

Construction Liens Against a Leased Premises

Article By:

Paul W. Norris

In the course of providing construction services for commercial properties, a contractor often performs jobs where they are providing materials and services to a commercial tenant at a leased property. What contractors need to be aware, however, of their rights to file a construction lien concerning work performed for a tenant on a leased property. The pivotal fact in this analysis is whether the owner of the property consented to the improvements that were performed. As discussed below, this ultimately determines whether the lien possesses any true value.

There are two ways that a construction lien by a contractor will attach to a commercial property when a contractor is performing services for a tenant of the property. The first way would be if the contractor entered into a direct contract with the owner of the property and performed the improvements. Under those circumstances, the filed construction lien would attach directly to the property. The other way the construction lien would attach directly to the property is if the tenant contracted for the improvement of the property and a contract for improvement was expressly authorized in writing by the owner of the property. The contract must be expressly authorized in writing, as a verbal confirmation is insufficient. Under these circumstances, the construction lien would attach to the property.

In the absence of a direct contract with the owner to improve the property, or a written authorization of the owner to improve the property, the lien claim would not attach directly to the real property itself. Instead, under these circumstances, the lien claim would only attach to the lease hold interest of the property. This is extremely significant, as the lease hold interest may hold very little value as compared to the value of the lien claim should the contractor attempt to collect. Further, without a lien against the property itself, the contractor is unable to assert intense pressure upon the owner of the property to collect payment with regard to materials and services that were provided. On the other hand, there are instances where a lien against the lease hold interest of the tenant could be substantially valuable. For instance, if the lease hold interest dealt with a successful business, whether it is a restaurant or any other business, the lien claim against the lease hold interest may possess significant value. It is indisputable; however, that the best way would if the contract was approved by the owner or issued directly by the owner which would thereby enable the lien to attach to the real property itself.

In light of the above, it is suggested that if contractors are performing work for a tenant of a leased property, that they either have the contract expressly approved in writing by the owner of the property, or that they have the owner of the property execute the construction contract as a party in

interest for whom the contractor is working. This would be the best way to protect the contractor in the event of non-payment and the filing of a construction lien. If a contractor needs help in filing of a construction lien under these circumstances, it is suggested that they consult with counsel who is experienced in this area.

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