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Judge Rules In Favor Of Bank Over Contractor In Boston Condo Suit

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Winchester contractor AJ Martini Inc. is out more than $4.6 million after a Suffolk County Superior Court judge upheld a disputed state statute, protecting TD BankNorth from subordinating its construction loan to Martini on a now foreclosed-upon downtown Boston condo development.

Martini was the contractor on the Broadluxe condominium project at 99-105 Broad St. in Boston. Work began on the project in late 2005.

Martini walked away from the 44-unit condo development in January 2007, after the project's developer, Franklin Realty Advisors, refused to pay Martini for more than two months of work. TD BankNorth, the holder of the project's $19 million construction loan, foreclosed soon after. It took ownership of the project with a $17.5 million bid at auction.

Martini sued TD BankNorth, arguing that its bills should be paid before the bank recouped money on its own development loan. The contractor said that the bank knew Broadluxe's developer was skating on dangerously thin ice, but remained silent.

However, Judge Peter M. Lauriat ruled that, since the bank hadn't loaned the developer any money after the submittal of the disputed work orders, the bank's priority was shielded by the state's mechanic's lien statute. Lauriat also rejected an effort by Martini to date its liens to the original date of the development contract, rather than the dates of the unpaid monthly invoices.

The suit was the most significant challenge to the state's mechanic's lien law in more than a decade, and reiterates what many Bay State lenders have long assumed - that, under normal circumstances, they can advance development loans over mechanic's liens and retain repayment priority.

"The decision provides certainty to the lending community and the development community," said TD BankNorth's attorney, Dennis McKenna, a senior partner at Riemer & Braunstein. "This was a very significant challenge to how the lending community viewed [the mechanic's lien statute]. It provides certainty that the statute will work as it was intended to work. It provides lenders with the certainty that [development loan] advances will continue to have priority over a lien."

Martini sought $5.2 million in the suit, including $4.6 million for unpaid work, and more than $600,000 in retainage fees. Lauriat's ruling only awarded Martini the retainage fee.

AJ Martini chairman Paul Martini called the ruling "disappointing," and told Banker & Tradesman his firm is still considering its next step. He noted that Lauriat found the bank had broken its contract when it withheld information about the health of the construction loan, although Lauriat declined to award damages for that breach.

Charles Norton Jr., president of Franklin Realty Advisors, had no comment when reached by Banker & Tradesman. ■