

When a Construction Contract is Abandoned

In the recent decision of Master Albert in *D'Urzo Demolition v. Damaris Developments*, the owner alleged the lien of its general contractor was out of time. The contractor argued that it did not abandon the contract.

The contractor indicated that after its official date on site (being January 8, 2007), it was in negotiations with the owner seeking payment for a change in the scope of work and intended to continue the contract once the parties resolved the issue of crushing the stone to a smaller size.

In finding the lien to be timely and therefore effective and in reference to section 31(2)(a)(ii) of the *Construction Lien Act*, Master Albert stated: "abandonment requires a cessation of work and an intention not to complete the contract. If D'Urzo registered its lien within 45 days of forming the intention not to continue the contract work then the lien was preserved in time... I find the D'Urzo formed the intention not to continue and abandoned the contract on February 26, 2007 when Nick D'Urzo gave up hope of successfully resolving the issue of payment and size of crush."

The lien in this case was registered on March 23, 2007, being 74 days from the date the contractor was last on site, but only 25 days from the date it formed the intention not to continue and treat its contract at an end as a result of the owner's breach in failing to make payment to the contractor.

This case is an example of when lien rights may be extended even though the contractor has left the site but has not given up on returning to the site to complete its work.