



Construction Law Zone

Current developments and recent trends in all areas of Construction Law

Robinson+Cole's Construction Group is pleased to bring you a special **New York Edition** of our [Construction Law Zone](#) blog. As we continue to follow developments and trends in all areas of construction law and share our insights on issues important to the industry, we encourage you to check out the blog and [subscribe](#) to receive e-mails when new content is posted. We welcome your feedback and input on topics you'd like us to cover.

CASE SPOTLIGHT

[An Unfounded Lien: What's an Owner to Do? And Can It Recover Its Attorneys' Fees?](#)

A subcontractor has liened the property even though the owner has paid in full for its work. The general contractor has disappeared. What should an owner do next? And will its attorneys' fees be recoverable? In New York, a mechanic's lien, although filed in the county clerk's office on the project owner's land record, secures only to funds:

- owed to the party directly above the lienor: each tier of subcontractors, materialmen, and laborers has its own "lien fund," and pursuit of that is its only recourse; and
- that have been approved for payment: if the owner did not by contract or change order consent to the payment sought, that dollar amount is not included in the "lien fund."

Thus, if at the time the subcontractor filed the notice of mechanic's lien, the owner did not owe the general contractor money for work performed, there is no fund to which the subcontractor's lien can attach, and the lien is void. In such a case, the owner has several options under the Lien Law. It should determine whether the lien is "facially valid," i.e., without knowing any facts, the lien, on its face, complies with the statutory requirements. If so, the owner may serve the lienor with a "Demand for Verified Statement," which seeks detailed information about the items of labor and materials furnished and the terms of the subcontract under which they were furnished. If the lienor fails to provide a responsive statement within five days, the statute sets up a path by which the owner can seek cancellation of the lien in a summary proceeding. If the lienor does timely respond, then with the information provided by the subcontractor, an owner can verify the lienor's claim. [Read more](#)

REGULATORY FOCUS

[NYC Amends Its Façade Inspection and Safety Program to Push Building Owners into Action](#)

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FEATURED AUTHORS:

[Lisa B. Andrzejewski](#)
[Peter E. Strniste](#)
[Virginia K. Trunkes](#)

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In the wake of the tragic death of architect Erica Tishman, who was killed by falling debris from a brick tower in midtown Manhattan in December 2019, the New York Department of Buildings (DOB) amended its rules governing exterior wall inspections and repairs. The new rules went into effect on February 20, 2020. Known as the Local Law 11 inspections, the Façade Inspection & Safety Program (FISP) has undergone extensive amendments in an effort to address the increasing number of dangerous façade conditions, including corroded masonry and fractured terra cotta, which in addition to causing structural problems, can loosen and fall to the ground, causing bodily harm or property damage.

This issue is a growing concern. During the past six years, more than 4,790 Environmental Control Board violations related to facades were issued, of which more than half remain active.[i] The DOB reported more than 22,000 violations related to facades since 2014.[ii] [Read more](#)

LEGISLATION SPOTLIGHT

[Will Claims Against Closely-Held Condominium Developers Be Thwarted by New York's Newly-Adopted Uniform Voidable Transactions Act?](#)

Property development companies regularly create single-purpose entities (SPE) to acquire new real estate for development, construction or renovations. SPEs are often comprised of only a few members and no assets beyond the property itself, and are considered “closely-held” companies.

There has been a growing trend in New York construction defect lawsuits in which boards of managers of newly-constructed condominiums that have sued the sponsor-developer-SPEs also name the SPE's individual members as defendants. The plaintiffs rely on New York's Debtor & Creditor statute Article 10, referred to as the “Uniform Fraudulent Conveyances Act” (UFCA). The UFCA authorizes “claw-backs” of money and other asset transfers as a remedy for some creditors.

Effective April 2020 in New York, after 95 years, the Uniform Voidable Transactions Act (UVTA) will replace the UFCA. The new statute will contain modified definitions and clearer criteria for which transactions may be unraveled. The question is whether this will reshape the courts' understanding of sponsor-developer-SPEs' equity financing arrangements, which by their nature have created a conflict with the UFCA. [Read more](#)

FEDERAL COURT UPDATE

[Caution When Approaching Artistry](#)

A \$6.75 million judgment was upheld by the United States Court of Appeals, Second Circuit, against a developer that whitewashed 45 spray-painted artworks on its site — several months before the demolition permits were issued. See [Castillo v. G&M Realty L.P.](#), — F.3d —2020 WL 826392 (February 20, 2020). The trial court had issued the maximum statutory damages (\$150,000 per destroyed work) pursuant to the “Visual Artists Rights Act,” holding that the developer's destruction of the murals at “5Pointzb” — a Queens, NY, curated warehouse where aerosol artists were once given legal permission to add their creations both inside and on the building's exterior — was a violation of the artists' rights. [Read more](#)

NEW+NOW

[Who Will Bear the Risk and Cost for Coronavirus Construction Delays? A Contractual Analysis](#)

As the Coronavirus spreads across the globe, its impact continues to disrupt many industries, including construction. Over the last twenty years, the construction industry in the United States has substantially increased its reliance on China as a supplier for all types of construction materials including electrical and lighting equipment, elevators and component parts, plumbing fittings and fixtures, and HVAC equipment.

Production lines in China are standing still while workers are quarantined or huddling in place in their homes. Shipping containers with raw materials are backed up in China's ports and there is no transportation to deliver finished products from factories. These supply chain shutdowns have already created increased demand for construction materials in the United States and have the potential for causing substantial construction delays and project cost overruns. [Read more](#)

If you have any questions, please contact a member of Robinson+Cole's [Construction Law Group](#)

[Gregory R. Faulkner](#) | [Lisa B. Andrzejewski](#) | [Joseph A. Barra](#) | [Robert M. Barrack](#)

[Dennis C. Cavanaugh](#) | [Niel P. Franzese](#) | [Choity R. Khan](#)

[Paul S. Lopez](#) | [Martin A. Onorato](#) | [Todd R. Regan](#) | [Kenneth A. Sherman](#)

[Peter E. Strniste Jr.](#) | [Virginia K. Trunkes](#)

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