

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2022

PHILADELPHIA, AUGUST 10, 2022

ALM.

Lien on Me: Removal of Pennsylvania Mechanics' Lien Actions to Federal Court

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Whenever a Pennsylvania construction lawyer files a Mechanics' Lien in a Pennsylvania state court, most practitioners first brace for the oft-asserted preliminary objections raising some procedural defect under the byzantine maze that is the Pennsylvania Mechanics' Lien Law of 1963, 49 P.S. Section 1101 et seq. (Pennsylvania Mechanics' Lien Law). Next, practitioners file state court lien enforcement complaints, seeking to reduce their client's mechanics' lien to judgment, consistent with the Mechanics' Lien Law and Rules 1651-1661 of the Pennsylvania Rules of Civil Procedure—a state court process, through and through.

But, what if, to your surprise, the owner files a notice of removal of your lien action to federal district court? Can you really be litigating a Pennsylvania Mechanics' Lien Law claim in federal court? Often overlooked (or never known) is that a Mechanics' Lien Action can be removed to federal court under certain circumstances if diversity jurisdiction exists.

Contractors and owners with projects in Pennsylvania need to understand the existing authority allowing removal of a Pennsylvania



Courtesy photos

(L-R) John W. Dornberger, Jeffrey P. Wallack, and Sean C. Campbell of Post & Schell.

Mechanics' Lien Action to federal court under certain circumstances and the advantages that may exist if or when a lien action is removable.

Removal Under the Pennsylvania Mechanics' Lien Law

Mechanically, removal is possible because the Mechanics' Lien Law delegates the practice and procedure to obtain judgment upon a claim to the Pennsylvania Rules of Civil Procedure. 49 P.S. Section 1701(a). In turn, Rule 1652(a) requires that the mechanic's lien action be brought "in and only in the county in which the claim has been filed."

Is there exclusive jurisdiction for mechanics' lien actions in state court? The statute is silent. Further,

case law from the New Jersey federal district court—involving liens created under the Municipal Mechanics' Lien Law that confers jurisdiction upon the New Jersey Superior Court—suggests that a jurisdictional restriction to the county Court of Common Pleas is neither dispositive nor controlling in the U.S. Court of Appeals for the Third Circuit.

In *Liner Technology*, Civil No. 91-1713, 1991 U.S. Dist. LEXIS 16982, at *5-6 (D.N.J. Oct. 21, 1991), a municipal authority argued, in part, that the New Jersey Municipal Mechanics' Lien Law conferred exclusive jurisdiction upon the New Jersey Superior Court—thus preventing the district court from exercising subject matter

jurisdiction. The district court disagreed and held that, even if the state statute conferred exclusive jurisdiction on the New Jersey Superior Court, “such a statute would be constitutionally infirm. Where, as here, a general right has been conferred, its enforcement cannot be limited to the state court.”

In *MasTec Renewables Construction v. Mercer County Improvement Authority*, 2017 U.S. Dist. LEXIS 207891, *12-13 n. 2 (D.N.J. December 19, 2017), the plaintiff filed a mechanics’ lien complaint in federal court after it had first filed an identical complaint in the New Jersey Superior Court. While setting aside the issue of whether New Jersey’s entire controversy doctrine served as a jurisdictional bar to the plaintiff’s federal lawsuit, the New Jersey district court took the time to direct the parties to the Third Circuit’s observation that: “it is axiomatic that, because federal subject matter jurisdiction can be conferred or withdrawn only by Congress, a federal court must look only to federal, not state, law to determine whether that jurisdiction exists, even when the substantive right at issue is a creature of state law. That a state simply has no power to divest a federal court of its constitutionally or congressionally conferred subject matter jurisdiction has been settled law for nearly a century,” (quoting *MCI Telecommunications v. Teleconcepts*, 71 F.3d 1086, 1109 (3d Cir. 1995)); (also citing *Railway v. Whitton’s Administrator*, 80 U.S. 270, 269 (1871)) (“Where a general right is thus conferred by a state, it can be enforced in any federal court within the state having jurisdiction of the parties. It cannot be withdrawn from the cognizance of such Federal court

by any provision of state legislation that it shall only be enforced in a state court.”). The district court then adopted *Liner Tech’s* holding to find that “no jurisdictional bar obligated the plaintiff to bring its Municipal Mechanics’ Lien Law] claim in state court and the balance of its claims concerning the same subject matter here.”

Although Pennsylvania federal district courts have not provided a similar analysis regarding a state’s inability to restrict substantive rights to its own state courts, they have, nevertheless, followed the same trend and allowed mechanic’s lien complaints to proceed in Pennsylvania federal courts. For example, in the U.S. District Court for the Eastern District of Pennsylvania, a defendant removed a mechanic’s lien claim and then, a few weeks later, separately removed the mechanic’s lien complaint to obtain judgment on the claim. See *Brooks Erection & Construction v. BP Oil*, C.A. NO. 94-6048, 1994 U.S. Dist. LEXIS 17130, at *1-2 (E.D. Pa. Nov. 30, 1994). The plaintiff filed a motion to remand the claim, but not the complaint. Relying on the Pennsylvania Superior Court’s opinion in *Tully Drilling v. Shenkin*, the district court observed that mechanic’s lien proceedings fell into two stages—the filing of the claim followed by the initiation of the complaint/action, (citing *Tully Drilling*, 597 A.2d 1230, 1231 (Pa. Super. 1991)). Since Pennsylvania Rule of Civil Procedure 1653 requires a mechanic’s lien claim to “be commenced by a filing ... a complaint,” the district court reasoned that “a civil action upon the Mechanic’s Lien Claim was only commenced when the plaintiff filed its “complaint in civil judgment to obtain judgment on Mechanics’ Lien Claim.””

The district court then granted the motion to remand the mechanics’ lien claim and retained the complaint. A review of the docket on PACER reveals that the mechanics’ lien complaint ultimately went to trial.

In a case from the other side of the commonwealth in the Western District of Pennsylvania, the district court denied a motion to remand or abstain in a mechanic’s lien action that had been removed to federal court and, instead, transferred the case to a related bankruptcy case in the Eastern District of Tennessee. See *Siskin Steel & Supply v. Highland North*, No. 3:12-CV-105, 2013 U.S. Dist. LEXIS 270 (W.D. Pa. Jan. 2, 2013). The plaintiff argued, in part, that the district court must exercise mandatory abstention to remand the case back to the Court of Common Pleas pursuant to 28 U.S.C. Section 1334(c)(2), which applies to state law claims related to, but not arising from, bankruptcy cases. Relying on Third Circuit case law, the district court noted that one of the factors when determining whether mandatory abstention applies is whether “federal courts would not have jurisdiction over the claim but for its relation to a bankruptcy case,” (quoting *Stoe v. Flaherty*, 436 F.3d 209, 213 (3d Cir. 2006)). The district court immediately homed in on this factor and found that, regardless of the related bankruptcy matter, diversity jurisdiction existed both at the time of the mechanic’s lien claim filing and the subsequent complaint. (“The Pennsylvania state mechanic’s lien complaint ... could also have been commenced in federal court on the jurisdictional grounds of diversity of citizenship.”). Thus, the district court concluded that mandatory abstention was not warranted and

that it would not remand the matter to the Court of Common Pleas.

Most recently, in the Middle District of Pennsylvania, judge, now chief judge, Matthew W. Brann reviewed a motion to dismiss a mechanic's claim complaint arising from alleged nonpayment under a subcontract. See *Miller v. O'Brien Construction*, No. 4:19-CV-01611, 2020 U.S. Dist. LEXIS 24171 (M.D. Pa. Feb. 12, 2020). Although Brann dismissed the complaint with leave to amend on the narrow grounds that the plaintiff failed to register a fictitious business name, he rejected the defendant's argument that the federal court lacked jurisdiction due to Pennsylvania Rule of Procedure 1653 that requires a mechanic's lien complaint to be filed where the lien itself is filed. He reasoned that because "Rule 1653 is merely instructive on how to file a mechanic's lien action in Pennsylvania state courts, this rule has no bearing on this action—federal courts apply the federal rules for procedure." According to the case docket, Brann granted the plaintiff's subsequent motion for leave to amend, and the parties proceeded to discovery in federal court until the case was, ultimately, voluntarily dismissed.

Removal and New Tactical Options

Assuming the removal of a Mechanics' Lien Action under diversity jurisdiction can survive abstention or other legal challenges, federal courts will seemingly apply the Federal Rules of Civil Procedure, to the exclusion of Pa. R.C.P. 1651-1661 as applicable to "actions upon mechanics' liens." The lien action limitations set forth in Pa. Rules 1651-1661 thereby disintegrate, providing lien claimants and respondents with new tactical options, strategy, and advantages.

Foremost may be avoidance of

Rule 1657 of the Pennsylvania Rule of Civil Procedure that expressly prohibits joinder of an action to obtain judgment on a Mechanics' Lien claim with any other causes of action, including breach of contract actions or statutory remedies under the Contractor and Subcontractor Payment Act (CASPA) 73 P.S. Section 501, et seq. Representing a contractor (or subcontractor or materialman), you have no ability to seek CASPA interest, penalties and attorney fees in a Pennsylvania Mechanics' Lien Action in state court. However, such limitation will not exist in federal court.

Conversely, representing an owner in a Pennsylvania Mechanics' Lien Action, a practitioner can only assert a set-off and cannot assert a counterclaim. However, in federal court, an owner would be free to assert a counterclaim for breach of contract and thereby assert other remedies permissible under the construction agreement. Indeed, in the *Miller* case discussed above, the defendant filed counterclaims, asserting fraud in the execution/fraud in the factum, tortious interference, rescission, and declaratory judgment claims. Defendant O'Brien Construction's answer and defenses to the plaintiff's amended complaint, and counterclaims, *Miller v. O'Brien Construction*, No. 4:19-CV-01611, (M.D. Pa. June 4, 2020), Doc. 35.

Conclusion

While removal of a Mechanics' Lien Action in Pennsylvania is not that common, as the previous examples show, upon diversity jurisdiction, it is possible. It also offers tactical advantages that contractors and owners can potentially utilize. Therefore, removal of liens and federal court litigation should be part of mechanics' lien analysis and strategy.

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