



CELEBRATING  
55 YEARS

# nerej

## **Mechanic's liens for leasehold improvements can attach to the landlord's fee in Massachusetts**

June 18, 2015 - Spotlights

One would think that since a leasehold interest is a lesser interest than the fee, the result would be that mechanic's liens for improvements to a leasehold estate contracted for by a tenant could not attach to the fee owner's interest in Massachusetts. A 2011 Supreme Judicial Court decision held that in certain circumstances, a contractor's mechanic's lien filed under M.G.L. c. 254, Â§ 2, can attach to the fee owner's interest in real property and is enforceable against the landlord. The case of Trace Construction, Inc., v. Dana Barros Sports Complex LLC, 459 Mass. 346 (2011), was decided by the Supreme Judicial Court on April 13, 2011. The case arose out of improvements to property leased by Dana Barros Basketball Camp, LLC (Barros) consisting of a 70,000 square foot building located in Bristol County, Massachusetts. The tenant was a limited liability company owned by former professional basketball player, Dana Barrows, who planned to operate a basketball camp on the leased property. The lease provided, in part, that any improvements, additions or renovations, with the exception of personal property and trade fixtures which could be removed without material damage to the premises, would be for the landlord's benefit. The lease also provided that the tenant was required to obtain landlord's written consent before contracting for improvements to the leased premises.

Barros contracted for improvements to the plumbing, electrical and HVAC systems and for installation of basketball equipment and seating. However, when Barros fell behind on rent obligations, he eventually surrendered the premises to the landlord and vacated the premises. Contractors and subcontractors filed mechanic's liens against the property under M.G.L. c. 254, Â§2 (applicable to contractors) and M.G.L. c. 254, Â§4 (applicable to subcontractors) and brought an action to enforce their respective mechanic's liens. Landlord brought a separate action to discharge the liens against his interest arguing that since he had no contractual relationships with the contractors and subcontractors their respective liens should be discharged as against his fee interest and only attach to the leasehold interest of the tenant. After a jury-waived trial in Bristol County, the Superior Court ruled in favor of the landlord. The contractors and subcontractors appealed to the Massachusetts Appeals Court and the Supreme Judicial Court transferred the case on its own motion.

The Supreme Judicial Court relied on the language of M.G.L. c. 254, Â§2 in ruling that the liens of contractors are enforceable against the fee owner landlord. The relevant portion of the statute provides that,

"A person entering into a written contract with the owner of any interest in real property, or with any person acting for, on behalf of, or with the consent of such owner for [relevant work] shall have a lien upon such real property... owned by the party with whom or on behalf of whom the contract was entered into..." Trace Construction, Inc., v. Dana Barros Sports Complex, LLC, (SJC-10765) (2011),

citing M.G.L. c. 254, Â§2.

The Court found that the landlord's actions during the course of construction coupled with language in the lease evidenced both consent on the part of the landlord, as well as, made it inevitable that the landlord would have the option to own the renovations undertaken to convert the space into a recreation facility, a use for which the premises had not been previously improved. Finally, the Court found that the landlord consented to the improvements because he negotiated a favorable rent with tenant in consideration of tenant's improving the premises and reasoned that the clause in the statute relating to "consent of such owner" results in the contractor liens being enforceable against the landlord's fee interest. The Court held that the landlord's actions rose above mere knowledge of the improvements and amounted to actual consent of the improvements. The Court declined to extend its ruling to subcontractor liens because subcontractor liens under M.G.L. c. 254, Â§4 are specifically limited to the property of the person contracting for the work noting that since both statutes were amended at the same time, the legislative intent was clear. The Court further ruled that liens on the tenant's leasehold interest are extinguished when the rights of the lessee expire. This article is provided for informational purposes only and is not intended to be relied upon as legal advice.

Joseph Sullivan, Esq. is underwriting counsel with Stewart Title Guaranty Company Commercial Services, Boston, Mass.

New England Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540