

# CONSTRUCTION LAW NEWSLETTER

VOLUME I, ISSUE IX    MAY 2016

## TRENDS IN CONSTRUCTION LAW

Work on federal properties can be good for business, but contractors should be aware of issues pertaining to enforcement of payment rights.

Contractors who perform work or furnish materials on a project involving a federal property have no lien rights. Thus, there is no quick and cost effective way to hold up the payment flow in order to preserve payment rights.

In lieu of lien rights,

the federal Miller Act gives contractors and suppliers bond claim rights on federal projects.

Because the procedural requirements for Miller act bond claims are different than those on New York State projects, bond claimants should be cognizant so their rights do not lapse.

Bond claims must be made within 90 days of the last labor or material furnished on the project.

In addition, absent a contractual venue provision, actions to enforce



the bond claim must be brought in federal district court where the project is located.

If the project is out of state, this could present a significant expense.

**Jordan R. Pavlus, Esq.**  
Email: [jpavlus@bcplegal.com](mailto:jpavlus@bcplegal.com)

**Zea M. Wright, Esq.**  
Email: [zwright@bcplegal.com](mailto:zwright@bcplegal.com)

**Gregory P. Bazan, Esq.**  
Email: [gbazan@bcplegal.com](mailto:gbazan@bcplegal.com)



**Byrne, Costello  
& Pickard, P.C.**

**ATTORNEYS AT LAW**

**Tower I, Suite 1600  
100 Madison Street  
Syracuse, New York 13202**

**PHONE 315/474-6448  
FAX 315/424-8556**

**Website: [www.bcplegal.com](http://www.bcplegal.com)**

## CASE LAW UPDATE

On May 12, 2016, Justice Barbara Jaffe, of the New York County Supreme Court, decided the case of *S. DiGiacomo & Son, Inc. v. Callen*.

The case centered on the build out of a retail space in Manhattan.

After the contractor was terminated, it filed a mechanic's lien for \$100,621.76.

The tenant filed a motion to dismiss the lien as willfully exaggerated, arguing that the lien included \$27,500 for

HVAC related expenses that the contractor admitted it did not install and \$54,369.66 for 19 change orders that were either not approved or were not valid modifications to the contract.

In response, the contractor argued that it was always open to communication, that the owner's architect was untimely in its review of change orders, and that the majority of the work in the unapproved change orders was for redesigns issued by the owner's architect.

The Court denied the motion to dismiss the lien as willfully exaggerated. It held that the tenant had not established that the lien was intentionally exaggerated and that it was a credibility issue for trial regarding whether the lien was willfully and intentionally exaggerated.

*The contents herein are for informational purposes only. No contents herein should be construed as legal advice or create an attorney/client relationship.*

*Consult your attorney regarding specific legal needs. This may be construed as attorney advertising. Prior results do not guarantee a similar outcome.*