

Legal Brief

by Timothy J. Woolford, Esquire

Court Expands Mechanic's Lien Law in Favor of Excavators and Site Contractors

Strange ruling changed so that excavators and site contractors can file a mechanic's lien

Since 1973, the law in Pennsylvania has been that a mechanic's lien cannot be filed unless a building is actually constructed at the project site. Therefore, an excavator or site contractor was, in many cases, not able to file a mechanic's lien if it was not paid. The legal reason for this seemingly strange rule was that under the Lien Law, a lien could only be filed if the work constituted "erection, construction, alteration or repair of an improvement on the property" or was incidental to that type of work. In the past, courts had ruled that unless a building was actually being constructed, a lien was invalid because there was no "improvement." The fact that plans called for a building to be constructed later was irrelevant – the lien was still invalid.

The law as it has stood for the last few decades was very frustrating to many site and excavation contractors who had performed early stage site work and were not paid for it because 1) the developer went broke, 2) the project was canceled, or 3) the development was split into multiple phases in which the site work was completed long before the buildings were to be

constructed. When these contractors attempted to file a mechanic's lien to enforce their right to payment, they were shocked to discover that they were precluded from doing so because a building was never constructed. This made no sense to them because, in their mind, they were doing construction work regardless of whether

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a building was actually under construction or not. Despite the apparent inequity of this situation, the lien would nevertheless be stricken by the court, usually leaving the subcontractor with no remedy. Meanwhile, the banks that usually foreclosed on, or

otherwise took over, the property did not have to pay for the work and were unjustly enriched by the value of the site or excavation contractor's work.

Thankfully, this unfair rule was recently changed in a court case that our firm handled. In the case *B.N. Excavating, Inc. v. PBC Hollow-A, L.P.*, 2011 Pa. Super. LEXIS 628, we represented a site contractor that had performed excavation and related work on a business park in Phoenixville for a developer affiliated with the Gambone Development Company. Our client was stiffed for \$119,000. We filed a mechanic's lien for the full amount. Plans and specifications called for buildings to eventually be constructed at the project site. However, plans to construct the buildings were tabled because of the developer's ailing financial condition. Eventually, according to the developer, the plans were scrapped. In response to the lien claim, the developer attempted to seize upon the cancellation of the building construction and argued that, because there was no building on the

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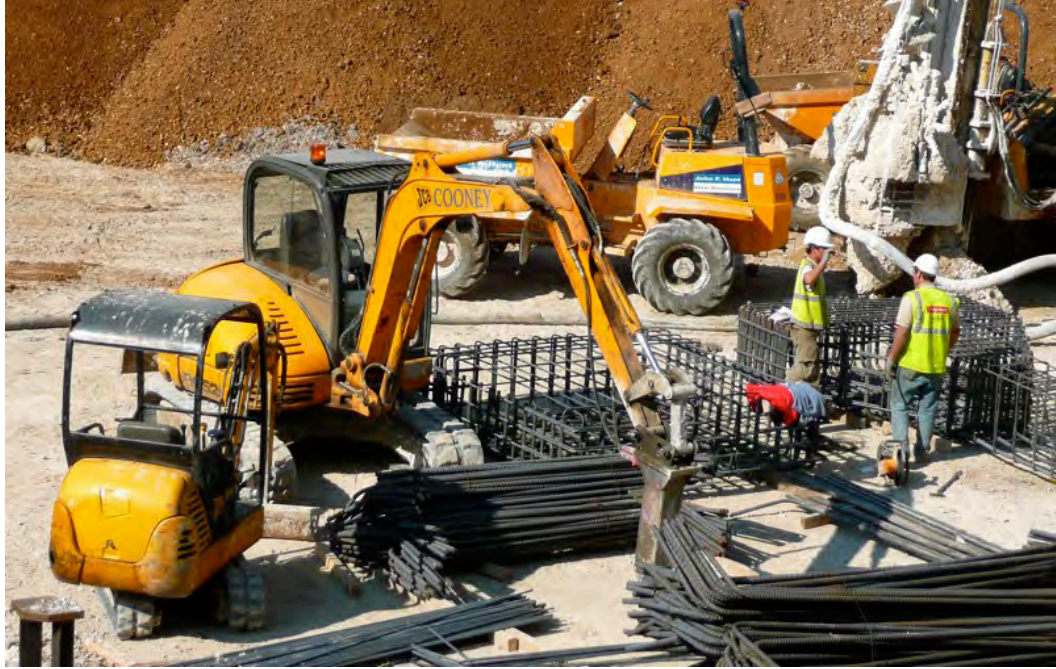
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site at the time the lien was filed, the lien was invalid. The trial judge in Montgomery County agreed and threw out the lien claim.

Believing this ruling was legally incorrect and patently unfair to excavators and site contractors, we appealed to the Pennsylvania Superior Court and won. The Superior Court is an appellate court which reviews decisions of the county judges. Judges in the county courts are required to follow the law as it is handed down by the Superior Court. Consequently, the Superior Court's ruling is binding on all trial judges in the state.

The Superior Court ruled that if the contractor's work is in preparation for the building of a structure upon the property, then the lien is valid even if the building is never built. The court ruled that the building need not actually be constructed – or even un-



The recent expansion of the Mechanic's Lien Law will benefit excavators and site contractors.

der construction – at the time the lien is filed. The decision constitutes a significant reversal from past precedent, and it is a strong affirmation of the importance of the Mechanics' Lien Law – a special law that provides a subcontractor and contractor with what, in many cases, is its most potent remedy to enforce its payment rights. The

right to a lien is more important than ever in this less than robust economy where payment is all too often delayed or not made at all. Fortunately, contractors that perform site work and other work in the early stages of a construction project can now be confident that if they are not paid, a mechanic's lien can protect their right to payment.

Mid Atlantic BX OCR feature contributes to fast, accurate estimates

Due to the current economic conditions in the commercial construction industry, many contractors, subcontractors and suppliers are competing for the same jobs. The importance of submitting accurate bids in a timely manner is greater than ever.

To help members with the submittal process Mid Atlantic BX (MABX) offers an Optical Character Recognition (OCR) search feature in its COOL (Construction Opportunities Online) Planroom. Also known as SAW, the OCR search feature allows users to enter specific terms, including product brand names, and search online for those terms in the plans, specs and addenda associated with construction projects.

MABX recently upgraded SAW resulting in faster, more accurate results. The MABX OCR search has always allowed members and COOL Planroom users to instantly search through all project documents, specs and addenda for terms specific to their trades.

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"The plans, specifications and addenda for commercial construction projects can be long, detailed documents that can take hours to thoroughly research," said Trisha Mays, MABX director of project information. "With the Optical Character Recognition ability of our SAW search, you can find the details you need in a matter of seconds."

SAW stands for Spec and Addenda Words. Users can easily locate trade names such as "Honeywell," "DuPont," "Prosoco" and "Trane," as well as terms that can be difficult to locate in project documents, such as "retaining wall," "valve," "crane."

To allow for accurate SAW searches, MABX scans all spec books and addenda using OCR technology. After the scanning process, the results are indexed and available for searching online. This service is included with a MABX membership and COOL subscription.

COOL provides members real-time access

to more than 14,000 new construction projects annually. On any given day it features around 5,500 projects in various stages valued to date at more than \$32 billion.

COOL is an internet-based construction reporting and lead-generation service that includes current projects out for bid, as well as direct access to project blueprints, specifications, addenda, bidders lists and other details about the projects listed. MABX members can search for and track construction projects relevant to their businesses.

The program allows users to set up filters based on geography, project type, funding type (public or private), construction categories and keywords pertaining to the products or services they provide. It then generates nightly email updates on those filters and any project being tracked.

Members can also add their names to bidders lists.