

STATEMENT FROM RICHARD C. ZISHOLTZ

A contractor, subcontractor or materialman that has a contract with a tenant could maintain a valid mechanic's lien against the owner's interest ONLY if the improvements made were with the consent or approval of the owner.

New York Courts have stated that consent of the owner requires an affirmative act and not just mere acquiescence. The Court's have gone even further and stated that if an owner confirms to a tenant that the construction is not violative of the terms of the lease, that is still not enough to establish consent under the Lien Law.

What is an "affirmative act" sufficient for consent and to establish a valid mechanic's lien against the owner's interest?

The answer to that question is often an issue of fact and any owner is likely to dispute that consent was given sufficient to create lien rights. However, the Court's have provided some guidance on what will constitute consent.

In 2018 the Court of Appeals addressed a case where the tenant's lease contemplated the improvement of the premises and even required the tenant to submit, amongst other items, a construction schedule. In that case, the Court found that there was enough affirmative action taken by the owner to allow the lien to remain on the property. However, many times the owner is simply reviewing the plans to ensure the work is being done to code and that the schedule does not interfere or affect the other tenants. The more involved the owner is in the project, the more likely the lien will remain intact. If the owner provides rent abatements, which could be considered a form of payment for the renovations, or if the owner actually pays for some of the work, the possibility of holding the owner responsible for your work increases.

It is always prudent to understand your contract and all the players involved, including the relationship of an owner if you are hired directly by a tenant. Doing your due diligence before any issues arise can help the entire process run smoothly.

Never let your lien time run out!!

For a free copy of our pamphlet pertaining to mechanic's liens and payment bond claims, kindly contact me.

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