

CONTRACTOR ALERT

Contractor Alert is a joint publication by this Contractor and the Law Offices of Richard M. Sissman, Esquire, located at 1485 Chain Bridge Road, Suite 105, McLean, VA 22101. This newsletter is designed to give general information on the matters covered. Space limitation prevents exhaustive treatment or analysis of this topic. This newsletter is not intended to substitute for advice on specific legal problems. If you are interested in receiving a complimentary issue or to be placed on our mailing list, contact Richard M. Sissman, Esquire. We welcome and appreciate your suggestions for future article topics.

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RECENT DEVELOPMENTS IN VIRGINIA LIEN LAW

The Virginia Supreme Court has recently visited the issue of what a general contractor must do in order to perfect his mechanic's lien upon real property. The case of Britt Construction v. Magazzino Clean LLC, 271 Va 58 (2006) was decided in January 2006.

Va. Code § 43-4 requires that a general contractor, as a condition of perfecting a mechanic's lien, contemporaneously file with the memorandum of lien a "certification" that a copy of the memorandum has been mailed to the property owner. (cited from case)

Britt Construction was hired by Magazzino to build a car wash in Loudoun County. A dispute arose and Britt filed 12 separate liens against Magazzino's property.

Britt neither mailed a copy of the liens to Magazzino nor did it file certifications of such mailings at the time of filing its memoranda. Magazzino argued that none of the mechanic's liens met the perfection requirements contained in the Virginia Code.

For a general contractor to perfect the lien, besides recording the lien in accordance with Va. Code §43-3 it must also file along with the memorandum of lien, a certification of mailing of a copy of the memorandum of lien on the owner of the property at the owner's last known address. This requirement was added to the statute in July 2003.

The Circuit Court invalidated the liens claiming that the failure to file certifications of mailing with the lien memorandum was in derogation of the statute and

therefore the lien was unenforceable.

Britt argued that the provision the Code provision was only a notice requirement and did not invalidate the lien. Needless to say, the Virginia Supreme Court disagreed with Britt's analysis.

The Supreme Court advised that the General Assembly's intent can be gleaned from the plain meaning of the words in the statute. The Court held that the statutory language was plain and unambiguous and therefore they will give import to the plain meaning of the words in the statute. Mechanic's lien requirements will be strictly construed.

The Court concluded that the statute expressly requires that the general contractor file a certification of mailing at the time it files its memorandum stating that it has mailed a copy of the lien memorandum to the owners of the property.

It is evident that when filing your lien, whether as a prime contractor or lower tier subcontractor, that you follow the requirements of the statute. Failure to do so may result in a dismissal of your claim.

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