

Mechanics Liens - When is a structure not lienable?

AUTHOR: SANDBERG PHOENIX

Mechanic's liens are legal creations that protect persons who improve real estate. Contractors and sub-contractors should beware, however, that not all structures that might, to a layman, seem to be a lienable improvements to real estate, are legally lienable. A case in point is the wind energy system that was built on property pursuant to a windpark easement agreement entered between a property owner and the wind energy developer, and contained a definite term. A subcontractor that worked on the wind tower filed a complaint to foreclose its \$3 million mechanic's lien against the property; and the Court granted the property owner's motion to dismiss the complaint, and the general contractor's motion for summary judgment. The Court held that the subcontractor's work was an improvement to a *trade fixture*, which is not lienable; and that, therefore, the work was not an improvement to real property, and not lienable. Although expensive to remove, the tower was not "incapable of removal", and the Court found that the difficulty of removal did not outweigh the fact that the tower was intended to be temporary. Contractors and subcontractors should determine the interest the "owner" for whom work is being performed has in real estate, before relying on the mechanic's lien statutes to secure their work. [windmills2](#)

Author: Sue A. Schultz, Esq., Sandberg Phoenix & von Gontard P.C., sschultz@sandbergphoenix.com, Direct Dial: 618-624-3478 or 314.425.8431.