Alberta Court of Appeal confirms when a landlord's interest is vulnerable to liens

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The Alberta Court of Appeal's (ABCA) recent decision in *Xemex Contracting Inc. v. Aspen Properties (Northland Place) Ltd.*, 2025 ABCA 49, serves as a reminder that not all work performed for a tenant will provide a "direct benefit" to the landlord, nor will it necessarily render the landlord's fee simple interest in the land "vulnerable" to liens. Contractors performing work on leased properties, who wish to preserve their right to register a lien against the landlord's fee simple title, should take heed and provide notice to the landlord prior to commencing the work in accordance with the *Prompt Payment and Construction Lien Act* (PPCLA).

Case summary (short and sweet)

Xemex Contracting Inc (the Contractor) performed work for Koor Energy Ltd (the Tenant) on a leased property, owned in fee simple by Aspen Properties (Northland Place) Ltd (the Landlord). When the Tenant stopped paying, the Contractor abandoned the job and ultimately filed a lien against the fee simple interest of the Landlord. The Contractor left the leased premises in state of disarray, but even if the work had been finished, the planned layout for the space would not have been attractive to other prospective tenants.

Ultimately, the ABCA concluded the Contractor's lien against the Landlord's fee simple title was invalid because the Landlord did not obtain a "direct benefit". The Landlord did not, therefore, meet the third part of the definition of an "owner" under the PPCLA.

Key takeaways

- A landlord does not necessarily obtain a "direct benefit" (as is required by the PPCLA to be an "owner") if it has to incur major expenses to modify or finish incomplete work of a lien claimant undertaking tenant improvements. In contrast, if the completed tenant improvements are to a "turnkey" ready-to-use space, then there may be a direct benefit to the landlord.
- A landlord approving some plans for tenant improvements, or involving itself in a project with a mind to ensuring safety and preventing undue disruption to its building, does not necessarily mean that the work is done with the landlord's

privity and consent. Approval of plans and mere instructions may not rise to the level of a "direct dealing" between a landlord and a contractor.

Discussion and analysis

A. The definition of "owner" under the PPCLA, and the lower court's decision

Under the PPCLA, a lien encumbers an "owner's" interest in the land. The definition of an "owner" has three components. First, the person must have an interest in the land. Second, the person must have expressly or impliedly requested that the work be done. Third, the work must have been done on the person's credit, on their behalf, with their privity and consent, or for their direct benefit.

Where a lien claimant has registered a lien against the fee simple interest of a landlord, the court's analysis as to whether that landlord is an "owner" will generally focus on the second and third components. In particular, it is often contentious whether the work was done either for the landlord's direct benefit, or with their privity and consent.

B. Decisions of the lower courts

In this case, the Applications Judge found that the Landlord was an "owner" under the PPCLA since the work was done at the Landlord's implicit request and it, in the eyes of the Applications Judge, directly to its benefit. As such, the lien was found to be valid.

On the Landlord's appeal of the Applications Judge's decision, the Justice of the Court of King's Bench agreed that the Landlord had implicitly requested the Contractor perform the work based on its involvement in the project, but concluded that the Landlord did not receive a "direct benefit" from the work since the project was left in a state of disarray and incomplete.

The Justice held that the Landlord was not an "owner" under the PPCLA. While there was an indirect benefit to the Landlord's building for some of the tenant improvement work, it was not a "direct benefit" since it would require the Landlord to spend more money to bring it to a marketable state for prospective tenants. As such, the lien was found to be invalid.

C. Appeal dismissed: No direct benefit, nor was there privity and consent by the landlord

The Contractor's appeal of the decision was dismissed, and the ABCA held that the Landlord did not meet the third part of the definition of an "owner" under the PPCLA.

i. The Landlord did not directly benefit from the work

The Contractor, relying upon the terms of the lease which contained a clause that all tenant improvements shall immediately become the Landlord's property, argued that the tenant improvement work did provide the Landlord with an immediate benefit and therefore the Landlord received a direct benefit as an "owner" under the PPCLA.

The ABCA held that even though the clause in the lease may have granted the Landlord an immediate legal ownership of the tenant improvements, it did not provide the Landlord with any tangible benefit. If a landlord has to incur major expenses to modify or complete tenant improvements, then it has not received a direct benefit. By contrast, if a contractor can demonstrate that a landlord has received a completed “turnkey” space, it is more likely that the landlord obtained a direct benefit.

ii. The work was not done with the Landlord’s privity and consent

A landlord may implicitly request work be done, by being aware of it or consenting to it, but that does not necessarily mean the work is done with the Landlord’s privity and consent.

In this case, the ABCA found that while the Landlord actively participated in the tenant improvement work, the dealings between the Contractor and the Landlord did not rise to the level of “direct dealing”. The purpose and role of the Landlord’s involvement in the tenant improvement work was to ensure the safety and operational integrity of its building. Moreover, any approval of plans by the Landlord was limited to the impact on the building itself or other tenants. Likewise, its other dealings were intended to ensure health and safety matters and limit interference with the other tenants. These were duties that would be expected of a landlord, but were not sufficient to conclude that the work had been done with its privity and consent.

Contact us

If you have questions related to this article, the PPCLA, or any other construction-related issues, make sure to reach out to any of the authors and contacts below, or any lawyer from BLG’s Construction Group.

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