

Owner's Consent to Improvements Can Be Inferred from the Lease

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In order for a private mechanic's lien to be valid, among other things, the New York Lien Law requires that the labor or materials furnished for the improvement of real property be performed with the consent or request of the owner of the real property. The consent or request element could become an issue where the real property being improved is subject to a lease or other agreement, such that the entity improving the property is remote and may be unknown to the owner.

In a recent case, the owner of a retail shopping plaza sought to have a mechanic's lien discharged after its tenant failed to pay its electrical contractor for work and materials incorporated into a new full-service restaurant. The owner argued that a contractor working for a tenant, including the electrical contractor, may not place a lien on a landlord's property unless the landlord has expressly or directly consented to the performance of the work, which the owner/landlord claimed it did not do.

The electrical contractor, after placing the lien, commenced an action, in order to, among other things, foreclose on the lien. The electrical contractor moved for partial summary judgment and the court granted partial summary against the owner/landlord upholding the validity of the lien. The owner/landlord appealed the matter to the Appellate Division and the Appellate Division upheld the lower court's decision. The owner/landlord then appealed to the New York Court of Appeals, New York's highest court.

The Court of Appeals reviewed, among other things, the lease between the owner/landlord and the tenant. The Court of Appeals found that the tenant entered into a ten year lease agreement with the owner and the lease imposed several requirements upon the tenant regarding the work to be performed, including, retaining architects, engineers and skilled contractors to complete the work. Additionally, the lease required the tenant to provide the owner with detailed plans and specifications. Moreover, the lease required the construction to be completed within ninety days and a rent abatement would be afforded during this period. Finally, as it related to the electrical contractor, the lease contained detailed requirements for the electrical work, including the type of service, type of panel board and type of system to be installed, which work was the subject of the challenged lien.

In asserting that the Appellate Division erred, the owner/landlord argued that, notwithstanding the terms of the lease, a contractor working for a tenant may not place a lien on a landlord's property unless the landlord has "expressly" or "directly" consented to the performance of the work, which the owner/landlord claimed it did not do. The Court of Appeals rejected this argument and held that the Lien Law does not require a direct relationship between the property owner and the contractor in order for the contractor to be able to enforce its lien against the owner. The Court of Appeals stressed that the

impetus behind the Lien Law, and specifically Lien Law § 3, is to provide protection to those who furnish work, labor and services or provide materials for the improvement of real property. As such, the court held that the Lien Law must be construed liberally to secure the beneficial interests and its purposes.

Finally, the court held that to enforce a lien, a contractor performing work for a tenant need not have any direct relationship with the property owner. Instead, to fall within Lien Law § 3, “the owner must be either be an affirmative factor in procuring the improvement to be made or having possession or control of the premises assent to the improvement in the expectation [that] he will reap the benefit of it.” The court held that a requirement in the lease that the tenant will make certain improvements on the premises was sufficient consent of the owner to charge the property with claims accruing during those improvements. Here, the lease specifically provided for the tenant to undertake the electrical work, but was also required to effectuate the purpose of the lease -- for the tenant to open a full time restaurant for business. Moreover, the detailed language in the lease made it clear that the owner retained close supervision of the work and was authorized to exercise direction over the work by reviewing, commenting on, revising and granting ultimate approval for the electrical design.

Commentary

Liens and the Lien Law statute were created and enforced to protect those that actually improve the real property. Here, the Court of Appeal’s upholding the validity of the lien was crucial to the electrical contractor. The tenant, while opened for business, ultimately closed before paying the lien amounts to the electrical contractor. Without the lien and lien rights, the electrical contractor would have, in effect, been left with no recourse for work properly completed for which the tenant and landlord fully appreciated.

Here, the Court of Appeals, and the lower courts, got this issue correct. The landlord/owner’s consent was clearly set forth in the lease, especially considering that the owner directed certain work to be performed and retained oversight authority over the work.

When filing and enforcing a lien, timing is key. Here, the electrical contractor filed the lien and then extended it before commencing an action to foreclose on the lien. The passage of time – two years – resulted in the tenant closing its operations before the lien/contract amounts were settled. While the court got the decision correct and upheld the contractor’s enforcement of the lien, waiting the two years, which is entirely proper under the Lien Law statute, the contractor ran the risk of losing its lien and the potential of having no recourse against the tenant.

Feel free to call me to discuss mechanic’s liens.