PAYMENT AND COLLECTIONS

Can I Lien That, Too?

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In "Can I Lien That?" published in the Fall 2007 edition of *The Construction Lawyer*,[1] we discussed the angst construction counsel suffer from the time that they learn of a client's job gone bad until they have satisfied themselves that they have done everything necessary to preserve the client's lien rights. Here, we consider a variation on this general theme. In the case law and statutes discussed here, we analyze the *breadth* of the contractor's lien rights in three scenarios: (1) the contractor performs work for an owner that holds only a leasehold interest in the improved property, (2) the contractor seeks to enforce a lien against more property than just the property on which the work was performed, and (3) the contractor performs work under a contract with an owner that holds a condominium interest.

Leasehold Interests

When a contractor improves the leasehold interest in real property, the public policy that gives rise to the creation of mechanic's liens can collide with the competing policy that protects property owners from encumbrances arising without their knowledge or consent.

This conflict can be illustrated by differing scenarios. First, consider the scenario where a developer builds a large retail and commercial center and enters into a leasehold contract with a company that operates large movie complexes. The developer seeks to have the cinema company build a large, sixteen-theatre complex to anchor the development. The developer enters into a long-term lease with the cinema operations company. Regardless of the remaining circumstances that govern the terms of the general contractor's contract with the cinema operations company, the general principles that govern mechanic's liens dictate that the general contractor that builds the theatre complex should be entitled to a mechanic's lien against the developer's fee interest in the property. Certainly, the developer has received significant improvements to its land that benefit the overall development and has received precisely the improvement the developer desired.

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In contrast, consider a scenario where the owner of a retail center enters into a lease with a large clothing retailer to lease a tenant space that was used by a prior tenant as a large store. The developer understands that the retailer will use the existing store facilities in their current form without significant modifications. Without the fee owner's knowledge, the store operator decides to make significant modifications to the retail store to include a café, a new venture for the retailer. The improvements include restaurant equipment, freezers, stoves, and other improvements. Shortly after the improvements are made, the retailer defaults on its obligations to the contractor and files for bankruptcy protection. In these circumstances, the owner has a significant argument that it lacked knowledge of the improvements, it did not receive any benefit from them, and its fee interest should not be burdened with a lien arising from the improvements.

In what follows, we review different approaches taken in response to the competing interests of contractors and lessors arising from improvements to leasehold interests. Most frequently, states allow the lien to attach to the lessor's fee simple interest if the lessee acted as an agent for the lessor or if the lessor consented to the improvements. The main question, then, in determining whether a lessor's fee interest will be subject to a mechanic's lien is whether the lessor consented. States differ, however, in how they approach the matter of consent. Of the state laws we sampled, the minority have found that the lessor's actual knowledge of the improvements is sufficient to find consent by the lessor. The majority of states require something more than passive knowledge or acquiescence—in varying degrees, from requiring some form of implied consent, to requiring active consent and involvement. These requirements vary from a signed writing to requiring that the lessor be a party to the improvement contract. What follows are summaries of several states' treatment of how to determine when the fee owner's interest will be subject to a mechanic's lien when the tenant/lessee has contracted for improvements to the leased property.

Lessor Knowledge Sufficient

Some states give the mechanic's lien claimant protection by providing that a mechanic's lien may attach to a lessor's fee interest under a tenant-initiated construction contract. In these states, a contractor or supplier need only show that the fee owner knew the tenant was making improvements to the leasehold interest.

1. California. In California, improvements constructed with the owner's knowledge are deemed to be at the instance of the owner unless the owner gives notice of nonresponsibility.[2] If the lessor has no knowledge of the improvements, or if the lessor knows of the improvements and posts a notice of nonresponsibility, the lien will be limited to the lessee's interest.[3] However, if the terms of the lease require an improvement, then the mechanic's lien may attach to the lessor's property interest regardless of a notice of nonresponsibility.[4] Under the "participating owner doctrine," if the terms of the lease require the tenant to improve the property, the mechanic's lien may attach to the lessor's property interest even if the lessor posted a notice of nonresponsibility.[5]

Published in *Construction Lawyer*, Volume 28, Number 4, Fall 2008

2. Illinois. In Illinois, a mechanic's lien attaches to the lessor's interest in real property if the lessor authorizes or "knowingly permits" the tenant to make improvements.[6] The words "knowingly permit," as contained in the statute, mean being aware of and consenting to improvements.[7] A lessor knowingly permits an improvement within the meaning of the statute when it knows the work or improvement is being done and has the opportunity to object but fails to do so.[8] Where the lessor has no knowledge of the improvements, the lessor's interest cannot be subjected to the mechanic's lien.[9]

3. Minnesota. Under Minnesota law, a contractor's lien will attach to the lessor's interest if the lessee improves the land and the lessor has actual knowledge of the improvement.[10] Lessors can protect themselves from liability by posting or serving on the contractor a notice of nonresponsibility.[11] Landowners are presumed to consent to the improvement if they have actual knowledge of the work and do not post a notice.[12] Even if the lessee has permission to improve the land, the lessor still needs to know when the improvement was scheduled to begin or when it actually began.[13]

Lessor Consent Required

Other states manage the competing interests of the contractor and the lessor by requiring that the lessor consent to the improvements that give rise to the mechanic's lien before the lien may attach to the fee property interest.

1. Florida.[14] Florida law protects lessors against mechanic's liens by providing that a mechanic's lien only attaches to the interest of the fee owner when the improvement is made in accordance with the agreement between lessee and lessor.[15] Florida lessors are permitted to further protect themselves against liens by recording the lease, a short form of the lease, or the anti-lien provisions with the county clerk. Interpreting this Florida statute, courts look to the terms of the lease to see if the improvements were required or if they were the essential purpose of the lease.[16] Even if the improvements are contemplated in the lease, are done with the knowledge of the lessor, and benefit the lessor, the lessor will not be exposed to a mechanic's lien unless the work was called for by an agreement with the lessor.[17]

2. South Carolina. In South Carolina, the owner's mere knowledge of improvements is not enough to allow a mechanic's lien to attach to the owner's interest.[18] In *F&D Elec. Contractors*, the South Carolina Supreme Court, interpreting its mechanic's lien statute, held that the lessor of a warehouse facility was not liable for the electrical upgrades installed in its warehouse because, even though its agents were aware of the upgrades, there was no evidence that the landlord expressly or impliedly granted the lessee consent to perform the specific work that is the subject of the mechanic's lien.[19] Acquiescence or even general permission to make improvements is also insufficient for a lien to attach to owner's interest.[20]

3. Massachusetts. A Massachusetts mechanic's lien may attach to the lessor's interest if the improvement was consented to by the lessor.[21] What classifies as consent is somewhat murky, but the courts indicate that a lien can be enforced against the lessor provided there exists "a certain undefined degree of lessor consent, control, and benefit."[22]

4. New York. In New York, a mechanic's lien may only attach to the owner's interest if the owner consented to or requested the improvements.[23] A lien cannot attach to the interest of the fee owner where a lessee authorizes an improvement for the benefit of the owner of the property unless the fee owner affirmatively consents.[24] Consent is implied when the lease requires the improvement or the owner actively participates in the work.[25] However, where the tenant requests the improvement and the owners never deal with the lienor, there is no implied consent.[26] Even if the owner is aware of the improvement and gives the tenant a rent credit, there is still no affirmative act for consent.[27]

5. Washington. When a lease requires improvements, the lien can attach to the lessor's interest.[28] Mere knowledge of improvements and acquiescence by the lessor are not enough to turn lessee into the lessor's agent.[29]

Lessee Agent of Lessor

The following jurisdictions analyze consent through an agency theory by comparing the lessee to an agent and analyzing whether the relationship between lessor and lessee could be categorized as a principal-agent relationship. If so, then the contractor may properly assert a lien against the lessor's interest in the property.

1. District of Columbia. In the District of Columbia, the lessee must be an agent of lessor if a mechanic's lien is to attach to lessor's interest.[30] The lessee is not an agent if the lease expressly provides that authorization to make improvements should not be construed to allow any mechanic's lien on the property owner's interest.[31] Moreover, the lessee is not an agent if a provision in the lease gives the lessee the right to make improvements, providing that the cost of improvements shall be deducted from the rent.[32] The determining factor is whether the contract creates a principal/agent relationship.[33] An agency relationship for purposes of management does not necessarily imply an agency relationship for purposes of making improvements to which a mechanic's lien may attach.[34]

2. Missouri. In Missouri, the lessee must be acting as an agent of the lessor for a lien to attach to the lessor's interest.[35] The owner's mere acquiescence to improvements is not sufficient.[36] If the lease requires or obligates the tenant to make improvements, agency is implied.[37] The owner's participation in construction, or other facts that show that the improvements are really for the benefit of the owner, can establish the relationship necessary for a lien to attach to the owner's interest.[38]

3. Tennessee. In Tennessee, a mechanic's lien will not attach to a lessor's real property unless the lessee is deemed the lessor's agent.[39] The court determines whether the lessee acted as an agent by looking at (1) whether the lease requires the lessee to construct a specific improvement, (2) whether the cost of the improvement is borne by the fee owner through offsets in lessee's rent, (3) whether the fee owner maintains control over the improvement, and (4) whether the improvement becomes the property of the fee owner at the end of the lease.[40]

Contract with Lessor Required

The states in this section, as well as in the next section, take the narrowest view of when mechanic's liens attach to the lessors' fee simple interests. In these states, the contractor must ensure that the fee owner is party to the improvement contract in order for the mechanic's lien to attach to the fee simple interest.

1. Georgia. In Georgia, there must be a contractual relationship between the lessor and materialman for the lien to attach to the lessor's interest.[41] The lessor's knowledge of the improvement is not enough to attach the lien.[42]

2. Ohio. Under Ohio law, unless there is a contract, express or

implied, between the lien claimant and the fee interest owner, the lien may not attach to that owner's interest in the property.[43]

3. Texas. In Texas, the lien will attach to the interest of the fee interest owner if there is a contract between the contractor and the fee interest owner.[44] Even though the lessee may have improved the lessor's land and then it reverts back to the lessor, the lien still does not attach to the interest of the lessor.[45]

Written Authorization of Tenant Improvements Required (New Jersey and Pennsylvania)

Both New Jersey[46] and Pennsylvania[47] require by statute that a mechanic's lien can only attach to the fee simple owner's interest if the owner specifically authorizes the improvements in writing.[48, 49]

Convenient Use Doctrine

The convenient use doctrine dictates the breadth of the property to which a mechanic's lien attaches when the construction arguably improves only a portion of the property. The general rule under most mechanic's lien statutes is that a mechanic's lien attaches to as much of the land as is necessary for convenient use and occupation. As described below, the jurisdictions may be classified generally as taking either a "narrow" or "broad" view of the convenient use of the property.

Narrow Interpretation of Convenient Use

Only a few courts take what can be described as the narrow view of the convenient use doctrine. In Maryland, for example, the court found that a plaintiff's contention that a mechanic's lien should attach to a 713-acre tract of owner's land was spurious when the work was done on one specific building only.[50] The court ruled that, when an improvement is made on a building, the land is only incidentally involved, and the lien should only attach to land physically covered by the building and land immediately adjacent.[51]

Similarly, in a Virginia case, the court dismissed an action to enforce a mechanic's lien on hotel property because a portion of the costs included in the amount of the lien arose from improvements made on public roads in connection with the work on the hotel.[52] The court, in discussing the extent of a mechanic's lien, stated that while a lien attaches to as much land as necessary for the convenient use and enjoyment thereof, the lien does not attach to other buildings upon which no work had been performed.[53]

Broad Interpretation of Convenient Use

Most courts interpret convenient use more liberally, consistent with the remedial nature of mechanic's liens.[54]

In a 1983 case, the South Dakota Supreme Court determined that an entire 160-acre tract of land was lienable for the construction of a single structure.[55] The court reversed the trial court's determination that the lien should be limited to the small plot of land immediately surrounding the building.[56] The court reasoned that because the building's value would be substantially decreased without "sufficient property for ingress, egress, and storage of equipment," the mechanic's lien attached to the entire 160-acre tract.[57]

The New Mexico Supreme Court upheld a trial court's finding that the entire plot of land surrounding a water well was attached by the mechanic's lien of the contractor that drilled the well.[58] The court so held despite the fact that the water well was dry.[59] The court noted that the trial court had wide discretion to determine what land was necessary for the improvement and convenient for its use. The court reasoned that the water well, if it had functioned properly, could conceivably have benefited the surrounding land, which included a camp house, barn, garage, blacksmith shop, and cook house.[60]

Similarly, in Idaho, the courts have broadly interpreted the meaning of "convenient use and occupancy" to include all land that benefited from the improvement.[61] Indiana courts also have liberally construed the convenient use doctrine.[62]

In Delaware, a mechanic's lien extends to as much land as is naturally used with the building.[63] As one Delaware court explained it, when improvements are made to a building on a town lot, then the town lot is lienable.[64] Or if it is a farm, and the building is for the use of and appurtenant to the farm, then the whole farm is lienable.[65] If the improvement is to land, like drainage, dredging, filling in, irrigation, or erecting banks (bulkheads), a lien extends to the lot or lands "in front of which such improvements are made."[66]

The "convenient use" of the property depends on the use and purpose for which the improvement is intended. This question was considered in the California case of *Mendoza v. Central Forest Co.*,[67] in which a lien was sought to be imposed for work in preparing a tract of land for an irrigation system consisting of ditches, drains, embankments, and the like. The claimant sought to foreclose a mechanic's lien against the entire tract of land. In upholding the lien, the court stated:

> The farm development here contemplated was a finished piece of work composed of integral parts, some of which the statute expressly designates as structures, and when completed consisted of ditches, drains, embankments, roads, so correlated as to form one harmonious entity designed to accomplish a particular object and constituting a permanent and valuable improvement to the land and necessary to its highest and most profitable uses.[68]

In another case, applying Pennsylvania law, the court held similarly.[69] A contractor performed excavation and grading work on various portions of a 1000-acre real estate development and the court held that while the contractor only claimed a lien on the portions where most of the work was conducted, it could have liened the entire 1000-acre property because as much land can be attached as is "reasonably needed for the general purposes for which the structure or other improvement was made."[70] The whole development, which included restaurants, a golf course, camping sites, stores, etc., constituted a single improvement that was to be integrated whole, and so the entire 1000-acre resort was properly lienable.[71]

In 1897, the Supreme Court of the United States has given a similar application of the "convenient use" doctrine in *Springer Land Association v. Ford*, involving the construction of an irrigation system. The court said:

> The truth is that what area of land is subject to lien in a given case largely depends on the character of the improvement. The extent of ground proper and necessary to the enjoyment of the building, a wall, or a fence, would not be the same as that required for, or appertaining to, an irrigation system; but the principle of determination is the same.
>
> This ditch was to expend its waters on this tract and could not be used or operated without it.[72]

Similarly, in a California case, defendants contended that plaintiff's lien for engineering services could not properly include compensation for work done on parcels that were outside the real property contemplated in the contract between developer and owner.[73] The court rejected defendant's argument and held that plaintiff's engineering services constituted a proper site improvement to the parcel as provided by statute, under which a lien could be established.[74] The court reasoned that work and services performed on the parcels outside the physical boundaries of the real property under contract had a "direct benefit" on the real property.[75] Accordingly, plaintiff was entitled to a lien on the real property for its services performed, both on the outside parcels and on the real property, "even though those services may also have benefited the surrounding land."[76]

The Oregon Supreme Court also emphasized the importance of determining the purpose of the improvements in order to determine the extent of a mechanic's lien.[77] The court could not determine how much property could rightly be liened from the construction of a building and dam on the owner's property and so remanded the matter back to the lower court to determine how much land should be covered by the lien because no intelligible evidence presented at trial showed the relationship between the intent of the improvement and the space necessary to fulfill such intent.[78]

Condominium Interests

The rules concerning condominiums illustrate that the nature of the underlying property affects the scope of the property to which a mechanic's lien attaches.

Generally, a blanket lien over a condominium complex is permitted, even though the individual units of the complex have separate owners.[79] For example, one Delaware contractor agreed to do grading, curbing, and utility work on a townhouse project before the project was subdivided. Later, the contractor sued the owners of the townhouses after the project was subdivided.[80] The appellate court had ruled that the mechanic's lien could not attach to the buildings when the contractor understood that units would be sold to individual buyers. But the Supreme Court of Delaware reversed the appellate court decision, holding that prior, better-reasoned decisions had held that the focus should be on the "nature of the work performed and not the intended ownership of the completed project."[81] The court reasoned that intended ownership is not a determining factor, especially since at the time the contractor began its work, there was only one owner of the whole project.[82] As a result, a mechanic's lien can attach against the entire structure, even though the structure is made up of individual units.[83]

A Pennsylvania court, in a similar ruling, went somewhat further to reverse an appellate court decision that struck a mechanic's lien on five condominium units, where the amount of the lien "had no direct relation to the work done or materials supplied" on the five units.[84] The court held that one lien could be filed against multiple units without apportionment between units, as provided for by statute, even though another statute stated that apportionment is generally necessary.[85] The court reasoned that the rule requiring apportionment was the general rule, and condominium liens were an exception to the rule.[86]

In California, on the other hand, a mechanic's lien on a condominium development must specify how much is due from each owner.[87] In one case, a contractor contracted with the homeowners' association to repair damage done to condominiums and common areas after an earthquake.[88] The contractor subsequently sued the individual owners of the condominiums without specifying the amount attributable to each individual owner.[89] The court held the contractor could not recover from the individual owners because, while a blanket lien against the entire complex was permitted, the contractor needed to apportion out the cost of improvements attributable to each owner.[90]

A 1992 New York decision held that a lien for labor and materials could not attach to units whose owners purchased their unit before the lien was filed and had not consented unanimously to the improvements.[91] Phase I of the complex had already been sold to individual owners, but phases II and III had not.[92] The court held that phase I could not be liened. Phases II and III could because a lien could attach to areas of the complex that were not yet established as condominiums even though they were intended to be condos at some point in the future. The first phase could only be liened if the individual owners unanimously consented to the improvements.[93]

Know the Rules

This article and its predecessor, "Can I Lien That?", have surveyed a variety of settings in which mechanic's liens may attach. Knowledge of these rules is useful to spot issues and is essential to reduce the angst of the contractor and its counsel having to invoke lien rights in order to get paid for work performed.

Endnotes

1. David W. Zimmerman & Melissa A. Orien, *Can I Lien That*? 27:4 CONSTR. LAW. 28 (2007).
2. Howard S. Wright Constr. Co. v. Superior Court, 130 Cal. Rptr. 2d 641, 647 (Cal. App. 2003) (quoting CAL. CIV. CODE § 3110 (West 1993)).
3. *Id.* (citing CAL. CIV. CODE § 3129 (West 1993)).
4. *Id.* (citing CAL .CIV. CODE §§ 3094 & 3129 (West 1993)). English v. Olympic Auditorium, Inc., 217 Cal. 631, 642 (1933) (where lessee orders work without lessor's knowledge, mechanic's lien only attaches to lessee's interest in the property).
5. *Id.* (citing CAL. CIV. CODE § 3094 (West 1993)).
6. 770 ILL. COMP. STAT. 60/1-1(a) (West 2008); Crowley Bros. Inc. v. Ward et al., 54 N.E.2d 753 (Ill. App. Ct. 1944) (where owner of property knowingly permitted tenant to contract for repairs and improvements, owner's interest was subjected to lien for labor and materials furnished).
7. M. Ecker & Co. v. LaSalle Nat'l Bank, 645 N.E.2d 335, 340 (Ill. App. Ct. 1994).
8. Wertz v. Mulloy, 144 Ill. App. 329 (Ill. App. Ct. 1908).
9. Fettes, Love & Sieben, Inc. v. Simon, 196 N.E.2d 700, 702 (Ill. App. Ct. 1964).
10. MINN. STAT. § 514.06 (West 2002).
11. *Id.*
12. Anderson v. Harrison, 160 N.W.2d 560, 562 (Minn. 1968).
13. *See* Master Asphalt Co. v. Voss Constr. Co. of Minneapolis, 535 N.W.2d 349, 354 (Minn. 1995). The owner of three commercial properties leased them to a party that intended to use them as a farmer's market, and the tenant showed the lessor preliminary renderings of market canopies and related structures but did not give the lessor notice when construction began and the lessor did not know who would perform the construction, when construction would commence, or any other details concerning the construction. The lessor was not charged with actual knowledge of the improvement, and the lien did not attach. *Id.*
14. Although Florida courts do not appear to use the word "consent" in their analysis, the Florida statute and the courts' reasoning best place it in this category of authorities.
15. FLA. STAT. ANN. § 713.10 (West 2006).
16. *See* Edward L. Nezelek, Inc. v. Food Fair Props. Agency, Inc., 309 So. 2d 219, 220 (Fla. App. 1975) (affirming trial court action denying lien foreclosure where lease required lessor approval of tenant improvements and contractor failed to investigate the terms of lessee's lease).
17. *See* Miracle Ctr. Dev. Corp. v. M.A.D. Constr., Inc., 662 So. 2d 1288, 1291 (Fla. App. 3 Dist. 1995). Tenant entered into a lease with the anticipation

that it would renovate the property and open a nightclub. The tenant's lease provided that the fee interest could not be burdened by any improvements to the leasehold. Tenant contracted for the anticipated improvements, then went into default under both the lease and the construction contract when only minor improvements remained. Shortly after the tenant defaulted, the owner leased the property to a new tenant that completed the improvements and promptly opened a nightclub. Although the lease anticipated that the leased premises may be improved, it found that that was not vital to the lease's perpetuity, distinguishing between leases that "contemplate" improvements and those that "require" improvements.

18. F&D Elec. Contractors, Inc. v. Powder Coaters, Inc., 567 S.E.2d 842, 845 (S.C. 2002).

19. *Id.* at 842–48.

20. *Id.* at 844, 845.

21. MASS GEN. LAWS ANN. ch. 254 § 2 (LexisNexis 2008).

22. United HVAC v. CP/HERS Somerville Corp., 18 Mass. L. Rep. 577 (2004).

23. N.Y. LIEN LAW § 3 (McKinney 1993); *see* Paul Mock, Inc., v. 118 E 25th Street Realty Co., 448 N.Y.S.2d 693, 694 (1982).

24. Dewees Mellor, Inc. v. Weise, No. 91Cv2518 (Erk), 1993 WL 591608, at *3 (E.D.N.Y. Dec. 29, 1993).

25. *Id.* (citing M & B Plumbing & Heating Co., Inc. v. Cammarota, 477 N.Y.S.2d 901 (1984); Nat'l Wall-Paper Co. v. Sire, 57 N.E. 293 (N.Y. 1900).

26. *Id.* (citing *Paul Mock*, 448 N.Y.S.2d at 694).

27. *Id.* (citing Beaudet v. Saleh, 539 N.Y.S.2d 567 (1989)).

28. McCombs Constr. Inc. v. Barnes, 645 P.2d 1131, 1134 (Wash. Ct. App. 1982).

29. *Id.*

30. D.C. CODE § 40-301.01.

31. Lipscomb v. Hough, 286 F. 775, 777 (D.C. 1923).

32. Langley v. D'Audigne, 31 App. D.C. 409 (1908).

33. *See id.*

34. Moore v. Axelrod, 443 A.2d 40, 44 (D.C. 1982).

35. MO. REV. STAT. § 429.010 (2008).

36. Utley v. Wear, 333 S.W.2d 787, 792 (Mo. Ct. App. 1960).

37. *Id.*

38. *Id.*

39. TENN. CODE. ANN. § 66-11-102(d).

40. *Id.*

41. Nunley Contracting Co., Inc. v. Four Taylors, Inc., 384 S.E.2d 216, 217 (Ga. App. 1989).

42. Meco of Atlanta, Inc. v. Super Valu Stores, Inc., 449 S.E.2d 687, 689 (Ga. App. 1994).

43. Mahoning Park Co. v. Warren Home Dev. Co., 142 N.E. 883 (Ohio 1924) (rejecting arguments under an agency theory or consent theory based on evidence that the owner met with the lessee and the lien claimant before work began and the owner was present when the lien claimant performed the work of improvement).

44. Commercial Structures & Interiors, Inc. v. Liberty Educ. Ministries, Inc., 192 S.W.3d 827, 835 (Tex. App. 2006).

45. C.T. Schneider v. Delwood Ctr., Inc., 394 S.W.2d 671 (Tex. App. 1965).

46. N.J. STAT. ANN. § 2A:44A-1 (West).

47. 49 PA. CONS. STAT. § 1303(d).

48. Hughes v. Durso, 168 A.2d 75, 78 (N.J. Super. Ct. App. Div. 1961); Cherry Hill Self Storage, LLC v. Racanelli Constr. Co., 2007 WL 1756914, at *2 (N.J. Super. A.D. 2007).

49. Murray v. Zemon, 167 A.2d 253, 256 (Pa. 1960).

50. Scott & Wimbrow, Inc. v. Wisterco Invs., Inc., 373 A.2d 965, 969 (Md. Ct. Spec. App. 1977).

51. *Id.* at 968.

52. Dominion Trust Co. v. Kenbridge Constr. Co., 448 S.E.2d 659, 661 (Va. 1994).

53. *Id.*

54. *E.g.*, W. Well Works, Inc. v. California Farms Co., 60 Cal. App. 749, 758 (1923) ("In determining the amount of land to be subjected to the lien . . . the trial court should take into account the fact that the mechanic's lien law is to be liberally construed, with a view to effecting its purpose."); *see also* Pac. Coast Refrigeration, Inc. v. Badger, 52 Cal. App. 3d 233, 242–43 (1975) ("It has been noted that there was frequent amendment of the lien laws . . . and that 'the amending process has been one of liberalization in favor of those who bestow services in the structure of the land.' ").

55. Amert Constr. Co. v. Spielman, 331 N.W.2d 307, 311 (S.D. 1983).

56. *Id.*

57. *Id.*

58. Dysart v. Youngblood, 102 P.2d 664 (N.M. 1940).

59. *Id.* at 667.

60. *Id.*

61. Beall Pipe & Tank Corp. v. Tumac Intermountain, Inc., 700 P.2d 109, 113–14 (Idaho Ct. App. 1985) (holding that "so much as may be required for the convenient use and occupancy thereof" was the equivalent of "all the land benefited," and that the trial court had wide discretion in determining the land benefited by the improvement).

62. Inter-City Contractors Servs., Inc. v. Consumer Bldg. Indus., Inc., 373 N.E.2d 903, 905–06 (Ind. Ct. App. 1978) (Company contracted to provide labor and materials for an eighty-unit housing project that was later divided into eighty-one lots. A community building was going to be built on lot 81 but was subsequently canceled, and no improvements were made to that lot. The trial court awarded a mechanic's lien on all eighty-one lots, even though the contractor performed no work on lot 81. The appellate court affirmed, reasoning that the division into eighty-one lots had no bearing on the extent of the lien and that the lien covered the entire land surrounding the improvements because the land was a proper part of the use and enjoyment of the improvements in question.).

63. Pioneer Nat'l Title Ins. Co. v. Exten Assocs., Inc., 403 A.2d 283, 286 (Del. 1979).

64. *Id.*

65. *Id.*

66. *Id.*

67. 37 Cal. App. 289 (1918).

68. *Id*. pp. 295–96; *see also* W. Well Works, Inc. v. California Farms Co., 60 Cal. App. 749, 757–58 (1923) (holding that appellant was entitled to lien an entire forty-acre tract upon which he installed an irrigation well because the well was installed to furnish water for the tract, and without the land to irrigate, the well would be useless).

69. *In re* Skyline Props., Inc., 134 B.R. 830, 837 (Bankr. W.D. Pa. 1992).

70. *Id.* (citing Wirsing v. Pa. Hotel & Sanitarium Co., 75 A. 259 (Pa. 1910)).

71. *Id.*

72. Springer Land Assoc. v. Ford, 168 U.S. 513, 530, 18 S. Ct. 170, 42 L. Ed. 562 (1897).

73. Scott, Black & Wynne v. Summit Ridge Estates, Inc., 251 Cal. App. 2d 347, 351 (1967).

74. *Id.* at 356.

75. *Id*.

76. *Id*.

77. Drake v. Riley, 9 P.2d 130 (Or. 1932).

78. *Id.*

79. Kershaw Excavating Co. v. City Sys., Inc., 581 A.2d 1111 (Del. 1990).

80. *Id.* at 1112.

81. *Id.* at 1114.

82. *Id.*

83. *Id.*

84. Metco, Inc. v. Moss Creek, Inc., 601 A.2d 802, 803 (Pa. 1992).

85. *Id.* at 804.

86. *Id.*

87. ECC Constr., Inc. v. Ganson, 98 Cal. Rptr. 2d 292 (Cal. App. 2000).

88. *Id.* at 294.

89. *Id.* at 296.

90. *Id.*; *see also* Compass Bank v. The Brickman Group, 107 P.3d 955, 960 (Colo. 2005) (affirming a decision holding that a lien covering more than one property in a condominium complex is enforceable upon a proper showing of apportionment among the properties).

91. United Bhd. of Carpenters v. Nyack Waterfront Assoc., 182 A.D.2d 16, 20, 21 (N.Y. App. Div. 1992).

92. *Id.*

93. *Id.*