

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
NORTHERN DISTRICT

SUPERIOR COURT

HPB Construction, LLC

v.

Berkshire-Amherst, LLC,
Bowdoin Construction Corp.,
T. D. Banknorth, N. A. (Trustee)

08-C-0145

Bowdoin Construction Corp.

v.

HPB Construction, LLC

Docket No.: 08-C-0170

ORDER

These cases were scheduled on September 3, 2008 for a Structuring Conference and a hearing on defendants' Motions for Immediate Release of Attachment. By way of brief procedural background, HPB Construction, LLC, a subcontractor on a commercial real estate development, was granted an *ex parte* petition for an attachment in the form of a mechanics lien on March 13, 2008 (Barry, J.) on both the development property and bank accounts containing funds for the project. Both the owner, Berkshire-Amherst, LLC, and the general contractor, Bowdoin Construction, object to the attachment and seek its release.

Two questions are at issue: (1) whether a mechanics lien may properly be placed on bank accounts; and (2) whether posting of a bond by the general

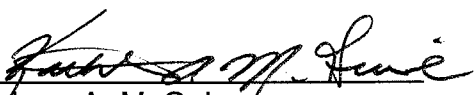
contractor pursuant to RSA 511:48, requires lifting the mechanics lien because it demonstrates sufficient assets to satisfy a judgment pursuant to RSA 511-A:3.

As to the first question, plaintiff agrees to release any attachments on any bank accounts. Accordingly, the motions to release are GRANTED as to trustee defendants. As to the second, the Court agrees with the reasoning in *Consolidated Electrical Distributors, Inc. v. SES Concord Company* (Merrimack Cty. Super. Ct., Nos. 89-C-571, 579 (11/21/89)) (Order on Motion to Release Mechanic's Lien Attachment, Manias, J.) and *Adams Windows and Doors, Inc. v. Eclipse Construction, Inc.* (Hills. Cty. Super. Ct. North, No. 05-C-0278 (08/05/08)) (Order on Motion to Substitute Bond, Abramson, J.) Those courts ruled that neither posting a bond under RSA 511:48 nor demonstrating sufficient assets pursuant to RSA 511-A:8, apply to mechanics liens under RSA Chapter 447 and RSA 511-A:8. Accordingly, the motions to release the mechanics liens are DENIED.

Counsel informed the Court that a hearing on consolidating the two cases pending in this county with related Merrimack County cases is scheduled in Merrimack County on October 14, 2008. Attorney Jack Crisp has assumed the responsibility of informing the clerk's office in this county as to the outcome of that hearing. These cases will then be either transferred to Merrimack County at that time or rescheduled for a structuring conference in this court.

SO ORDERED.

9/5/08
Date


Kathleen A. McGuire
Presiding Justice