LANDLORDS BEWARE: TENANT IMPROVEMENTS SUBJECT OWNERS TO MECHANIC'S LIENS

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In construction law, there is no better bargaining chip than the threat of a mechanic's lien, and that chip just got bigger. It is a given that commercial landlords subject themselves to the risk of a mechanic's lien anytime they contract for improvements to their property. Now, as a result of a recent Missouri Court of Appeals—Eastern District decision, certain (very common) lease terms can automatically subject the landlord/owner to mechanic's liens for improvements made by their tenants as well.

Crafton Contracting Company, et al v. Swenson Construction Company, Inc., et al.

At issue in *Crafton* was whether a lien placed on the Plaza Frontenac shopping mall in St. Louis, Missouri could be enforced by one of its tenant's subcontractors in litigation. The Appellate Court said yes.

In 2012, Plaza Frontenac and Allen Edmonds Corporation ("Allen Edmonds") entered into a ten-year lease. The lease required Allen Edmonds to make certain improvements to its leased premises. Allen Edmonds did just that.

It contracted with Swenson Construction Company ("Swenson") for the improvements, and Swenson

subcontracted demolition, heating, and ventilation work to Crafton Contracting Company ("Crafton") and Vogel Sheet Metal and Heating, Inc. ("Vogel"). Allen Edmonds paid Swenson. However, Swenson went out of business and failed to pay Vogel or Crafton. Vogel and Crafton filed mechanic's liens on the Plaza Frontenac property and subsequently filed a lawsuit to enforce the same.

In *Crafton*, the Court made clear that it was not holding that tenant improvements *per se* subject the landlord/owner to a possible mechanic's lien. Instead, a factual inquiry must be conducted to determine whether the tenant was acting as the landlord's agent under Missouri's mechanic's lien law—namely Mo. Rev. Stat. § 429.010. If the tenant is an agent, mechanic's lien law applies.

To determine whether a tenant is an "agent" of the landlord for purposes of the applicability of mechanic's lien law, Courts do not conduct a rigorous examination. Instead, whether an agency relationship exists often rests on the terms and conditions of the lease. The inquiry is simple. If the lease *requires* the improvements, the tenant is an agent.

In *Crafton*, not only did the lease demand the improvements, but the lease gave control over the improvements to Plaza Frontenac. Among other things, Allen Edmonds was obligated to submit all plans for work to Plaza Frontenac for pre-approval and order its contractors to correct deficiencies noted by Plaza Frontenac.

In short, while commercial landlords certainly would (and should) prefer to retain control over tenant improvements in their lease agreements, they do so at their own risk. After *Crafton*, mandatory tenant improvements quite clearly subject the landlord/owner to a mechanic's lien on its property in the event of nonpayment by the tenant's general or subcontractors.

For more information, a link to the opinion can be found here.