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July 2011

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Construction Law Q&A's

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RECENT CASE DEVELOPMENTS AND PROPOSED CHANGES TO PENNSYLVANIA'S MECHANIC'S LIEN LAW

One recent case and some proposed changes to Pennsylvania's Mechanic's Lien Law may affect whether contractors have lien rights and how those lien rights are enforced.

Recent Case

The Mechanic's Lien Law in Pennsylvania allows contractors and lower-tier subcontractors on private projects to file a lien against real property on which the project is located where the contractor or subcontractor has not been paid. In order for the work to be the subject of a mechanic's lien, the labor and materials must be **incident to** the "erection, construction, alteration or repair" of a building or permanent structure. Where the work is **independent of** the erection, construction, alteration or repair of a building or permanent structure, the work is not lienable.

The legal distinction between work which is "incident to" or "independent of" has posed some difficulty for site work and excavation contractors over the past forty years. What happens when a contractor performs site work, excavation work or utility work but a structure is never built? Since the 1973 Pennsylvania Superior Court decision of *Sampson-Miller Associated Companies v. Landmark Realty Co.*, the answer has generally been that such site work, excavation work or utility work is not lienable if a permanent structure is not built.

Recently, the Pennsylvania Superior Court broadened the definition of work which is "incident to" erection and construction and therefore lienable. In *B.N. Excavating, Inc. v. PBC Hollow-A, L.P.*, a site work contractor installed a silt fence, a temporary riser, emergency spillway and sub-grading for a building pad as part of an overall design for the construction of a new building. However, the planned structure was never built. When the site work contractor was not paid, it filed a mechanic's lien claim. The Superior Court determined that preliminary site work is incident to erection or construction, and therefore lienable, even where the structure is not ultimately built, as long as the site work was performed in preparation for the planned construction of a structure or building. This decision potentially expands the reach of the Pennsylvania lien law to site work even when a planned structure is not ultimately built.

Proposed Lien Law Change

A recent bill introduced in the Pennsylvania House also proposes to change the Mechanic's Lien Law. House Bill 1602, introduced in May, 2011 proposes to add a notice requirement as a precondition to the filing of a mechanic's lien by subcontractors. The House Bill, if passed, would require a contractor or owner, within 15 days of beginning work on a project, to file a Notice of Commencement of Work with the Court and post the Notice at the project site. If the Notice of Commencement is filed and posted as required, a subcontractor who does not have a direct contract with the owner would have to give a written Notice of Furnishing to the owner within 20 days of commencing work, which describes the work and materials the subcontractor will be furnishing. The House Bill proposes that a subcontractor must timely prepare and serve the Notice of Furnishing as a condition precedent to filing a mechanic's lien.

House Bill 1602 also proposes to reduce the time for filing a mechanic's lien from six months to four months from the date of completion of the lien claimant's work. This proposed change is an attempt to return to the four month deadline which had been in place until the recent amendment to the Mechanic's Lien Law.

At this time, House Bill 1602 is still in committee and there may be many changes to it, if and when it gets to the floor of the Pennsylvania House and Senate.

The Pennsylvania Mechanic's Lien Law and the cases that interpret it are in flux. Owners, contractors and subcontractors should take care and obtain legal advice when filing or disputing a mechanic's lien claim.

For more information on the Mechanic's Lien Law, or other questions you may have regarding construction law, please contact Sandhya M. Feltes at 610.941.2561 (sfeltes@kaplaw.com). You can also contact any member of our Construction Law group.