

Not all Labor, Materials and Equipment are Liable

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While the New York Lien Law is remedial in nature and it is liberally construed by the courts, it does not automatically provide a right of mechanic's lien for every type of work performed, materials furnished and/or equipment utilized on a project. There is a grey area regarding lien rights when the lien is in connection with rental equipment, as not all furnished equipment to a project is liable.

When it comes to rented equipment, the rule of thumb is that it is only liable if the equipment is directly related to the permanent improvement of a property. Under the Lien Law, an improvement includes the reasonable rental value for the period of actual use of machinery, tools and equipment in connection with the demolition, erection, alteration or repair of any real property.

In a recent case, the court was asked to determine whether a company that provided rental vibration monitoring systems during a construction project was entitled to file and enforce a Notice of Mechanic's Lien Law (Lien) after it did not receive payment from the project's owner for the rented equipment and related labor.

During the construction of a project the contractor installed two vibration monitoring systems, which were placed on the building being erected and on an adjoining building. The vibration monitoring systems remained on the project until its completion when the contractor removed the systems and sent the owner the project an invoice. When the invoice was not paid by the owner and a dispute ensued, the contractor filed a Lien.

Shortly after the Lien was filed the owner commenced an action seeking to discharge the Lien. The owner argued that the Lien should be discharged because the type of work the contractor performed and the vibration monitoring systems are not the type of equipment covered by the Lien Law.

The court began its analysis by reviewing the Lien Law in order to determine whether the contractor was a "materialman" entitling it to lien rights. Under the Lien Law, in order to be considered a materialman, the contractor must be a person or entity which furnishes material, tools and equipment in the prosecution of the improvement to the project. Also, to be considered a materialman, the work, equipment or materials must also relate to the performance of some part of the contract. In this case, although the contractor provided monitoring systems that were valuable, the court held that the material and services did not directly relate to the performance of the contract or increase its value.

The court further held that the hoisting of electrical power and thermal energy equipment (required for the vibration monitoring systems) was not liable because the parties had no intent to make the system a permanent improvement within the meaning of the Lien

Law. The court likened this work to that of the labor provided by a security guard service, which like the contractor here, while ensuring safety of a project and satisfying the requirements of the New York Building Code, is not lienable because the services did not provide a permanent improvement to the property.

In discharging the Lien, the court finally noted that while the contractor does not have lien rights, it was not left without recourse as it can make a claim for monetary relief.

Commentary

While filing a mechanic's lien is often an invaluable tool contractors, subcontractors and materialmen use to obtain payment for work, materials and equipment, as the contractor learned in this recent case, not all work and equipment are lienable.

Luckily for this contractor the absence of lien rights did not leave it without other remedies. Although the contractor has a right of action against the project owner for a monetary judgment, having the real property encumbered by a mechanic's lien is more favorable. The owner may not have any assets and a contractor may be left with an empty judgment.

As a practical matter, consideration of lien rights and timing of any potential lien is an analysis that should be undertaken at the outset of a project and not left to the last days of the statutory period for the filing of a mechanic's lien.

Feel free to contact me to discuss lien rights.