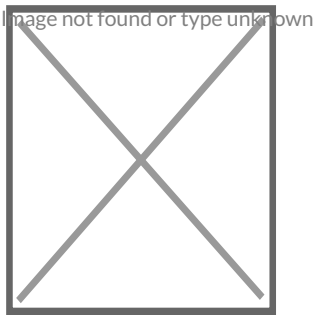


Preserving Your Construction Lien Rights



By Maggie Puccini, Bouhan Falligant LLP

Special to *Business in Savannah*

Business is booming for the construction industry, and not a moment too soon. Prior to the recent recession, construction employment hit an all-time high of 7.7 million jobs, but then reduced 30 percent of its workforce by January 2011.

Over the past six years, according to the Associated General Contractors of America, the construction industry has added 1.3 million jobs. This growth will likely continue as this country focuses more on infrastructure spending.

In fact, a January 2017 survey by the Associated General Contractors of America revealed that 73 percent of firms plan to expand their payrolls this year due to strong demand from the public and private sectors. Simply put, for those in the construction industry, this is the most welcome and optimistic outlook in the past seven years.

Frequently, however, more mistakes are made when business is going well because there simply isn't time to focus on details that can have a significant legal impact. Recently, the Georgia Court of Appeals upheld a local trial court's decision that a masonry subcontractor's lien against the Savannah Law School property was invalid because the subcontractor failed to pursue the lien within the statutorily-required time period. The subcontractor had executed a lien waiver and then failed to file an affidavit of nonpayment or a lien within 60 days of the date set forth on the waiver, as required by Georgia law. The subcontractor asserted that the waiver was backdated at the request of the general

contractor and that it wasn't actually signed until several months after the date on the waiver. The subcontractor argued that the date the waiver was actually signed, rather than the date on the face of the waiver, should be the operative date for the commencement of the 60-day period to file a lien or affidavit of nonpayment.

A lien is a statutory right to make a claim against real property to secure payment for labor, materials or services provided to improve that property. In Georgia, it is the only way to recover monies from parties, such as the landowner, with whom a subcontractor or supplier has no contract.

Except in those instances where there is a direct contract with the property owner, a subcontractor or supplier cannot collect directly from the property owner. The subcontractor or supplier's best protection is to have a lien against the owner's property, but unless the subcontractor or supplier strictly adheres to the requirements of Georgia law regarding the form, content, filing, and service of the lien, it will be declared invalid.

If you are a contractor or subcontractor, it is imperative you pay attention to the details in order to preserve your lien rights. Remember to focus on the date of last work or delivery of goods for the project rather than the date you invoice the work, make sure change orders or additional work are approved in writing in advance of the work, carefully scrutinize lien waivers and releases, file and serve an affidavit of nonpayment or lien within the statutory deadline if you aren't paid after signing an interim or final lien waiver, and include all the required information in the affidavit of nonpayment or lien. And, like the aforementioned case involving the Savannah Law School evidence, never, ever backdate a document, regardless of who is asking you to do so or why.

Georgia's lien statutes are complex, even to many attorneys, so they can certainly be confusing to a layperson. In order to cross all your t's and dot all your i's, be sure to seek out an experienced lawyer who can assist with properly declaring and filing a lien. By doing so, you will significantly increase the odds of avoiding future business and legal headaches.

Margaret ("Maggie") W.S. Puccini is a partner with Bouhan Falligant whose practice focuses on construction law, bankruptcy and creditor's rights, banks and financial institutions, commercial litigation, and landlord-tenant disputes. She can be reached at 912-644-5746 or mpuccini@bouhan.com.

Practice Areas

- Banks & Financial Institutions
- Commercial Litigation
- Construction Law

Attorneys

- Margaret W.S. Puccini