lien Foreclosure Action

In New York, general contractors and subcontractors routinely file mechanic's liens against real property on private, residential (single family dwelling) home improvement projects for non-payment of labor or materials provided for a project.



Adam H. Koblenz, Esq.

Pursuant to New York law, on a private project, a general contractor must file a mechanic's lien within four months of the last date in which such labor or materials were furnished to the project.¹

When filed, the duration of a mechanic's lien is one year.² The lien may be extended by court order for up to an additional year prior to its expiration.³ In contrast to a public project, the mechanic's lien must be filed by the general contractor or subcontractor within 30 days from the date in which such project was granted by the public authority and this type of mechanic's lien will not be extended absent a court order.⁴

In the private sector, mechanic's lien foreclosure actions are typically filed by general contractors seeking to simultaneously: (1) obtain equitable relief in the form of a foreclosure on a mechanic's lien filed in connection with construction work performed on real property and (2) obtain legal relief in the form of monetary damages for breach of contract and quantum meruit. Under such circumstances, in which a contractor pursues both equitable and legal relief within the same action, the contractor irrevocably waives its right to a jury trial on *all* of its claims. As the case law



underscores, if a contractor seeks both equitable and legal relief within a mechanic's lien foreclosure action, a demand for a trial by jury made in conjunction with filing a note of issue is likely to be stricken by the court in favor of a bench trial on all claims.

Under New York law, "[i]t is well settled that by 'deliberately joining legal and equitable causes of action arising out of the same transaction,' a party waives its right to a trial by jury."⁵ Indeed, this well settled doctrine has been articulated within the

specific context of a mechanic's lien foreclosure action.⁶

For instance, in *Magill v. Dutchess Bank & Trust Co.*, a case filed by certain beneficiaries against a co-trustee for damages for breach of trust, the Appellate Division, Second Department has made clear that "[u]nder established principles, the joinder of claims for equitable and legal relief amounts to a waiver of the right to demand a jury trial."⁷

Moreover, in *Anesthesia Assocs. of Mount Kisco LLP v. N. Westchester*

Hosp. Ctr., a case where the trial court was confronted with circumstances in which a party joins claims for money damages and injunctive relief arising out of the same action, the Second Department has demonstrated a tendency to affirm a lower court's decision to strike a jury demand.⁸ Similarly, in *Bryant v. Broadcast Music, Inc.*, a breach of contract action for non-payment of royalties, the Second Department reversed the lower court's

See FORECLOSURE Page 22

FORECLOSURE ...

Continued From Page 9

decision to deny a motion to strike a jury demand where the plaintiff deliberately joined both legal and equitable claims for relief.⁹

Furthermore, the case law highlights that "[o]nce the right to a jury trial has been intentionally lost by joining legal and equitable claims, any subsequent dismissal, settlement or withdrawal of the equitable claim(s) will not revive the right to jury trial."¹⁰

In conclusion, a general contractor and/or subcontractor prosecuting a mechanic's lien foreclosure action in New York State Supreme Court knowingly seeking both equitable and legal claims irrevocably forfeits its right to a trial by jury, notwithstanding any subsequent dismissal, settlement or withdrawal of the equitable claims. Accordingly, based upon the prevail-

Based upon the prevailing precedent in the Second Department, a court is more likely (than not) to strike the contractor's jury demand and order a bench trial on all claims.

ing precedent in the Second Department, a court is more likely (than not) to strike the contractor's jury demand and order a bench trial on all claims.

Adam H. Koblenz, Esq. is a Member and Partner of Sahn Ward Coschignano, PLLC. The firm represents clients in complex business, labor, employment, construction, real property, environmental, civil rights, and land use litigation in state and federal courts. The litigation and appeals practice provides comprehensive litigation services from the inception of a case through trial and appeal.

1. Lien Law § 10.
2. *Id.*
3. *Id.*

4. *Id.*

5. *Haber v. Cohen*, 25 Misc. 3d 1216(A) (Sup. Ct., Kings Co. 2009) (quoting *Mirasola v. Gilman*, 104 A.D.2d 932 (2d Dept. 1984)), *aff'd*, 74 A.D.3d 1282 (2d Dept. 2010).

6. *See, e.g., Edward Joy Co. v. McGuire & Bennett, Inc.*, 221 A.D.2d 891, 892 (3d Dept. 1995) ("[B]y joining [a] legal [cause of action for breach of contract] and [an] equitable cause of action [to foreclose on a mechanic's lien] arising out of the same transaction [i.e., a construction project], plaintiff waived its right to a trial by jury.").

7. *Magill v. Dutchess Bank & Trust Co.*, 150 A.D.2d 531, 532 (2d Dept. 1989); *see also, e.g., Petra Cablevision Corp. v. Teleprompter Corp.*, 49 A.D.2d 888, 888 (2d Dept. 1975) ("The joinder by plaintiff of legal and equitable claims constituted a waiver of its right to a trial by jury.").

8. *See, e.g., Anesthesia Assocs. of Mount Kisco LLP v. N. Westchester Hosp. Ctr.*, 59 A.D.3d 481 (2d Dept. 2009) (affirming striking of jury demand when the plaintiff joined claims for equitable and legal relief); *Ayromylooi v. Staten Island Univ. Hosp.*, 7 A.D.3d 475 (2d Dept. 2004); *Whipple v. Trail Props., Inc.*, 261 A.D.2d 470 (2d Dept. 1999).

9. *See, e.g., Bryant v. Broadcast Music, Inc.*, 88 A.D.3d 631 (2d Dept. 2011) (reversing denial of motion to strike jury demand when the plaintiff joined claims for equitable and legal relief); *Yi v. Marcy Realty Co.*, 291 A.D.2d 368 (2d Dept. 2002); *Tanenbaum v. Anchor Sav. Bank*, 95 A.D.2d 827 (2d Dept. 1983).

10. *Bryant*, 88 A.D.3d at 632 (quoting *Anesthesia Assocs. of Mount Kisco LLP*, 59 A.D.3d at 482); *see also, e.g., Whipple*, 261 A.D.2d at 470 ("The subsequent amendment of the complaint to eliminate the equitable cause of action and demand for equitable relief did not revive that right [to a jury trial]."); *Mirasola*, 104 A.D.2d at 932 ("The subsequent removal of the equitable claims from the case through a partial settlement did not revive that right [to a jury trial]."); *Sepinski v. Bergstol*, 81 A.D.2d 860, 861 (2d Dep't 1981) ("Plaintiffs who make an intentional choice to join equitable and legal causes based upon the same transaction cannot be relieved from their waiver of the right to a trial by jury.").