**Liening Leaseholds – Section 19 of the *Construction Lien Act***

Section 19 of the *Construction Lien Act* requires that in circumstances where an “owner” as defined under the *Act* is a tenant, the interest of the landlord will also be subject to the lien if: 1) the contractor has given written notice of the lien to the landlord, and 2) if the landlord does not provide written notice to the contractor within 15 days that the landlord assumes no responsibility for the improvement.

Where owner’s interest leasehold

**[19.](http://www.e-laws.gov.on.ca/html/statutes/french/elaws_statutes_90c30_f.htm%22%20%5Cl%20%22s19s1)**[(1)](http://www.e-laws.gov.on.ca/html/statutes/french/elaws_statutes_90c30_f.htm#s19s1)  Where the interest of the owner to which the lien attaches is leasehold, the interest of the landlord shall also be subject to the lien to the same extent as the interest of the owner if the contractor gives the landlord written notice of the improvement to be made, unless the landlord, within fifteen days of receiving the notice from the contractor, gives the contractor written notice that the landlord assumes no responsibility for the improvement to be made. R.S.O. 1990, c. C.30, s. 19 (1)

An “owner” as described by the *Act* is: “any person, including the Crown, having an interest in a premises at whose request and, (a) upon whose credit, or (b) on whose behalf, or (c) with whose privity or consent, or (d) for whose direct benefit, an improvement is made to the premises but does not include a home buyer”.

This section is helpful to the landlord with respect to dismissing the construction lien. However, s. 19 will not dismiss the construction lien against a tenant at the same time. The lien will subsist against the tenant regardless of failure to comply with section 19.

**Case Law on Section 19**

***Flexible Contractors Inc. v 1408023 Ontario Inc.,* [2012] OJ No 4889 (ONSC)**

FACTS: The same person was President of both the tenant that contracted with the Plaintiff and also the landlord who owned the property. The contractor Plaintiff did not provide written notice to the landlord pursuant to s. 19(1) of the *Act*.

HELD: The court found that constructive notice as a result of a person’s position as President in both companies was not sufficient notice under s. 19(1) of the *Act* as it wasinconsistent with the s. 19(1) requirement that the notice be given in writing. The claim against the landlord was dismissed and the lien was discharged from the owners’ interest in the property. The claim against the tenant was also dismissed as the tenant was able to prove they had overpaid for the construction costs to date.

***1276761 Ontario Ltd. (c.o.b. GRM Contracting) v 2748355 Canada Inc.*, [2005] OJ No 2956 (ONSC)**

FACTS: GRM contracted by 2748355 (owner and landlord of property) to perform work on a sub-lessee’s unit. The sub-lessee made a separate contract with GRM for further work. 2748355 paid for their contract but the sub-lessee did not pay for theirs. GRM filed a lien against the property. At the time of trial, the landlord was the only party with an interest in the premises following the termination of tenancy for non-payment of rent.

HELD: 2748355 was not the “Owner” of the property for the purposes of the *Act* as they had not requested the extra work that the sub-lessee contracted with GRM to perform. There was no evidence that GRM expressly or impliedly requested the improvements made by the sub-lessee. GRM’s notice to 2748355 was not sufficient as required by s. 19(1) of the *Act* and 2748355 was not given the opportunity to notify GRM that it assumed no liability for the construction requested by the sub-lessee.

***J. Lepera Contracting Inc. v Royal Timbers Inc.*, [2012] OJ No 1549 (ONSC)**

FACTS: Royal Timbers, the owner of land, entered an Agreement of Purchase and Sale with Sonoma for the land. Sonoma then contracted with Lepera to install necessary underground services in order to build a hotel. Sonoma backed out of the purchase of the land and did not pay Lepera for services. Lepera registered a lien against the land and recovered against Sonoma but the amounts went unpaid. Lepera then sought action against Royal Timbers.

HELD: Royal Timbers was not the “Owner” for the purposes of the *Act* and thus Lepera could not recover against Royal Timbers. However, Lepera was not at fault for the failure of the sale to proceed and thus Lepera was entitled to a lien on the deposit paid by Sonoma to Royal Timbers toward satisfaction of its judgment against Sonoma.

***Venneri Engineering Ltd. v Zonenward Leasex Management Inc.*, [1994] OJ No 1649 (OCJ – Gen Div)**

FACTS: Tenant (Zonenward) contracted with numerous contractors for work to be done to the premises. Venneri claimed against the two tenant companies (Zonenward and Food Court International Inc. which Zonenward operated through) and the Owner of the premises (John Pianosi). Venneri noted the tenants in default. The two tenant companies became insolvent and were without assets. The landlord remained the only defending defendant in the claim as he was the only one with any assets. For the lien claim to succeed it must be shown that a “contractor” gave the landlord written notice of the improvements to be made and that the landlord gave no written response disclaiming responsibility. Upon being contracted by the tenant companies, Venneri faxed and mailed a letter to the Owner/Landlord of the premises stating that they had been retained to make renovations and improvements to the premises. The Owner/Landlord acknowledged receipt of the letter through signing and returning a copy of the letter via fax.

HELD: Claims against the landlord dismissed. There was no notice pursuant to s. 19(1) of the *Act*. The notice provided to the landlord must contain the elements of Form 2 under Regulation 175 of the *Act*. The notice provided did not sufficiently draw attention to the landlord that his land was being used as a surety. The landlord was not found to be an “Owner” for the purposes of the *Act*.

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