

“There is no prejudice to the petitioners in granting the relief requested by the respondent.”

*Shilian v All Sons Electric Corp.,
Supreme Court,
Nassau County,
Index No. 601994/2016*

We are pleased to share this victory with our clients and colleagues, and look forward to the opportunity to continue to share good news.



MILLER LAW OFFICES, PLLC is a general practice law firm with an emphasis in Corporate Law and Commercial Litigation in New York.

MILLER LAW OFFICES,
141 Washington Avenue;
Suite 101
Lawrence, NY 11559
Office (516) 569-0440
FAX: (516) 224-0249
millerlawofficespllc.com

‘LIEN’ ON ME

Our client, All Sons Electric Corp., filed a Mechanic’s Lien after its invoice went unpaid. A Mechanic’s Lien is a claim against the property itself. Like a mortgage, it is docketed in the county clerk’s office and it acts as ‘cloud on title’, preventing the homeowner from selling the property without first paying the debt.

As a result of the negative effect on the homeowner, New York law requires that the party filing the lien (called a lienor) start a law suit to enforce the lien within one year. The lien is automatically extinguished if the lienor neither starts a law suit nor extends the lien within that year.

Our client hired a company to extend the lien but it turns out that the proper procedure was not followed. The homeowners, picking up on the mistake, brought a law suit seeking to declare that the lien had expired and was no longer enforceable. Only then did All Sons learn about the defective lien extension. That’s when we got involved.

We conceded in court papers that the lien was improperly extended and that under the law, the lien was considered to have been extinguished. We also admitted that the Judge was powerless to accept the late filed lien extension.

However, we asked the Judge to waive his magic wand (gavel) and declare that All Sons’ application for a lien extension had indeed been filed several months earlier. In essence, we asked the Judge to accept the lien extension retroactively, (*nunc pro tunc*’ in legal terms) as if the lien never really expired.

The question of law before the court was to whether a judge has the power to issue an order retroactively, especially when the court is tasked with enforcing a statute that provides the manner of extending a lien and automatically voids a lien that is not properly extended.

The Trial Court agreed with us that in certain circumstances, a Judge has the equitable power to back date the contractor’s lien extension. Fortunately for our client, the Judge concluded that this was one of those ripe circumstances. The court remarked that while All Sons failed to properly extend the lien, it still deserved an ‘A for Effort’ since it did its best to extend the lien within the allotted time and made a prompt application to the court as soon as it learned of the error. The Court also noted that the homeowner was not hurt by the ruling since an application for a lien extension would surely have been granted had the proper procedures been followed.

We think that the Court appreciated our candor and creativity, and our arguments about fairness and equity carried the day. However, we cannot help but wonder though if the Judge was also influenced by Cher (“*If I Could Turn Back Time*”) or if he was a fan of the 1988 song “*Turn Back the Clock*” by Johnny Hates Jazz:

*I wish that I could turn back the clock
Bring the wheels of time to a stop
Back to the days when life was so much better*

Regardless of the Judge’s musical inclinations, there is nothing sweeter to our ears than a thank you from a client for a job well done.