

NY Construction Firm Committed Fraud, Judge Says

By **Brent Godwin**

Law360 (December 9, 2022, 9:26 PM EST) -- New York general contractor J.T. Magen & Co. Inc. intentionally falsified records when working on an auto dealership building for a subsidiary of The Georgetown Co., a New York judge said Thursday, which resulted in the contractor receiving tenant improvement payments under false pretenses and then seeking to be paid again by placing a lien on the property.

In a decision and order Thursday in New York Supreme Court, Judge Joel M. Cohen granted summary judgment in favor of Georgetown and others, dismissing the lien as void and holding J.T. Magen liable for fraud. However, Judge Cohen said damages for Georgetown's claims of fraud and willful exaggeration will be decided at trial.

"The record now shows — unequivocally — that JTM's conduct precludes it from recovering on a claim in equity under the lien," Judge Cohen said in the order. "JTM knowingly made false, sworn statements to induce Georgetown to release [tenant improvement] funds. JTM edited invoices and engaged in other inequitable conduct, including entering the side-agreement, that went straight to the heart of the project and prejudiced defendants by depriving them of their contractually bargained-for protections."

The decision is the latest in a complex case that began in 2017 and involved a 2015 project to turn Georgetown's building at 787 11th Ave. in New York into showrooms for Jaguar/Land Rover and Nissan/Infiniti.

Bicom NY LLC signed a lease with Georgetown for the Jaguar/Land Rover dealership portion of the building, according to court documents, while a second lease was signed between Georgetown and Nissan, with Bicom acting as owner.

Bicom later hired JTM to be the contractor to build out the showrooms, with a contract that said JTM would submit invoices to Bicom and Bicom would in turn submit requests to Georgetown for tenant improvement funds. Georgetown required lien waivers as a condition to these funds, according to court documents.

But Bicom and JTM struck a side deal in 2016, Judge Cohen said in the decision, in which "JTM agreed to continue to work on the project without being paid in exchange for a twenty percent (20%) interest fee on outstanding invoices as opposed to the ten percent (10%) they would otherwise be entitled to." This deal, however, was never disclosed to Georgetown.

Ultimately, \$6.5 million was paid in tenant improvement dollars based on falsified documents, Judge Cohen said in the decision. But Bicom later stopped paying JTM, and ultimately declared bankruptcy in July 2017. JTM put an \$11 million mechanic's lien on the property for nonpayment, though it had executed the scheme to defraud Georgetown out of tenant improvement funds, Judge Cohen said in the decision.

JTM sued to enforce payment of the lien in 2017, which began the current litigation.

"In reliance on JTM's representations, Georgetown paid millions in tenant improvements, but then Bicom failed to pay JTM and its subcontractors as promised," Judge Cohen said in the decision. "With Bicom now in bankruptcy and with the project left incomplete, JTM now seeks through lien foreclosure to have defendants pay again the invoices that JTM verified under oath had already been paid."

Georgetown, Nissan and others countersued JTM, saying the contractor willfully exaggerated the lien.

Counsel for Georgetown and for JTM did not immediately respond to requests for comment.

J.T. Magen & Co. Inc. is represented by Manny A. Frade of Meltzer Lippe Goldstein & Breitstone LLP.

Georgetown Eleventh Avenue Owners LLC is represented by Mark P. Ressler and Joshua E. Hollander of Kasowitz Benson Torres LLP.

The case is J.T. Magen & Co. Inc. v. Nissan North America et al., index number 160497-2017, in the Supreme Court of the state of New York.

--Editing by Melissa Treolo.