

CONSTRUCTION LAW NEWSLETTER

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TRENDS IN CONSTRUCTION LAW

The State Board of Regents maintains rules for the conduct of design professionals in the State of New York.

Part 29.3(b) of the rules permits design professionals of record to delegate specifically defined design work to a professional hired by a contractor or subcontractor. Many times this is contractually required of the contractor or subcontractor.

Part 29.3(b), requires the principal designer to

review and approve the design submitted by the contractor or subcontractor for conformance with the specifications on the project. However, many A/Es of record do not stamp "approved" on the designs submitted by the contractor or subcontractor's design professional. Instead, they will stamp equivocal language which seeks to avoid liability for any design flaws which may come to light later.

A way to guard against this practice is to send a letter to the A/E citing Part 29.3 and affirming that it is the A/E respon-



sibility to approve the design and it is your understanding that its stamp does so.

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CASE LAW UPDATE

On March 10, 2017, Justice David F. Everett, of the Westchester County Supreme Court, decided the case of *Special Breaks, LLC v. 201 Murray Ave., LLC*

The case involved a contractor who filed a mechanic's lien for unpaid work.

The owner filed a motion to dismiss the mechanic's lien on various grounds, including failure to list its name and address in the state, failure to list the name and ad-

dress of its attorney, failure to verify the lien, failure to specify the labor, equipment or materials comprising the lien, and failure to serve the lien upon the owner at its business address.

The court cited Lien Law section 23, stating "a substantial compliance with its several provisions shall be sufficient for the validity of a lien and to give jurisdiction to the courts to enforce same."

It then went on to hold that the lien substantially complied with the requirements of Lien Law section 9, which sets forth the required contents of a mechanic's lien.

The court further held that service of the lien was proper because the owner actually received the mechanic's lien.

Lastly, the court allowed the lienor an additional 14 days to correct deficiencies in the lien and serve the corrected version on the owner.

The contents herein are for informational purposes only. No contents herein should be construed as legal advice or create an attorney/client relationship.

Consult your attorney regarding specific legal needs. This may be construed as attorney advertising. Prior results do not guarantee a similar outcome.