

BARRISTER'S BITS

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What Is The Last Day Of Labor Performed For Mechanics Lien Purposes?



Every contractor knows that the last date to file a mechanics lien in New York State is four months from the last date of labor performed or materials supplied on a single family dwelling, and eight months for non single family dwellings. However, an issue arises when determining what constitutes the “last date of labor performed” on the project. A seemingly simple question can get quite complicated and every subcontractor should know what the applicable last date of labor performed on a project in order to preserve lien rights.

Case law has held that lien rights are extended throughout the period the contractor performs the contract work. However, the 4/8 month period begins to run when the contractor is performing independent work which was not a part of the contract work, but is related to it. *Fay v. Muhler*, 1 Misc. 321 (Comm Pleas 1892). Additionally, “guarantee” work performed for a period of time after completion of the contract work does not extend the time within which to file a mechanics lien.

In the case of *Bradley v. Kastanoski, et al*, 101 N.Y.S.2d 767 (Sup Ct. 1950), a contractor filed a lien outside the four month period of time for a single family dwelling, but argued the lien was timely because he guaranteed to replace trees and shrubs which did not survive the original planting up to one year after the original planting. The Court held that a guarantee of good workmanship does not extend the time in which to file a lien.

On the other hand, in the case of *Boyle v. Paolini Cafeteria & Restaurant, Inc., et al*, 220 A.D. 482 (4th Dept. 1927), the contractor installed a boiler which was found to be an insufficient size. The Court held that the replacement of the boiler was part an entire single and continuous service by the contractor, in part because his equipment remained on the premises for a two week period while the new boiler was obtained.

More recently, United States Court of Appeals, Second Circuit, has held that the 4/8 month period does not begin to run when a contractor performs remedial work pursuant to the original scope of the contract work, so long as the work is not done pursuant to a guarantee to repair. *C.H. Sanders Co, Inc. et al v. BHAP Housing Development Fund Co., Inc., et al*, 903 F.2d 114, 120 (2nd Cir. 1990).

CONCLUSION

Work done pursuant to the original contract work , including remedial work, tolls the period within which to file a mechanics lien. However, independent work or guarantee work outside the scope of the original work, does not extend the time within which to file a mechanics lien.

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