

# **Bond Case Briefs**

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## **BONDS - NEW JERSEY**

### **Morris County Imp. Authority v. Power Partners Mastec, LLC**

**Superior Court of New Jersey, Appellate Division - March 24, 2014 - Not Reported in A.3d - 2014 WL 1125378**

In 2011, Power Partners Mastec, LLC (Mastec) and SunLight General Capital, LLC (SunLight) responded to RFPs issued by Morris County Improvement Authority and Somerset County Improvement Authority, and were awarded the contract to design and construct approximately seventy solar energy generating systems on properties owned by governmental entities across Morris, Somerset, and Sussex Counties. Mastec's and SunLight's business relationship did not endure. The two entities are currently embroiled in arbitration to determine which one of them is liable for cost overruns and construction delays that have affected their ability to perform under the contract entered into with plaintiffs.

Before these arbitration proceedings began, Mastec filed notices to assert liens under the Municipal Mechanics' Lien Law on approximately \$50,000,000 in project financing funds plaintiffs received from the sale of government-secured, taxable municipal bonds. These funds are intended to cover the cost of the solar energy program and are held in a trust managed by the U.S. Bank.

Acting on plaintiffs' order to show cause and verified complaint, the Law Division discharged any restrictions on the disbursement of these funds by U.S. Bank as trustee that were created by Mastec's notice under the Municipal Mechanics' Lien Law. The court found Mastec was not a "subcontractor" under the statute and thus not entitled to the protections afforded by the Municipal Mechanics' Lien Law. After this ruling, Mastec filed notices of lien under the Construction Lien Law. On plaintiffs' challenge, the trial court limited the scope of these liens, by permitting them to attach only to interests in real property held by SunLight, arguably rendering the liens powerless to affect the disbursement of the municipal bond funds managed by U.S. Bank. The court denied Mastec's motion for reconsideration of this ruling.

Mastec now appeals arguing the trial court erred when it discharged the municipal mechanics' liens based on having found Mastec was not a subcontractor as defined under [N.J.S.A. 2A:44-126](#). Mastec also argues it is entitled to have construction liens attach to SunLight's entire leasehold interest in properties, including any revenue generated by leases that are derived from the municipal bond funds. If we were to reject these arguments, Mastec urges us to remand the matter for the parties to engage in discovery and, if necessary, for the trial court to conduct a plenary hearing. According to Mastec, the limited record developed before the trial court thus far is not sufficient to support a final determination of the issues raised here.

The appellate court found that the trial court erred in not finding Mastec to be a subcontractor under [N.J.S.A. 2A:44-126](#), but nevertheless affirmed the court's ultimate judgment denying Mastec the protections available under the Municipal Mechanics' Lien Law because the County Improvement Authorities Law, [N.J.S.A. 40:37A-44](#) to -135, specifically exempts the property of a county improvement authority from "judicial process." [N.J.S.A. 40:37A-127](#). As plaintiffs correctly argued, because a municipal mechanics' lien can only be enforced through judicial process, the liens are unenforceable as a matter of law.

