



## CONSTRUCTION LAW E-UPDATE

### OFFICE FIT-OUTS AND THE LIEN LAW

By Henry L. Goldberg, Managing Partner, Goldberg & Connolly

MARCH 2014

To meet the needs of the modern office environment, modular construction is increasingly in use in interior commercial construction. Modular construction allows the end user to expand, reconfigure and add or subtract work space, which makes it easier to move partition walls, cabinets and other office components to accommodate a change in space. Despite this trend, a New York Court has been recently presented with the issue of whether a subcontractor that installs these types of office work stations, cabinets, and partition walls, is protected by the Lien Law.

In this case, the general contractor challenged the subcontractor's mechanic's lien rights. The primary argument of the general contractor was that modular office installations, work stations, partitions and office front wall/partition systems are not lienable because such work should not be considered permanent "improvements" to real property. The general contractor likened the installation of work stations to "moveable furniture and furnishings." Furthermore, it argued that because the installed materials were moveable, and/or readily removable, none of the subcontractor's work permanently improved the realty.

Pursuant to the Lien Law, the term "improvement" includes, "the demolition, erection, alteration or repair of any structure upon, connected with, or beneath the surface of, any real property and any work done upon such property or materials furnished for its permanent improvement."

In this recent decision successfully obtained by Goldberg & Connolly, the court ruled that the work of a subcontractor that provided such fit-outs for commercial offices is protected by the Lien Law. This subcontractor specifically constructed work stations, installed and bolted to overhead cabinets to walls, constructed partition walls and, glazed and installed glass walls. The installations were affixed by bolts and screws, permanently installed tracks or cleats attached to the office buildings' walls and floors.

The Court considered how other courts have determined whether the installations of materials are improvements to real property. The Court noted that doors, paneling, kitchen sinks, carpeting, and various appliances have been found to qualify as permanent improvements. The Court contrasted such improvements of real property from items that are "easily and customarily moved," such as furniture, carpets, hangings and pictures.

In reaching its decision, the Court considered the manner in which the subcontractor installed the workstations. Specifically, the Court noted how the glass panels for the partitions, used by the subcontractor, were held in place by hardware that is screwed to office walls and how the subcontractor screwed or toggle-bolted small plates or cleats to the wall to hang wall cabinets. The Court further noted that the subcontractor screwed tops of office front systems into drywall ceilings. This was enough for the Court to find



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that the workstations installed by the subcontractor are a “permanent” improvement entitled to protection under the Lien Law. Notably, the Court explained that “A minimal degree or lack of damage to the realty involved in installing or removing an item does not control whether an item is an improvement to realty.” Thus, the Court dismissed the general contractor’s arguments and held that the installation materials’ attachment to the property constituted a permanent improvement under the Lien Law.

#### **Goldberg & Connolly Commentary**

Considering the increasing use of modular construction in interior commercial work, the issue of whether certain office fit out work constitutes a “permanent improvement” to the property was bound to surface. This recent decision represents an important review of the issue and, most importantly, a victory for the subcontractor. While a right to lien depends on the facts presented in each case, this decision establishes that the “modular” nature of a project does not, in it of itself, prevent a contractor from enforcing its Lien Law rights. Such systems can be “lienable” permanent improvement under the right circumstances.

#### **About Goldberg & Connolly Attorneys at Law**

*Goldberg & Connolly is a recognized authority on all aspects of construction and government contract law and is at the forefront of new issues, developments and legislation affecting the industry. The firm provides legal counsel in the areas of construction, government contracts, surety law, real estate development, environmental law and commercial law and litigation. Goldberg & Connolly also service the personal, corporate, business succession and estate planning needs of our entrepreneurial clientele. The firm has aggressively pursued the interests of its clients since 1955. More information may be found at: [www.goldbergconnolly.com](http://www.goldbergconnolly.com).*