

Countering a mechanic's lien filed against real property



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The filing of a mechanic's lien against real property need not necessarily be cause for alarm. While a lien has the potential to cause severe hardships on a project, its effect can usually be minimized through the use of some of the tools provided in the New York Lien Law. One of those tools, set forth in Lien Law §59, permits the property owner or contractor to serve a notice on the lienor demanding that it foreclose on its lien within thirty days. If the lienor fails to timely foreclose, the owner or contractor may seek an order discharging the lien. Sometimes, however, the issue presented is not simply whether the foreclosure action was timely commenced within the statutory period, but rather whether the action was properly commenced at all.

In one recent case, a subcontractor filed a mechanic's lien against a commercial building located in Manhattan. The general contractor, believing the subcontractor had failed to properly perform its work, then commenced litigation against the subcontractor in District Court in Nassau County (as the subcontractor's business office was located in Nassau County) and also served a Lien Law §59 demand to foreclose. The lienor subsequently served its answer to the lawsuit in Nassau County and asserted a counterclaim seeking the "establishment" of its mechanic's lien. The general contractor thereafter petitioned the court in New York County (where the lien was filed) to discharge the lien for failure to commence a foreclosure action as required. The general contractor argued that the counterclaim raised in the Nassau County action did not constitute a proper foreclosure action as the property owner (who, unless the lien has been discharged by bond, is a necessary party to a foreclosure action) was not named in the action and since the District Court, a court of limited jurisdiction, does not have jurisdiction over a foreclosure action. The New York County court granted the petition and discharged the mechanic's lien.

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