

Western District Holds that Federal Miller Act Does Not Preempt State Lien Laws

BY GREGORY L. SHELTON

The United States District Court for the Western District of North Carolina recently considered whether the federal Miller Act preempts remedies provided under New York's state lien law. The case, **In re J.A. Jones, Inc.**, No. 3:05CB263-MU, 2006 WL 335873 (W.D.N.C. Feb. 13, 2006), arises out of the J.A. Jones entities' bankruptcy proceedings pending in the Western District.

J.A. Jones, as general contractor, contracted with Siemens Building Technologies ("Siemens"), as subcontractor, on various projects including the construction for the General Services Administration of a U.S. Post Office in New York. J.A. Jones filed bankruptcy and Siemens, in turn, filed a secured proof of claim. *Id.* at *1. Siemens took the position that its claim was secured based upon a provision in New York state lien law that imposes a trust on all funds coming to a general contractor for the benefit of subcontractors and suppliers. *Id.*

The bankruptcy court disallowed the secured claim on the grounds that the Miller Act, 40 U.S.C. Sections 3131 *et seq.*, preempts state lien laws on federal construction projects. Siemens appealed. The District Court, through District Judge Graham C. Mullen, reviewed the decision of the bankruptcy court's ruling *de novo* and reversed.

The court initially observed that the Miller Act, which requires a general contractor to obtain a payment bond on federal projects, protects subcontractors "by providing an alternate remedy to mechanic's liens ordinarily available on private construction projects[.]" *Id.* at *1 (citations omitted). The court noted that, without a payment bond, subcontractors and suppliers could not secure payment on public projects because liens cannot attach to government property. *Id.*

The court then turned to the question of preemption. Federal law may preempt state law: (1) by stating so in express terms; (2) by reflecting a "Congressional intent to occupy the entire legal field in the area"; or (3) where state law and federal law conflict. *Id.* (citations omitted). The court quickly disposed of express preemption as a possibility, finding no language in the Miller Act expressly preempting state law remedies. *Id.* at *2.

The court also found no Congressional intent to occupy an entire legal field. In deciding whether Congress intends to occupy a field, the court must decide "whether Congress meant to enact a statutory scheme so comprehensive that no room for state involvement can exist." *Id.* (citation omitted). The court noted that the Miller Act contains just four provisions: Section 3131 requires the general contractor to obtain a payment and performance bond; Section 3132 pro-

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vides an exception for small projects; Section 3133 permits subcontractors to file suit against the payment bond surety; and Section 3134 provides exceptions for certain federal projects. The court concluded that these provisions are "certainly not so comprehensive as to leave no room for state involvement." *Id.*

The Court then turned to the issue of whether the Miller Act conflicts with the New York lien law. Federal law conflicts with state law "when it is impossible to comply with both the state law and the federal law" or where state law obstructs the execution of Congress' full purposes and objectives. *Id.* (citation omitted). The court saw no conflict between the Miller Act and the New York lien law, concluding that, "[i]f anything, the New York law is entirely consistent with the Miller Act in providing remedies available for subcontractors who have not been paid for their work." *Id.*

Under **In re J.A. Jones**, subcontractors performing work on federal projects located in North

Carolina may lien funds as provided under Section 44A-18 of the North Carolina General Statutes. Although the federal agency owner may have defenses to liability, such as sovereign immunity, the lien upon funds provides subcontractors a remedy in addition to the remedies available under the Miller Act.

Whether subcontractors may lien funds on North Carolina government projects remains in dispute. North Carolina law prohibits the filing of liens upon state property. **Robinson Mfg. Co. v. Blaylock**, 135 S.E. 136, 139 (N.C. 1926) ("The lien statutes therefore may be put aside as inapplicable, as no lien can be acquired on a public building."). Although **In re J.A. Jones** deals with federal preemption, Judge Mullen's analysis lends credence to the argument that a subcontractor on North Carolina public projects may assert a lien upon funds in addition to asserting a payment bond claim under North Carolina's Little Miller Act.

As in the federal context, the North Carolina public entity may have defenses not available to the general contractor and the subcontractors tiered beneath the general contractor. For instance, the public owner may get mileage out of the argument that the construction funds remain "public property" until paid to the general contractor. ■

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