

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
NORTHERN DISTRICT

SUPERIOR COURT

Adam Windows & Doors, Inc.

v.

Eclipse Construction, Inc. & Renaissance 7 Limited Partnership

No. 05-C-278

ORDER ON MOTION TO SUBSTITUTE BOND

Defendants Eclipse Construction, Inc. ("Eclipse") and Renaissance 7 Limited Partnership ("Renaissance") have moved to substitute a security bond in place of a mechanic's lien that was obtained by plaintiff Adam Windows & Doors, Inc. ("Adam").¹ Adam obtained the mechanic's lien in connection with a dispute related to payment for windows that it provided to Eclipse, a general contractor, for installation at a construction site owned by Renaissance. For the reasons stated in this order, the defendants' motion to discharge the mechanic's lien and substitute a bond is DENIED.

The asserted facts have been set forth in the pleadings and on the record. Here, the court focuses on the narrow legal issue of whether a mechanic's lien holder may, under New Hampshire law, be compelled to accept a surety bond as alternate security. In their motion, the defendants argue that "the Court should

¹ The bond has been issued by National Grange Mutual Insurance Company.

exercise its discretion to require Adam to accept security in the form of a surety bond as a substitute for the recorded lien.” Def. Supp. Memo. at p. 2. Citing to RSA 511:48, the defendants also argue that “a firm statutory basis does exist for the Court to order the substitution.” *Id.* In response, Adam counters that “[n]othing within the lien statute, RSA 447, or the pre-judgment attachment statute, RSA 511-A, provides that a mechanic’s lien holder may be compelled to discharge its lien for alternative security.” Pl. Obj. to Mot. to Submit Alt. Sec. at p. 1 [Doc. No. 6].

To begin, the court notes that the defendants have not cited any New Hampshire statutes or cases which specifically authorize or require the discharge of a mechanic’s lien upon production of a substitute bond. Nor have the defendants cited any cases—New Hampshire or otherwise—in which a general attachment statute, such as RSA 511:48 has served as the basis, or even as a partial basis, for compelling a mechanic’s lien holder to accept, against its will, a bond as alternate security. Rather, based upon this court’s review of the case law, it appears that legislatures in other jurisdictions have created very clear statutes, specifically related to mechanic’s liens, which require or permit the substitution of a bond. *See, e.g.*, Conn. Gen. Stat. Ann. § 49-37(a) (West 2005); Va. Code Ann. § 43-71 (West 2005); Ind. Code Ann. § 32-28-3-11 (West 2005). *See also* 53 Am. Jur. 2d Mechanic’s Liens § 313 (1996) (noting that “[t]he statutes of some jurisdictions allow release of a mechanic’s lien when the property owner files an approved bond or undertaking, and the Uniform Construction Lien Act specifically allows owners of property against which a lien

exists to discharge the lien by filing a bond"). As stated above, the court is not aware of a New Hampshire statute that specifically requires or authorizes discharge of a mechanic's lien upon production of a surety bond.

Indeed, the Merrimack County Superior Court has previously recognized that New Hampshire does not have a specific statute that would require substitution of a bond for a mechanic's lien. See Consolidated Electrical Distributors v. SES Concord Co. & Service Elec. Co., Merrimack Cty. Super. Ct., Nos. 89-C-571, 579 (Nov. 21, 1989) (Order on Mot. to Release Mechanic's Lien Attachment, Manias, J.). In Consolidated, the defendant moved to "dissolve the attachment and substitute a bond for security pursuant to RSA 511:48." Id. at 8. The Consolidated Court distinguished general attachments under RSA 511:48 from mechanic's liens obtained pursuant to RSA 447. Id. at 8. The Consolidated Court then declined to "intervene to readjust the relationships of the parties under the circumstances presented by this case." Id.

The legal position asserted by the defendants in the instant case is identical to, and the essential facts are analogous to those that were raised by the defendants in Consolidated. Thus, the court finds and rules that the above-cited Consolidated order is incorporated by reference. Further, based on the thoughtful and comprehensive legal analysis articulated by the court in Consolidated, and for the reasons stated above, the court declines to require the requested bond substitution under the facts and circumstances of this case.


Accordingly, for the foregoing reasons, the defendants' motion to discharge

Adam's mechanic's lien and substitute a bond is DENIED.

The Office of the Clerk of Court is hereby requested to schedule, as the docket permits, a hearing on the defendants' Objection to Ex Parte Mechanic's Lien Attachment [Doc. No. 8].

SO ORDERED.

Date: 8/5/05



Gillian L. Abramson
Presiding Justice