



# Legal Corner

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## Minor Work Does Not Extend The Time Period For Mechanic's Liens

*In November of 2007, a Massachusetts appeals court determined that performance of minor work on a project will not extend the time in which a contractor may file a lien.*

*A local church hired a general contractor to renovate its church building. The general contractor then hired a subcontractor to perform steel work on the project. Although the steel subcontractor substantially completed its work on the job, the general contractor refused to pay the balance on the subcontract. As a result, the subcontractor recorded a "Notice of Contract" and gave notice of the filing to the church. Under the Massachusetts mechanic's lien statute, a contractor will establish a lien on property by filing a notice of contract and by giving actual notice of the filing to the owner. The notice of contract must be filed within a certain period of time, however. One way to establish a lien is to file the notice of contract within 90 days of the last day on which the contractor or subcontractor performed work on a project.*

After filing its notice of contract, the subcontractor brought suit against the general contractor and sued the church to enforce its lien. The church argued that the subcontractor did not file its notice of contract within 90 days after the last day on which the sub performed work on the project. According to the church, the subcontractor finished its work in November of 2005, but did not file its notice of contract until May of 2006. In response, the subcontractor alleged that it performed repair work on the project in March of 2006, within 90 days of filing its notice of contract. The sub alleged that its project manager repaired and reinstalled a broken ladder on the church building. The trial court sided with the church, however, and the subcontractor took its case to the appeals court.

On appeal, the court addressed whether the subcontractor properly recorded its notice of contract within 90 days from the date of last-performed work on the project. The general rule is that when additional work is required for proper performance of the contract, even if the contractual work has been substantially completed, the time requirements for filing a lien will begin when the additional work is finished. In other words, certain necessary additional work will extend the deadline for filing a notice of contract. Minor work that is outside the scope of the contract, however, will not constitute "additional work" and will not extend the period for filing a lien. Since the subcontractor performed repair-work within the 90 day period, the court had to resolve one question: whether the repair work on the ladder was "additional work" required to achieve proper performance of the contract and sufficient to extend the deadline.

Ultimately, the court concluded that the repair work was minor and did not fall within the scope of the contract. The subcontractor removed the ladder from the project and repaired the ladder off-site. The subcontractor, however, did not provide any evidence, such as time

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sheets, payment records or letters, to show that it actually performed the work. In fact, the church did not even know that the sub had repaired the ladder! In addition, the subcontractor failed to show that the work was required for the proper completion of the contract. As a result, the court determined that the repair and reinstallation of the ladder

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was an unnecessary "gratuitous" act by the subcontractor: it was not required work. Even if the subcontractor did not repair the ladder, the project was already substantially performed. That is, the repair work was too minor to be considered necessary "additional work" under the contract. As a result, the work did not extend the time period for filing a lien, and the court found for the church because the subcontractor did not file its notice of contract within 90 days of its last performed work in November of 2005.

This case demonstrates the importance of keeping

proper records and timely pursuing lien rights. Once a contractor finishes working on a project and no longer provides labor or materials, the contractor has only 90 days to place a lien on property. Performing minor work on a contract may very well not extend these lien rights. For a contractor that must return to a project to perform any further work, you must keep detailed records such as time sheets, invoices and correspondence, showing that the work was performed and necessary additional work under the contract. This will help establish the date on which the work was last performed and will establish the deadline for filing a notice of contract to enforce a lien on the property. ■

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