

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
NORTHERN DISTRICT

SUPERIOR COURT

Metro Walls, Inc.

v.

The MacMillan Company, LLC and The Prospect-Woodward Home

No. 216-2019-CV-760

ORDER

On October 15, 2019, the court convened a hearing after notice on the plaintiff's motion for *ex parte* mechanic's lien attachment. All parties appeared through counsel. The issue presented was whether defendant The Prospect-Woodward Home ("Prospect") is entitled to substitute a performance bond in place of the plaintiff's mechanic's lien. Because the court is persuaded by the reasoning of the cases holding that the general provisions of RSA 511:48 do not affect the plaintiff's statutory right to a mechanic's lien under RSA 447, the court finds and rules that the plaintiff is entitled to a mechanic's lien.

The issue presented has been thoroughly addressed in *Consolidated Electrical Distributors, Inc. v. SES Concord Co. & Service Electric Co.*, Merrimack Cty. Super. Ct., Nos. 89-C-571, 579, Order of Nov. 21, 1989 (*Manias, J.*), that the remedy of posting a bond under RSA 511:48 does not apply to mechanic's liens. This is consistent with a statutory scheme that does not apply the prejudgment attachment standards, such as an examination of the sufficiency of the defendants' assets, to RSA 447 mechanic's liens. This reasoning has been followed in other superior court and federal court rulings. *See, e.g. H.E. Contracting v. Franklin Pierce College*, 360 F. Supp. 2d 289, 291 (2005); *Frasier Engineering Co., v. IPS Integrated Project Servs., LLC*, No.

17-cv-102-JD, 2018 WL 1525725, at *2 (D.N.H. March 27, 2018); *HPB Constr., LLC v. Berkshire-Amherst, LLC, et al.*, Hillsborough Cty. Super. Ct. Northern District, No. 08-C-145, and *Bowdoin Constr. Corp. v. HPB Constr., LLC*, Hillsborough Cty. Super. Ct. Northern District, No. 08-C-170, Order of September 5, 2008 (McGuire, J.); *A&E Flooring, Inc. v. SAMCO Holdings, LLC & Great Pine Constr. Mgmt., LLC.*, Merrimack Cty. Super. Ct., No. 09-C-008, Order of May 11, 2009 (Nicolosi, J.); *Adam Windows & Doors v. Eclipse Constr., Inc. & Renaissance 7 Limited Partnership*, Hillsborough Cty. Super. Ct. Northern District, No. 05-C-278, Order of August 5, 2005 (Abramson, J.); *Pinnacle Builders, LLC v. Ella S. Tobelman*, Grafton Cty. Super. Ct., No. 05-C-006, Order of April 14, 2005 (Houran, J.); *West Side Dev. Group, LLC. v. Philip and Kristine D'Amour*, Carroll Cty. Super. Ct., No. 04-C-018, Order of March 24, 2004 (O'Neill, J.).

In support of its request to substitute a performance bond for the mechanic's lien, Prospect cites *Alex Builders & Sons v. Danley*, 161 N.H. 19, 23-24 (2010). There, the court quoted language which stated that "[t]he purpose of the mechanics' lien law is remedial, to guarantee effective security to those who furnish labor or materials which are used to enhance the value of the property of others." *Id.*, quoting *Innie v. W & R, Inc.*, 116 N.H. 315, 317 (1976). Conceding that the case does not address the present issue, Prospect argues this language warrants a reexamination of the consistent superior court rulings. Prospect also cites three Rockingham County superior court orders that have accepted this reasoning. See *S & J Enters., Inc. v. Bruce Delle Chiaie, et al.*, Rockingham Cty. Super Ct., No. 218-2019-CV-143, Order of May 6, 2019 (Schulman, J.); *B & B Drywall, Inc. v. Calamar Construction Management, Inc. and RM16A Holdings, LLC*, Rockingham Cty. Super Ct., Nos. 218-2016-CV-1024 and 218-2016-CV-1194, Order of November 30, 2017 (Anderson, J.); and *Moynihan Lumber of Plaistow, LLC v. Destefano & Assoc., Inc., et al.*, Rockingham Cty. Super Ct., No. 218-2017-CV-590, Order of August 2, 2017 (Delker, J.).

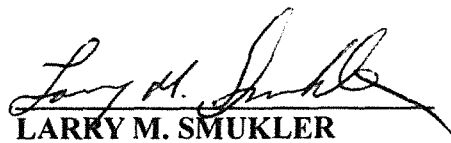
Prospect asserts that because the Rockingham cases are more recent, they represent the current view of the proper construction of the statutory framework governing mechanic's liens.

The court disagrees. First, the court does not believe that *Alex Builders* supports a reexamination of well-established law. Indeed, the cited language is a quote from a 1976 case. The *Alex Builders* court went on to state that “[t]he general rule is to construe remedial statutes liberally in favor of the person the statute is intended to benefit.” *Alex Builders*, 161 N.H. at 24. Here, the statute is intended to benefit the the mechanic's lienholder. Second, the court agrees that Prospect has appropriately cited the Rockingham County cases, but it is not persuaded by the reasoning in those cases, which appear to opt for a policy of practicality. While the court recognizes the seductiveness of this policy argument, it does not believe it justifies a departure from the statutory scheme. “The wisdom and reasonableness of [a] legislative scheme are for the legislature, not the courts, to determine.” *Blackthorne Group v. Pines of Newmarket*, 150 N.H. 804, 810 (2004).

Based on the foregoing, the court rules that the posting of Prospect's performance bond does not compromise the plaintiff's entitlement to a mechanic's lien. The original lien was in the amount of \$679,568.36. The plaintiff agrees that the lien should be reduced to \$533,347.42. Accordingly, Prospect's request to discharge the plaintiff's mechanic's lien based on the existence of the performance bond is DENIED. The plaintiff is entitled to a reduced mechanic's lien of \$533,347.42 and its motion to attach in that amount is GRANTED.

So ORDERED.

Date: October 17, 2019


LARRY M. SMUKLER
PRESIDING JUSTICE

Clerk's Notice of Decision
Document Sent to Parties
on 10/17/2019